



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## RECOMMENDATION OF THE HEARINGS OFFICER

### I. GENERAL INFORMATION

**File No.:** LU 13-115249 CP ZC (HO 4130008)

**Applicant/Owners:** Peter Kusyk, Lead Applicant [3607 and 3617 NE 14<sup>th</sup> Avenue]  
Firenze Development Inc.  
7110 SW Old Wilsonville Road  
Wilsonville, OR 97070

Dawn M. Meaney [3637 NE 14<sup>th</sup> Avenue]  
4745 Calaroga Drive  
West Linn, OR 97068

Kevin Palmer [3623 NE 14<sup>th</sup> Avenue]  
3623 NE 14th Avenue  
Portland, OR 97212-2258

**Applicant's Representative:** Bruce Vincent  
Bedsaul/Vincent Consulting, LLC  
416 Laurel Avenue #3  
Tillamook, OR 97141

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** Sylvia Cate

**Site Address:** 3607, 3617, 3623 and 3637 NE 14<sup>th</sup> Avenue

**Legal Description:** BLOCK 13, LINCOLN PK: LINCOLN PK; BLOCK 13 LOT 13, LINCOLN PK; BLOCK 13 LOT 14, LINCOLN PK; BLOCK 13 LOT 15, LINCOLN PK; BLOCK 13 LOT 16, LINCOLN PK

**Tax Account No.:** R497101910, R497101920, R497101930, R497101940

**State ID No.:** 1N1E23CD 19700, 1N1E23CD 19600, 1N1E23CD 19500, 1N1E23CD 19400

**Quarter Section:** 2631

**Neighborhood:** Sabin Community Association

**Business District:** North-Northeast Business Association

**District Neighborhood Coalition:** Northeast Coalition of Neighborhoods

**Plan District:** None

**Existing Designation/Zoning:** High Density Single Dwelling/R5a Residential 5,000 with  
Alternative Design Density overlay

**Proposed Designation/Zoning:** Attached Residential/R2.5 Residential 2,500

**Land Use Review:** Type III, CP ZC, Comprehensive Plan Map Amendment and Zone Map  
Amendment

**BDS Staff Recommendation to Hearings Officer:** Approval

**Public Hearing:** The hearing was opened at 1:33 p.m. on September 9, 2013, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 3:56 p.m. The record was held open for new evidence until 4:30 p.m. on September 16, 2013, and until 4:30 p.m. on September 23, 2013 for rebuttal from the applicants/owners and their representatives (these individuals shall be referred to as "Applicant" throughout the remainder of this recommendation). On September 14, 2013, BDS submitted a request to reopen the record. The Hearings Officer issued an Interim Order extending the open record period until 4:30 p.m. on September 26, 2013 and until 4:30 p.m. on October 3, 2013 for written argument by the Applicant. The record was closed at that time.

**Testified at the Hearing:**

Sylvia Cate  
Fabio de Freitas  
Janet Walker  
Dennis Hauth  
Rick Alexander  
Katherine Shisler  
Peter Kusyk  
Bruce Vincent  
Michael Coleman

**Proposal:** The Applicant requests a Comprehensive Plan Map Amendment and concurrent Zone Map Amendment to change the current designation and zoning on real property generally referred to as 3607, 3617, 3623 and 3637 NE 14<sup>th</sup>, Portland, Oregon (the "Subject Property")

*from High Density Single Dwelling Residential [designation] and R5a [zoning] with Alternative Design Density overlay zone*  
*to*

*AR, Attached Residential [designation] and R2.5, [zoning].*

Potential future development on the Subject Property would include attached townhouses. Two of the lots of the Subject Property, 3607 and 3617 NE 14<sup>th</sup> Avenue, are proposed to be redeveloped with attached housing in a Craftsman/Cottage style. Attached to this Recommendation are two zone maps showing existing and proposed, and an example of potential future development.

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the criteria of Title 33, the Planning and Zoning Code. The applicable criteria are:

**33.810.050 Comprehensive Plan Map Amendments**

**33.855.050 Zoning Map Amendments**

The above criteria also include, by reference, applicable portions of the *Portland Comprehensive Plan* (goals and policies), *State Land Use Goals*, and the *Metro Urban Growth Management Functional Plan* (titles).

## II. ANALYSIS

**Site and Vicinity:** The Subject Property comprises four abutting lots, all with frontage along NE 14<sup>th</sup> Avenue, starting with a corner lot [3637 NE 14<sup>th</sup> Avenue] in the southwest quadrant of the intersection of NE 14<sup>th</sup> Avenue and NE Beech Street, and three lots immediately to the south. The total size of the Subject Property is 20,000 square feet. Each lot is 5,000 square feet, with two lots vacant and the other two lots developed with single dwelling houses. Directly east of the Subject Property, across NE 14<sup>th</sup> Avenue, is a CN2 zoned block of land occupied by a shopping center, whose anchor tenant is Whole Foods Market; other tenants include Starbucks, Papa Murphy's, a UPS store and Backyard Bird Shop. The second floor has 13 residential units.

The Subject Property is across NE 14<sup>th</sup> Avenue from the rear façade of the main building in the shopping center. Directly south of the Subject Property are lots zoned R5a. Further south are properties zoned CN1; these properties are close to or on NE Fremont Street. The CN1 lots consist of a small group of neighborhood commercial uses, such as a restaurant, pub, clothing store, barbershop, and coffee shop. The balance of the vicinity are lands zoned R5a and R5. Four blocks to the west of the Subject Property is a large area of lots and parcels zoned R2.5; the zone that the Applicant is requesting for the Subject Property. Immediately south, across NE Fremont Street, is the Irvington Historic District.

**Existing Zoning:** The current zoning for the Subject Property is Single Dwelling Residential 5,000 with the Alternative Design Density overlay zone. The single-dwelling zones are intended to

preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The R5 zone is a high-density single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes.

The purpose of the Alternative Design Density Overlay Zone is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements.

**Proposed Zoning:** The R2.5 zone is a high-density single-dwelling zone. The R2.5 zone allows attached and detached single-dwelling structures and duplexes. Both the existing and proposed zones are single-dwelling zones. There is no difference between the development standards, between the existing and proposed zones, with the exception of height [30 feet for R5, 35 feet for R2.5].

The minimum width for lots in the R2.5 zone, if developed with detached houses, may not be reduced below 25 feet. Thus, the potential result of the requested zoning, if approved, would be a total of eight lots, with each 5,000 square lot being divided in half. A future land division will be required in order to divide the Subject Property into 8 lots.

**Land Use History:** City records indicate there are no prior land use reviews for the Subject Property.

**Agency Review:** A "Request for Response" was mailed July 29, 2013. The following bureaus have responded with no issues or concerns:

- **Fire Bureau** noted no concerns and that future development must comply with the Fire Code in effect during building permit review. The full response is contained in the record at Exhibit E.4.
- **City Forester** noted no concerns. [Exhibit E.6]
- The **Bureau of Environmental Services** ("BES") responded that each of the four lots on the Subject Property have existing sanitary services. At time of redevelopment, all new laterals required to serve the project must be constructed to the public main at the Applicant's or owner's expense. BES response further notes that while there is no public storm-only sewer available, there are two available discharge points [on-site infiltration or to the public combination sewer after pollution reduction and flow control] for each of the lots. BES is satisfied that stormwater management is available, and will be reviewed at time of development. The full response is contained in the record at Exhibit E.1.
- The **Bureau of Transportation Engineering** ("PBOT") responded with an analysis of Goal 6 and related policies, as well as an analysis of adequacy of the transportation system in relation to the proposal. Excerpts of this analysis are found below, in this recommendation. The full

response is contained in the record at Exhibit E.2. The transportation response concluded that it had no objections to the proposal.

- The **Water Bureau** responded that the four lots on the Subject Property have existing water service. The full response is contained in the record at Exhibit E.3.
- The **Site Development Section of BDS** ("Site Development") responded that the Subject Property is relatively flat, not located in a Potential Landslide Hazard Area and is not within the 100-year floodplain. Site Development will review future development for conformance with the Stormwater Management Manual during building permit review. Site Development noted no concerns regarding the proposal, but did indicate that the Applicant must determine whether or not abandoned cesspools are present on any of the lots. The full response is contained in the record at Exhibit E.5.
- The **Portland Police Bureau** responded that police services are available. The full response is contained in the record at Exhibit E.7.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on August 16, 2013. Two written responses were received, by BDS staff, from the Sabin Neighborhood Association. One letter was received from the Sabin Neighborhood Association Land Use Chair, dated April 4, 2013, expressing support for the proposal. The letter noted that the location is well served by frequent transit service; that there are many services accessible by walking; that a neighborhood greenway is less than quarter mile away, providing good bicycle access and that the added density will support the neighborhood businesses. A second letter, dated August 22, 2013, was received from the Sabin Neighborhood Association, after the Land Use and Transportation Committee reconsidered the proposal, with the additional lots included in the Subject Property. The letter noted that the committee continued to support the revised proposal.

At the September 9, 2013 hearing, four persons testified who reside in the vicinity of the Subject Property. The common thread amongst the neighbors' testimony was a concern about the on-street parking impacts on NE 14<sup>th</sup> Avenue if the application were to be approved. Janet Walker ("Walker"), one of the neighbors who testified at the hearing, indicated that demand for on-street parking was high as a result of the nearby shopping center. Walker noted, in her testimony, commercial vehicles loading/unloading for the shopping center legally and illegally park on NE 14<sup>th</sup> Avenue. Walker requested that if the application were approved a condition be included requiring the Applicant to have "shared driveways." Neighbors Dennis Hauth ("Hauth") and Rick Alexander ("Alexander") also testified that on-street parking demand is high. Neighbor Katherine Shisler ("Shisler") expressed concern that any new development on the Subject Property could possibly block sunshine to the orchard located behind her residence; the Shisler property borders the Subject Property to the west.

Shisler expressed concern regarding shadows cast by new buildings located at the Subject Property if the application were approved. This issue will not be discussed by the Hearings Officer in the findings below, as it does not directly relate to a relevant approval criterion. However, the Hearings Officer reiterates comments found in the "Zoning" description above related to development standards for the existing R5a zone and the proposed R2.5 zone. The development standards for

R5a and R2.5 zone are the same excepting for the allowed height of a building (30 feet for R5a and 35 feet for R 2.5). The Hearings Officer is of the opinion that any possible building(s) on the Subject Property, if this application is approved, would potentially be 5 feet taller than allowed under the existing zone. The Hearings Officer does not believe that an additional 5 feet in the height of one or more of the buildings on the Subject Property would create a significant negative impact the amount of sunshine that would reach Shisler's orchard.

The Hearings Officer will address the above-referenced neighbor concerns related to on street parking in the findings for the relevant approval criteria and/or policies below.

## **ZONING CODE APPROVAL CRITERIA**

### **33.810.050 Approval Criteria**

- A. Quasi-Judicial.** Amendments to the Comprehensive Plan Map that 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:** The following analysis includes an assessment of the Comprehensive Plan goals, policies and objectives relevant to this proposal. Based on this analysis, it is determined that on balance the proposed designations are equally or more supportive of the Comprehensive Plan than the old designation. Therefore, the Hearings Officer finds this criterion is met.

## **Comprehensive Plan Goals and Policies**

The following Comprehensive Plan Goals and Policies are relevant to this proposal:

### **Goal 1 Metropolitan Coordination**

*The Comprehensive Plan shall be coordinated with federal and state law and support regional goals, objectives and plans adopted by the Columbia Region Association of Governments and its successor, the Metropolitan Service District, to promote a regional planning framework.*

**Findings:** The *Urban Growth Management Functional Plan* ("Functional Plan") was approved November 21, 1996 by the Metro Council and became effective February 19, 1997. The purpose of the Functional Plan is to implement the Regional Urban Growth Goals and Objectives ("RUGGO"), including the 2040 Growth Concept. Local jurisdictions must address the Functional Plan when Comprehensive Plan Map Amendments are proposed through the quasi-judicial or legislative processes. The Functional Plan is Section 3.07 of the Metro Code. The 13 titles in that section are summarized and addressed below.

Overall, as noted in the discussion below, the requested proposal will have little or no effect on the intent of these titles or these titles will be met through compliance with other applicable City regulations. The proposed project is consistent with Metro's regional planning framework, and therefore the requested Comprehensive Plan Map Amendment and Zone Map Amendment is not inconsistent with Goal 1, Metropolitan Coordination, of the City's Comprehensive Plan.

### **Functional Plan Analysis**

#### **Title 1 - Requirements for Housing and Employment Accommodation**

This section of the Functional Plan facilitates efficient use of land within the Urban Growth Boundary ("UGB"). Each city and county has determined its capacity for providing housing and employment which serves as their baseline and if a city or county chooses to reduce capacity in one location, it must transfer that capacity to another location. Cities and counties must report changes in capacity annually to Metro.

**Findings:** The intent of Title 1 is to require the City of Portland to use land within the UGB efficiently and to increase its capacity if necessary to accommodate Portland's share of the regional growth for both housing and employment capacity. For the past 20 years, the City has adopted local community plans and zoning to provide additional housing capacity, as well as expand employment zoning on lands suitable for businesses and manufacturing. Title 1 directs local jurisdictions to establish areas and boundaries to define the central city, regional centers, main streets, corridors, station communities, employment and industrial areas and designate regionally significant industrial areas, among other tasks to provide housing and employment capacity within the city. The City is fully compliant with the requirements of Title 1 and as a result, the City has adequate housing capacity due to thousands of non-required residential units developed on lands within Commercial zones.

The proposal to change the zoning on the Subject Property from Residential 5,000 to Residential 2.5 results in an incremental increase in capacity for housing. Therefore the proposal is consistent with this Title.

#### **Title 2 - Regional Parking Policy**

The Metro 2040 Growth Concept calls for more compact development to encourage more efficient use of land, promote non-auto trips and protect air quality. In addition, the federally mandated air quality plan adopted by the state relies on the 2040 Growth Concept fully achieving its transportation objectives. This title establishes region-wide parking policies that set the minimum number of parking spaces that can be required by local governments for certain types of new development. It does not affect existing development. Parking maximums are also specified. By not creating an over supply of parking, urban land can be used most efficiently.

**Findings:** Chapter 33.266 of the Portland Zoning Code ("PCC") establishes parking maximums and minimums for specified uses in a variety of zones, consistent with the requirements of Title 2. Proposed future development would include on-site parking; however, the site is within 500 feet of

frequent transit service, and therefore no on-site parking is required. Therefore the proposal is consistent with this title.

### **Title 3 - Water Quality, Flood Management and Fish and Wildlife Conservation**

The goal of the Stream and Floodplain Protection Plan (Title 3) is to protect the region's health and public safety by reducing flood and landslide hazards, controlling soil erosion and reducing pollution of the region's waterways.

**Findings:** Compliance with this title is achieved in these areas through the review of development against the current Stormwater Management Manual regulations at time of building permits. At time of future development, the project must comply with all stormwater management requirements. Therefore the proposal is consistent with this title.

### **Title 4 - Industrial and Other Employment Areas**

Title 4 places restrictions of certain uses in three designations on the 2040 Growth Concept Map. In Employment Areas, retail uses are limited to less than 60,000 square feet. This can be increased if it is demonstrated that transportation facilities are adequate to serve the retail use and to serve other planned uses in the Employment Area.

**Findings:** The proposal will not have any effect on Title 4, and therefore is not inconsistent with the intent of this title.

### **Title 5 - Neighbor Cities and Rural Reserves**

This section of the Functional Plan directs Metro to work with its neighbor cities to protect common locations for green corridors along transportation corridors connecting the Metro region and each neighboring city.

**Findings:** The proposal has no impact on this title, as the Subject Property is within the urban growth boundary and therefore has no impact on neighboring cities or rural reserves.

### **Title 6 - Central City, Regional Centers, Town Centers and Station Communities**

The intention of Title 6 is to enhance the Centers designated on The 2040 Growth Concept Map by encouraging development in these Centers. This title recommends street design and connectivity standards that better serve pedestrian, bicycle and transit travel and that support the 2040 Growth Concept.

**Findings:** Because the Subject Property lies in an area that is not within the Central City, nor is designated as a Regional or Town Center or a Station Community, the proposal has no impact on this title.

### **Title 7 - Affordable Housing**

This section of the functional plan will ensure that all cities and counties in the region are providing opportunities for affordable housing for households of all income levels.



**Findings:** The proposal would result in an incremental increase in the number of housing units available within the City, thereby increasing the range of housing available on the open market. Therefore, the proposal is consistent with this Title.

#### **Title 8 Compliance Procedures**

This title ensures that all cities and counties in the region are fairly and equitably held to the same standards and that the Metro 2040 Growth Concept is implemented. It sets out compliance procedures and establishes a process for time extensions and exemptions to Metro Code requirements.

**Findings:** This proposal meets this Title by fulfilling the notice requirements for Type III land use reviews, as outlined in PCC 33.850 and Statewide Planning Goal Exceptions. In addition to notifying the affected neighborhood associations and property-owners within a 400-foot radius of the Subject Property, a notice of the proposal was also been sent to Metro and to the Department of Land Conservation and Development. Therefore, the proposal is consistent with this Title.

#### **Title 9 Performance Measures**

This title ensures that progress or lack of progress is measured in the implementation of the Urban Growth Management Functional Plan (UGMFP) and the 2040 Growth Concept.

**Findings:** The requested proposal has no impact on this title and therefore it is not inconsistent with the intent of Title 9.

#### **Title 10 Definitions**

This title defines the words and terms used in the document.

**Findings:** The proposal has no impact on this title and therefore it is not inconsistent with the intent of Title 10.

#### **Title 11 Planning for New Urban Areas**

The purpose of this title is to guide planning of areas brought into the UGB for conversion from rural to urban use.

**Findings:** The requested proposal has no impact on this title and therefore it is not inconsistent with the intent of Title 11.

#### **Title 12 Protection of Residential Neighborhoods**

The purpose of this title is to protect the region's existing residential neighborhoods from air and water pollution, noise and crime, and to provide adequate levels of public services.

**Findings:** The proposal is subject to review and evaluation against existing and future demand on public services, and whether there are adequate levels of same to support the proposed re-designation and zoning pattern. To the extent that the proposal meets the criteria found at PCC 33.855.050 B, as discussed below, the proposal is consistent with the intent of this title. Pollution

and noise control is achieved via compliance with other City regulations at time of building permit review for new development. Crime control is addressed via the City of Portland – Police Bureau, as noted in Exhibit E.7. Therefore, the proposal is consistent with this Title.

### **Title 13 Nature in Neighborhoods**

The purposes of this program are to conserve, protect and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with other streams and rivers and with their floodplains in a manner that is integrated with upland wildlife habitat and with the surrounding urban landscape; and to control and prevent water pollution for the protection of the public health and safety and to maintain and improve water quality throughout the region.

**Findings:** The Subject Property has no streams, nor any Environmental zoning overlays. Any future development will be required to meet all of the applicable Stormwater Management requirements, thus ensuring that water pollution is reduced and water quality is improved prior to release into the overall stormwater system. Therefore, the proposal is consistent with this Title.

In summary, the proposal will have little or no effect on the intent of these titles or these titles will be met through compliance with other applicable City regulations. Therefore, the request is consistent with the regional planning framework, and this Goal [**GOAL 1: Metropolitan Coordination**] is met.

### **GOAL 2 Urban Development**

*Maintain Portland's role as the major regional employment, population and cultural center through public policies that encourage expanded opportunity for housing and jobs, while retaining the character of established residential neighborhoods and business centers.*

**Findings:** The proposal is consistent with this goal because it will result in expanded potential for housing while remaining compatible with the character of the established residential neighborhood immediately surrounding the site. In summary, the requested Goal Exception is not inconsistent with Goal 2, Urban Development and the relevant policies. On balance, this goal is met.

#### **2.1 Population Growth**

*Allow for population growth within the existing city boundary by providing land use opportunities that will accommodate the projected increase in city households by the year 2000.*

#### **2.9 Residential Neighborhoods**

*Allow for a range of housing types to accommodate increased population growth while improving and protecting the city's residential neighborhoods.*

**Findings:** The proposal, if approved, would create the potential for eight housing units to be developed on the Subject Property; that is, each 5,000 square foot lot would have the potential to be divided in half and redeveloped with attached town homes. The lot on the corner is allowed under

the R5 zoning, to be a duplex; therefore the total net gain of potential housing units would be three. The R2.5 zone allows more density, but remains a single dwelling zone consistent with the immediately surrounding R5 neighborhood. On balance, this goal is met.

### **GOAL 3 Neighborhoods**

*Preserve and reinforce the stability and diversity of the City's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses and insure the City's residential quality and economic vitality.*

**Findings:** The proposal would result in an incremental increase in residential density within a well-established residential neighborhood in close proximity to neighborhood businesses and services. On balance, this goal is met.

### **3.5 Neighborhood Involvement**

*Provide for the active involvement of neighborhood residents and businesses in decisions affecting their neighborhood through the promotion of neighborhood and business associations. Provide information to neighborhood and business associations which allows them to monitor the impact of the Comprehensive Plan and to report their findings annually to the Planning Commission.*

**Findings:** Applicant presented a proposal to the Sabin Neighborhood Association prior to submitting this application. In addition, notice of the hearing on the proposed amendments has been sent by the City to the appropriate Neighborhood Association and to property owners within 400 feet of the site. The Subject Property was posted with information pertaining to the application and hearing schedule. Overall, the proposal is supportive of this Policy.

### **3.6 Neighborhood Plan**

*Maintain and enforce neighborhood plans that are consistent with the Comprehensive Plan and that have been adopted by City Council*

**Findings:** The Sabin Neighborhood Plan was adopted in October 1993. One policy within the Neighborhood Plan addresses housing. Policy 1, *Housing*, states: Foster the preservation and development of affordable, quality housing that is compatible with the existing single-dwelling character and socio-economic diversity of the Sabin Neighborhood. Enhance a sense of pride and commitment to the community.

The proposal is consistent with this policy, as the request to rezone the Subject Property from R5 to R 2.5 would continue to be consistent with the existing single-dwelling character of the immediate area, while providing an incremental increase in housing density. Overall, the proposal is supportive of this Policy.

#### **GOAL 4 Housing**

*Enhance Portland's vitality as a community at the center of the region's housing market by providing housing of different types, tenures, density, sizes, costs, and locations that accommodate the needs, preferences, and financial capabilities of current and future households.*

**Findings:** The proposal is supportive of this goal because the requested zoning will allow a variety of housing types, both attached and detached, in a single-dwelling neighborhood in close proximity to transit and commercial services. On balance this Goal is met.

##### **4.1 Housing Availability**

*Ensure that an adequate supply of housing is available to meet the needs, preferences, and financial capabilities of Portland's households now and in the future.*

**Findings:** The proposal would result in an incremental increase in residential density, thus furthering an adequate supply of housing potential for the future. Overall, the proposal is supportive of this Policy.

##### **4.3 Sustainable Housing**

*Encourage housing that supports sustainable development patterns by promoting the efficient use of land, conservation of natural resources, easy access to public transit and other efficient modes of transportation, easy access to services and parks, resource efficient design and construction, and the use of renewable energy resources.*

**Findings:** The proposal would allow a more efficient use of land within the site for residential development that is consistent with the surrounding single-dwelling residential neighborhood. The location is well situated for access to frequent service transit; it is within a quarter mile of a neighborhood greenway that provides good bicycle access. A number of neighborhood businesses and services are in very close proximity and easily accessed by all transportation modes. City owned Irvington Park is approximately seven blocks west of the Subject Property with a number of recreational amenities. Overall, the proposal is supportive of this Policy.

#### **GOAL 5 Economic Development**

*Foster a strong and diverse economy which provides a full range of employment and economic choices for individuals and families in all parts of the city.*

**Findings:** The proposal would incrementally increase the range of economic choices in housing for individuals and families in the Sabin Neighborhood. On balance, the proposal is consistent with this Goal.

##### **5.1 Urban Development and Revitalization**

*Encourage investment in the development, redevelopment, rehabilitation and adaptive reuse of urban land and buildings for employment and housing opportunities.*

**Findings:** The proposal would result in a new base zone that would allow redevelopment on any of the four lots comprising the Subject Property with a more efficient reuse of the land. Overall, the proposal is supportive of this Policy.

#### **GOAL 6 Transportation**

*Develop a balanced, equitable, and efficient transportation system that provides a range of transportation choices; reinforces the livability of neighborhoods; supports a strong and diverse economy; reduces air, noise, and water pollution; and lessens reliance on the automobile while maintaining accessibility.*

**Findings:** Goal 6 was the focus of intense study and commentary in this case. The Applicant provided a written Transportation Impact Study ("TIS" – Exhibit A.2) and follow-up documentation (Exhibits H.5 and H.12d) and expert testimony at the hearing. PBOT submitted a written response to the application (Exhibit E.2) and offered testimony at the hearing. Walker (neighboring property owner) submitted written comments addressing on-street parking impacts of the proposed development. Walker, Hauth and Alexander (neighboring property owners) testified at the hearing about on-street parking impacts of the proposed development.

BDS staff, in its Staff Report and Recommendation to the Hearings Officer (Exhibit H.4) included a large section of the PBOT written response as support for its finding that the proposal satisfied Goal 6. The Hearings Officer finds that the PBOT response (Exhibit E.2), utilizing the TIS and generally accepted traffic analysis principles, is thorough and well reasoned. The Hearings Officer relied heavily upon Exhibit E.2 in making this recommendation. The Hearings Officer also reviewed the TIS and Applicant's supplemental evidence (Exhibits H.5 and H.12d) and found them both to be thorough and well reasoned. The Hearings Officer found Exhibit H.12d to be particularly helpful in addressing on-street parking impacts.

The Hearings Officer concurs with the PBOT response, as set forth in Exhibit E.2 with respect to Goal 6 policies 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.21, 6.22, 6.23, 6.24, 6.28 and 6.34. The Hearings Officer concurs with PBOT's response (E.2) and the TIS (Exhibit A.2) and Applicant's supplemental evidence submissions (Exhibits H.5 and H.12d).

The Hearings Officer finds it appropriate to focus the balance of the findings for Goal 6 on policies 6.25, 6.26 and 6.27. The Hearings Officer summarizes policies 6.25, 6.26 and 6.27 below:

**Policy 6.25 Parking Management.** City parking is to be managed by considering the existing supply of parking in comparison to the expected parking demand.

**Policy 6.26 On-Street Parking Management.** On-street parking should (1) encourage safety for all modes and (2) maintain existing on-street parking in older neighborhoods.

**Policy 6.27 Off-Street Parking.** Consider eliminating on-street parking in areas where there is "high quality" transit and "good" pedestrian and bicycle access.

The evidentiary record, in this case, is that on-street parking on NE 14<sup>th</sup> Avenue, between NE Fremont Street and NE Beech Street is in high demand. The adjacent shopping center (Fremont Place) to the east and the commercial uses to the south (along NE Fremont Street) place somewhat unusual demands for on-street parking spaces in a residential neighborhood. It also appears, to the Hearings Officer, that the nearby TriMet bus lines (#8 and #24) generate some additional demand for on-street parking spaces for persons "parking and riding." Finally, the No Parking area and Loading Zone area, along the east side of NE 14<sup>th</sup> Avenue (south of NE Beech Street) limit the available on-street parking spaces on NE 14<sup>th</sup> Avenue.

Despite the demands for on-street parking and somewhat limited space for on-street parking, as described in the preceding paragraph, the Applicant's traffic consultant and PBOT concluded that demand for on-street parking did not exceed the supply of on-street parking during traditional peak hours. Walker suggested the actual peak hours for high on-street parking demand extended to later hours because of the proximity of the shopping center. However, the Hearings Officer concluded, even with the adjacent shopping center and somewhat limited parking spaces on NE 14<sup>th</sup> Avenue, the demand for on-street parking did not exceed, on a regular basis, the supply of on-street parking. The Hearings Officer found the Applicant satisfied policy 6.25; the Applicant did consider the existing supply of parking in comparison to the expected parking demand.

The Hearings Officer finds the analysis of policies 6.26 and 6.27, when those policies are considered together, to be challenging. As described by Fabio de Freitas ("de Freitas"), the PBOT representative who prepared Exhibit E.2 and offered testimony at the hearing, policies 6.26 and 6.27 can, in certain instances, appear to conflict with one another. De Freitas stated that one of the objectives of policy 6.26 objective B is that on-street parking should be maintained in older neighborhoods. One way to maintain on-street parking is to minimize curb cuts; the fewer curb cuts on the block face the more space for on-street parking. De Freitas also stated that policy 6.27 objective B discourages off-street parking (parking on the developed property) when the area is served by "high quality" transit and has "good" pedestrian and bike access. De Freitas stated that the Subject Property is in close proximity to TriMet bus lines #8 and #24 (#8 runs along NE 15<sup>th</sup> all days of the week and #24 runs along NE Fremont Street Mondays through Friday). De Freitas concluded that the Subject Property was served by "high quality" transit. De Freitas also testified that the Subject Property was well served by sidewalks and bicycle access. De Freitas concluded that the Subject Property had "good" pedestrian and bicycle access. The Hearings Officer concurs with de Freitas' conclusions that the Subject Property has "high quality" transit service and has "good" pedestrian and bicycle access. The Hearings Officer, therefore, concludes that Policy 6.27 Objective A would, in this case, encourage the elimination off-street parking at the Subject Property.

It is clear to the Hearings Officer that if there is no off-street parking (theoretically satisfying Policy 6.27 Objective A) there will be additional demand created for on-street parking if residential development is allowed at the Subject Property. It is equally clear to the Hearings Officer that if off-street parking is allowed, then there will be less space along the block face for on-street parking. The Hearings Officer is faced with policies which, on their face, appear to be in conflict. City Council, upon their subsequent review, will be faced with this apparent conflict.

The current situation for the Subject Property is that there are four single family lots. Each of those lots has the right to have a garage/driveway. Each lot, therefore, would be entitled to a curb cut (reducing the on-street parking space). The current situation would allow three single family residences and one duplex; a duplex is allowed on the NE 14<sup>th</sup>/NE Beech corner lot. As originally proposed by the Applicant, the development would result in eight curb cuts; an increase of four curb cuts. As modified by the Applicant, there would only be four curb cuts because of the use of shared driveways. The Hearings Officer notes that Walker, in Exhibit H.6 and her hearing testimony, was supportive of "shared driveways." The Applicant estimated that there would be a loss of approximately 56 lineal feet of curb space if the application were approved (Exhibit H.12d).

Considering the evidence in the record, the Hearings Officer finds, if a condition of approval to the zone change were included to require shared driveways for development of the Subject Property, there would be no increase in the number of curb cuts under the proposal as compared to existing conditions. The Hearings Officer also finds that on-street parking space will be only be reduced by approximately 56 lineal feet. The Hearings Officer finds that if off-street parking is allowed at the Subject Property, as described by the Applicant in Exhibits H.12a, H.12b, H.12c and H.12d, space for eight to 16 vehicles will be available to meet the demand of the Subject Property residents.

The Applicant proposed the inclusion of a condition of approval to the zone change that imposed the requirement of shared driveways (Exhibits H.12a, H.12b, and H.12c). BDS staff proposed language for such a condition (Exhibit H.15).

The Hearings Officer considered a number of options in dealing with Policies 6.26 and 6.27. The Hearings Officer could find the Applicant's modified proposal (including shared driveways) does not meet Policy 6.26 Objective B for the reason that allowing off-street parking (parking on driveways and in garages on the developed lots) does not maintain existing on-street parking in an older neighborhood that experiences a very high demand for on-street parking. On one hand this approach makes sense in that approving the application would result in four curb cuts and those curb cuts reduce the available space by approximately 56 lineal feet of on-street parking space on NE 14<sup>th</sup> Avenue.

Another option, when considering Policy 6.26 Objective B, would be to simply consider the number of curb cuts on the west side of NE 14<sup>th</sup> Avenue. The number of curb cuts would be the same (four) whether or not the application is approved. Using this option the Hearings Officer would find Policy 6.26 Objective B is satisfied.

The Hearings Officer concluded that Policy 6.26 Objective B seeks to "maintain existing on-street parking in older neighborhoods." The Hearings Officer finds that reducing on-street parking space by approximately 56 lineal feet does not "maintain on-street parking." The Hearings Officer finds Policy 6.26 Objective B is not satisfied by this proposal.

The Hearings Officer finds that Policy 2.27 Objective A must be analyzed in the context of the word "consider." The Hearings Officer finds that the Applicant and PBOT "considered" eliminating requirements for off-street parking at the Subject Property. The Hearings Officer finds the

Applicant and PBOT concluded that eliminating off-street parking would likely create more negative on-street parking impacts as compared to allowing four curb cuts and requiring shared driveways. The Hearings Officer agrees Policy 2.27 Objective A is satisfied in this case.

PBOT's suggested that a "balanced approach" be taken when determining if Goal 6 was satisfied. This approach, in the opinion of the Hearings Officer, is on its face the best approach. The Hearings Officer finds a balanced approach must be taken when considering whether or not Goal 6 is met.

In conclusion the Hearings Officer finds Policy 6.25 is satisfied by the Applicant and PBOT considering the parking supply and demand in the vicinity of the Subject Property. The Hearings Officer finds that Policy 6.27 Objective A is satisfied by the Applicant and PBOT considering the impacts of eliminating off-street parking. The Hearings Officer finds that Policy 6.26 Objective B is not satisfied because the proposal will not maintain existing on-street parking on NE 14<sup>th</sup> Avenue.

With the exception of Policy 6.26 Objective B, the Hearings Officer found all other policies of Goal 6 to be consistent (satisfied) with this proposal. The Hearings Officer finds, on balance, the proposal (as modified to include shared driveways) is consistent and supportive of Goal 6 even though Policy 6.26 Objective B is not satisfied.

## **GOAL 7 Energy**

*Promote a sustainable energy future by increasing energy efficiency in all sectors of the city by ten percent by the year 2000.*

**Findings:** Goal 7 policies and objectives are generally directed toward the City implementing energy-related strategies. However, as identified below, there are two policies that focus on promoting energy efficiency through land use regulations. On balance, the proposal is consistent with this Goal.

### **7.4 Energy Efficiency through Land Use Regulations**

*The City shall promote residential, commercial, industrial, and transportation energy efficiency and the use of renewable resources.*

**Findings:** The proposal is supportive of this policy as the location of the proposal is in close proximity to transit, therefore providing an opportunity to reduce vehicle trips and the related energy use. Overall, the proposal is supportive of this Policy.

### **7.6 Energy Efficient Transportation**

*Provide opportunities for non-auto transportation including alternative vehicles, buses, light rail, bikeways, and walkways. The City shall promote the reduction of gasoline and diesel use by conventional buses, autos and trucks by increasing fuel efficiency and by promoting the use of alternative fuels.*

**Findings:** The proposal is supportive of this policy because of the location of the Subject Property and the proximity to frequent service transit, a neighborhood greenway that provides bicycle access,



and to neighborhood oriented businesses and services that are within walking distance on public sidewalks. Overall, the proposal is supportive of this Policy.

#### **GOAL 8 Environment**

*Maintain and improve the quality of Portland's air, water and land resources and protect neighborhoods and business centers from detrimental noise pollution.*

**Findings:** Most of the policies and objectives under this goal are not relevant to the requested proposal. On balance, the proposal is consistent with this Goal.

#### **8.4 Ride Sharing, Bicycling, Walking, and Transit**

*Promote the use of alternative modes of transportation such as ridesharing, bicycling, walking, and transit throughout the metropolitan area.*

**Findings:** The proposal will allow a wider range of housing types and is located in an area that is well served by frequent transit service. A nearby neighborhood greenway provides good bicycle access. The Subject Property is also located in good proximity to a number of neighborhood oriented businesses and services that are within easy walking distance. The proposal is supportive of this policy.

#### **GOAL 9 Citizen Involvement**

*Improve the method for citizen involvement in the on-going land use decision-making process and provide opportunities for citizen participation in the implementation, review and amendment of the adopted Comprehensive Plan.*

**Findings:** The City provided notice of the proposal to surrounding property owners within 400 feet of the site and to the neighborhood association in order to inform them of their opportunity to comment on the application both in writing and at the public hearings on this application. In addition, the site has been posted per the requirements of the Portland Zoning Code for Type III Land Use Reviews. This Goal has been met.

#### **GOAL 10 Plan Review**

*Portland's Comprehensive Plan will undergo periodic review to assure that it remains an up-to-date and workable framework for land use development. The Plan will be implemented in accordance with State law and the Goals, Policies and Comprehensive Plan Map contained in the adopted Comprehensive Plan.*

**Findings:** This Goal and related policies address how the City of Portland will address periodic review and how the Plan is implemented, including quasi-judicial Comprehensive Plan Map Amendments. The proposal is consistent with Policies 10.7, and 10.8. Because of the proposal's consistency with these Policies, the proposal, on balance, is supportive of Goal 10, Plan Review and Administration, of the Comprehensive Plan. A detailed analysis of the applicable policies follows, below.

### 10.7 Amendments to the Comprehensive Plan Map

The Planning Commission must review and make recommendations to the City Council on all legislative amendments to the Comprehensive Plan Map. Quasi-judicial amendments to the Comprehensive Plan Map will be reviewed by the Hearings Officer prior to City Council action, using procedures stated in the zoning code. For quasi-judicial amendments, the burden of proof for the amendment is on the applicant. The applicant must show that the requested change is:

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

Hearings Officer Comment: The preceding analysis and findings in this recommendation demonstrate that the proposed Plan Map Amendment is, on balance, supportive of and consistent with the relevant goals and policies of the Comprehensive Plan.

- (2) Compatible with the land use pattern established by the Comprehensive Plan Map,

Hearings Officer Comment: The requested Plan designation and zoning for the Subject Property is compatible with the general land use pattern established by the Comprehensive Plan for the area around the Subject Property. The requested Attached Residential designation and Single Dwelling Residential 2500 zone would result in the majority of a block face being zoned R2.5, in close proximity to two commercial areas directly south [CN1] and to the east [CN2] and to frequent transit service. Three blocks to the west is extensive R2.5 zoning. An approval of the request would result in a similar zoning pattern as there is to the west.

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

Hearings Officer Comment: The State of Oregon Land Conservation and Development Commission ("LCDC") has acknowledged the Comprehensive Plan for the City of Portland. The city goals mentioned in "LCDC and Comprehensive Plan Considerations" are comparable to the statewide planning goals in that City Goal 1 is the equivalent of State Goal 2 (Land Use Planning); City Goal 2 addresses the issues of State Goal 14 (Urbanization); and City Goal 3 deals with the local issues of neighborhoods. The following city and state goals are similar: City Goal 4, State Goal 10 (Housing); City Goal 5, State Goal 9 (Economic Development); City Goal 6, State Goal 12 (Transportation); City Goal 7, State Goal 13 (Energy Conservation); City Goal 8, State Goals 5, 6 and 7 (Environmental Impacts); and City Goal 9, State Goal 1 (Citizen Involvement). City Goal 10 addresses city plan amendments and rezoning; and City Goal 11 is similar to State Goal 11 (Public Facilities and Services). Other statewide goals relate to agricultural, forestry and coastal areas, etc., and therefore do not specifically apply to this site.

For quasi-judicial plan amendments, compliance with the city's plan goals, as discussed here, shows compliance with applicable state goals. The analysis in this recommendation indicates that all of the City goals and policies are supported by the proposal. Consequently, the proposal is consistent with all applicable statewide goals.

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

Hearings Officer Comment: As previously discussed above in this recommendation, the proposal is consistent with the Housing Goal included within the adopted Sabin Neighborhood Plan.

#### **Policy 10.8    *Zone Changes***

Base zone changes within a Comprehensive Plan Map designation must be to the corresponding zone stated in the designation. When a designation has more than one corresponding zone, the most appropriate zone will be applied based on the purpose of the zone and the zoning and general land uses of surrounding lands. Zone changes must be granted when it is found that public services are presently capable of supporting the uses allowed by the zone, or can be made capable prior to issuing a certificate of occupancy. The adequacy of services is based on the proposed use and development. If a specific use and development proposal is not submitted, services must be able to support the range of uses and development allowed by the zone. For the purposes of this requirement, services include water supply, sanitary sewage disposal, stormwater disposal, transportation capabilities, and police and fire protection.

Hearings Officer Comment: The Attached Residential designation has one corresponding zone which implements the designation: Single Dwelling Residential 2,500.

The proposed Comprehensive Plan Map amendment from High Density Single Dwelling to Attached Residential is combined with a Zoning Map amendment request to place the corresponding zone of R2.5 on the site in the configuration shown on the attached Proposed Zoning Map, Exhibit B.2. These policies and objectives are implemented through this land use review, and are specifically addressed in findings for conformance with the approval criteria for the proposed Zone Map Amendment, 33.855.050.A-C, following this section on the proposed Comprehensive Plan Map Amendment. To the extent that applicable approval criteria of 33.855.050.A-C contained in this recommendation are met, these policies and objectives are also met.

#### **GOAL 11 A   Public Facilities**

*Provide a timely, orderly and efficient arrangement of public facilities and services that support existing and planned land use patterns and densities.*

**Findings:** The proposal is consistent with Goal 11. Agency responses to this proposal indicate that either adequate public facilities and services exist or can be reasonably made available as discussed in Exhibits E.1 through E.7. Because of the proposal's consistency with these Policies, the proposal, on balance, is supportive of Goal 11, Public Facilities of the Comprehensive Plan. A detailed analysis of the applicable policies follows, below.

#### **11.2    Orderly Land Development**

Urban development should occur only where urban public facilities and services exist or can be reasonably made available.

Hearings Officer Comment: The adequacy of public facilities is discussed in detail below in this recommendation under the criterion 33.855.050 B. To the extent that criterion is met, the proposal is consistent with this policy.

## **GOAL 12 Urban Design**

*Enhance Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations.*

**Findings:** The proposal is consistent with Goal 12, which is intended to enhance Portland's identity as a livable city with attractive amenities creating an urban dynamic through quality projects. Because of the proposal's consistency with these Policies, the proposal, on balance, is supportive of Goal 12, Urban Design of the Comprehensive Plan. A detailed analysis of the applicable policies follows, below.

### **Policy 12.1 *Portland's Character***

Enhance and extend Portland's attractive identity. Build on design elements, features and themes identified with the City. Recognize and extend the use of City themes that establish a basis of a shared identity reinforcing the individual's sense of participation in a larger community.

### **Policy 12.6 *Preserve Neighborhoods***

Preserve and support the qualities of individual neighborhoods that help to make them attractive places. Encourage neighborhoods to express their design values in neighborhood and community planning projects. Seek ways to respect and strengthen neighborhood values in new development projects that implement this Comprehensive Plan.

**Findings:** The Subject Property is immediately adjacent to a small commercial node at NE 15<sup>th</sup> and NE Fremont Street, which has a distinct character of mostly small businesses, a branch of the Portland Public Library, and a very pedestrian and bike oriented commercial center. The Applicant noted in the application submittal that the proposal:

*"included building elevations for the proposed attached dwelling units at 3607 and 3617 NE 14<sup>th</sup>. Note that the proposed dwelling units have incorporated design cues from the older dwellings in the neighborhood, such as front porches, dormers, double hung windows, horizontal siding, shingles, and bracketing in the eaves. By so doing, the applicant has responded to the character of the area, by proposing infill development that increases density, but at the same time maintains the attractive qualities of the neighborhood. There is no current re-development proposed for the remaining two of the four subject lots, therefore there will be no immediate change to the existing dwellings."*

The Applicant also noted that the elevation included in the application is conceptual, and future development may differ from the elevation. Based on the above factors, the proposal is supportive of these policies.

2. When the requested amendment is:

- From a residential Comprehensive Plan Map designation to a commercial, employment, industrial, or institutional campus Comprehensive Plan Map designation; or
- From the urban commercial Comprehensive Plan Map designation with CM zoning to another commercial, employment, industrial, or institutional campus Comprehensive Plan Map designation;

the requested change will not result in a net loss of potential housing units. The number of potential housing units lost may not be greater than the potential housing units gained. The method for calculating potential housing units is specified in subparagraph A.2.a, below; potential housing units may be gained as specified in subparagraph A.2.b, below.

**Findings:** This criterion is not applicable to the proposal.

3. When the requested amendment is from an Industrial Sanctuary or Mixed Employment Comprehensive Plan Map designation, in order to prevent the displacement of industrial and employment uses and preserve land primarily for these uses, the following criteria must also be met:

**Findings:** This criterion is not applicable to this proposal.

### **33.855.050 Approval Criteria for Base Zone Changes**

An amendment to the base zone designation on the Official Zoning Maps will be approved (either quasi-judicial or legislative) 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 Comprehensive Plan Map designation is 'Attached Residential.' There is only one zone that corresponds to this designation, R2.5, which is the zone that is being requested. This criterion is not applicable.

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.

**Findings:** The Subject Property does not have any such designation nor is there a Buffer overlay. This criterion is not applicable.

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:** The proposal is to rezone the Subject Property to a higher-density residential zone. This criterion is not applicable.

**B. Adequate public services.**

1. Adequacy of services applies only to the specific zone change site.
2. Adequacy of services is determined based on performance standards established by the service bureaus. The burden of proof is on the applicant to provide the necessary analysis. Factors to consider include the projected service demands of the site, the ability of the existing and proposed public services to accommodate those demand numbers, and the characteristics of the site and development proposal, if any.
  - a. Public services for water supply, 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.

**Findings:** Public services to the Subject Property are adequate, as both the Police and Fire bureaus have no objections. The Water Bureau responded with no objections to the proposal and that water services are available to each lot. The Water Bureau response contains additional information for the Applicant regarding requirements at time of building permit review.

- b. Proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services. Performance standards must be applied to the specific site design. Limitations on development level, mitigation measures or discharge restrictions may be necessary in order to assure these services are adequate.

**Findings:** BES has no objections. The BES response included information for the Applicant regarding requirements at time of building permit review.

- c. Public services for transportation system facilities are capable of supporting the uses allowed by the zone or will be capable by the time development is complete. Transportation capacity must be capable of supporting the uses allowed by the zone by the time development is complete, and in the planning period defined by the Oregon Transportation Rule, which is 20 years from the date the

Transportation System Plan was adopted. Limitations on development level or mitigation measures may be necessary in order to assure transportation services are adequate.

**Findings:** PBOT reviewed the proposal and offered the following analysis (Exhibit E.2):

*“The applicant submitted a professionally prepared Transportation Impact Study (TIS) to address the transportation-related approval criteria associated with this Zone Change request. The TIS compares the potential worse case development scenario for the current R5 zoning with the worse case development scenario for the proposed R2.5 zoning (essentially 4 homes versus 8 homes across the subject site).*

*The TIS includes intersection capacity analyses utilizing industry standard methodologies as well as a projected trip distribution consideration given observations made at and near the site. As directed by PBOT, the studied intersections were at NE 15<sup>th</sup> Ave/NE Fremont (signalized), NE 15<sup>th</sup> Ave/ NE Beech (stop controlled), NE 14<sup>th</sup> Ave/NE Fremont (stop controlled) and NE 14<sup>th</sup> Ave/NE Beech (stop controlled). The City’s operational standards require Level of Service (LOS) D or better at signalized intersections and LOS E or better at un-signalized intersections.*

*To estimate the trip generation for the subject property, trip rates from the manual TRIP GENERATION, Ninth Edition, published by the Institute of Transportation Engineers (ITE), were used. To provide a conservative estimate on the number of trips generated by the (potential redevelopment related to the) proposed rezone, the applicant’s traffic consultant also included a development scenario of 8 detached homes. The data supplied in the TIS also appropriately illustrates forecasted peak hour traffic demand in the year 2033, 20 years into the future and 27 years beyond the City’s current Transportation System Plan’s 2006 adoption date.*

*The following table represents the capacity analysis for the studied intersections:*

#### Capacity Analysis Summary

Peak Hour	Morning Peak Hour	Evening
	LOS	LOS
<b>NE 15<sup>th</sup> Ave/NE Fremont</b>		
Existing Conditions	B	C
2033 w/Current Zoning	B	C
2033 w/Proposed Zoning	B	C
(with 8 detached homes)		
<b>NE 15<sup>th</sup> Ave/NE Beech</b>		
Existing Conditions	C	C

2033 w/Current Zoning	C	C
2033 w/Proposed Zoning (with 8 detached homes)	C	C
<b>NE 14<sup>th</sup> Ave/NE Fremont</b>		
Existing Conditions	C	C
2033 w/Current Zoning	C	C
2033 w/Proposed Zoning (with 8 detached homes)	C	C
<b>NE 14<sup>th</sup> Ave/NE Beech</b>		
Existing Conditions	A	A
2033 w/Current Zoning	A	A
2033 w/Proposed Zoning (with 8 detached homes)	A	A

*The analysis prepared by the applicant's traffic consultant, again, utilizing acceptable industry standards which PBOT supports, shows that all of the studied intersections currently and in the future, even considering the forecasted additional trip generation during the peak hours of operation associated with the proposed Zone Change, will satisfy City of Portland performance measures for intersection operations. The applicant has adequately demonstrated to PBOT's satisfaction, that there will be an adequacy of (transportation) services in relation to the demands of the proposed Comprehensive Plan/Zone Change. PBOT is therefore supportive of the proposed Comprehensive Plan/Zone Change request.*

**B.2.c Public services for transportation system facilities are capable of supporting the uses allowed by the zone or will be capable by the time development is complete. Transportation capacity must be capable of supporting the uses allowed by the zone by the time development is complete, and in the planning period defined by the Oregon Transportation Rule, which is 20 years from the date the Transportation System Plan was adopted. Limitations on development level or mitigation measures may be necessary in order to assure transportation services are adequate.**

**Findings:** *The amended Transportation Planning Rule (effective January 1, 2012) generally requires a local government to determine whether certain regulatory amendments will "significantly affect an existing or planned transportation facility." The land use actions that trigger compliance with this requirement are amendments to a functional plan, comprehensive plan, or a land use regulation (including a Zoning Map Amendment). (OAR 660-012-0060(1)) If the local government finds an amendment has a significant effect, it must take one or more specifically identified steps to address and remedy this conflict. (OAR 660-012-0060(2))*



*The analysis in the submitted TIS considered conditions in the year 2033 (20 years from the existing conditions). The City's Transportation System Plan update was adopted in 2006. As reflected previously in this response, the applicant has demonstrated to PBOT's satisfaction that the net increase in trips generated by the potential development allowed as a result of the change in zoning of the subject property will not significantly impact the functionality of the existing transportation system. The analyzed intersections will function at the same level regardless of whether or not the development allowed with the Zone Change occurs. Based on the detailed analysis, the proposed Zone Change will not degrade the performance of any existing or planned transportation facility to less than acceptable performance measures. Accordingly, the Transportation Planning Rule is satisfied.*

***Based on the above referenced analysis, PBOT has found that the applicant has demonstrated compliance with the applicable transportation-related approval criteria. PBOT is therefore supportive of the proposed Comprehensive Plan/Zone Change (with no recommended conditions of approval)."***

The Hearings Officer concurs with the PBOT analysis quoted above.

The Hearings Officer incorporates the findings/comments related to the review of Comprehensive Plan Goal 6 to the findings for PCC 33.855.050 B.2.c. In particular the Hearings Officer takes note of the findings/comments related to on-street parking impacts of the proposed development. Testimony at the hearing (Walker, Hauth and Alexander) and written evidence submitted into the record (Exhibit H.6) expressed concern that the proposed development would create unacceptable on-street parking impacts. In the findings/comments for Goal 6 Policies 6.25, 6.26 and 6.27, the Hearings Officer considered Walker's request that a condition of approval be included that required shared driveways for the proposed eight lots. The Applicant, at the hearing, indicated the imposition of a condition of approval requiring shared driveways was acceptable. Further, the Applicant provided proposed language, with an accompanying map, to be included in a condition of approval (Exhibits H.12b and H.12c). BDS staff, upon review of Exhibits H.12b and H.12c, after the close of the record, submitted a written request to re-open the record to allow BDS to respond to the language proposed by the Applicant for the condition (Exhibit H.14). The Hearings Officer, in a Hearings Officer's Interim Order, granted the BDS request to re-open the record. During the time the record was re-opened, BDS staff submitted evidence including recommended language of any condition of approval relating to shared driveways (Exhibit H.15). Neither the Applicant nor any other person provided a written response objecting to the proposed condition language contained in Exhibit H.15.

The Hearings Officer finds that to assure public transportation services are adequate, in this case, the imposition of a condition is necessary to assure that as many on-street parking spaces, as possible, are retained. BDS staff recommended the following language:

- “Driveways proposed for access to the residential units on the site shall be paired. There shall be a maximum of four total driveways and each paired driveway shall not exceed 22-ft in width.
- The distance between driveways wings along NE 14<sup>th</sup> Avenue shall be a minimum of 22-ft.
- Approval of a Design Exception from PBOT will be necessary if the driveway location does not satisfy the minimum 25-ft dimension requirement from the intersection of the site’s NE 14<sup>th</sup> Avenue and NE Beech Street property lines.”

The Hearings Officer finds that based upon the above analysis and the inclusion of the proposed shared driveway conditional language as quoted above, this criterion is met.

3. Services to a site that is requesting rezoning to IR Institutional Residential, will be considered adequate if the development proposed is mitigated through an approved impact mitigation plan or conditional use master plan for the institution.

**Findings:** The Subject Property is not zoned IRd nor within an approved Impact Mitigation Plan boundary. This criterion is not applicable.

- C. When the requested zone is IR, Institutional Residential.** In addition to the criteria listed in subsections A. and B. of this Section, a site being rezoned to IR, Institutional Residential must be under the control of an institution that is a participant in an approved impact mitigation plan or conditional use master plan that includes the site. A site will be considered under an institution's control when it is owned by the institution or when the institution holds a lease for use of the site that covers the next 20 years or more.

**Findings:** The Subject Property is not zoned IRd nor is it within an approved Impact Mitigation Plan boundary. This criterion is not applicable.

- D. Location.** The site must be within the City’s boundary of incorporation. See Section 33.855.080.

**Findings:** The Subject Property is within the boundary of the City of Portland. This criterion is met.

## **DEVELOPMENT STANDARDS**

### **Development Standards**

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 review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be

met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

### III. CONCLUSION

Applicant requested a Comprehensive Plan Map Amendment and concurrent Zone Map Amendment to change the current designation and zoning on the Subject Property from High Density Single Dwelling [designation] and R5a Single dwelling Residential 5,000 with the 'a' overlay [zoning] to AR, Attached Residential [designation] and R2.5 [zoning]. Applicant requested not to include the 'a' overlay zone.

The review of the relevant comprehensive plan policies, with the exception of policies 6.25, 6.26 and 6.27, was relatively straightforward. The review of the relevant zone change approval criteria, with the exception of PCC 33.855.050 2.c, was relatively straightforward. Policies 6.25, 6.26 and 6.27 and PCC 33.855.050 2.c. relate, in part, to on-street parking impacts. The analysis of these sections required a more extensive review.

The Hearings Officer considered the evidence in the record (including testimony/documents offered by the Applicant, the Applicant's traffic consultant, BDS staff, PBOT staff and concerned/objecting neighbors). The Hearings Officer ultimately found the evidence in the record was overwhelmingly supportive that Policy 6.25 was satisfied.

The Hearings Officer found Policy 6.26 Objective B seeks to "maintain existing on-street parking in older neighborhoods." The Hearings Officer found Policy 6.26 Objective B was not satisfied because approximately 56 lineal feet of on-street parking space on NE 14<sup>th</sup> Avenue would be eliminated if the application were to be approved.

The Hearings Officer found Policy 6.27 Objective A requires a decision maker to consider the elimination of off-street (on-site) parking where a site is in an area of "high quality" transit and "good" pedestrian and bike access. The Hearing Officer found, in areas that have high quality transit and good pedestrian and bike access off-street (on-site) parking is discouraged. The Hearings Officer found Policy 6.27 Objective A was satisfied because the Applicant and PBOT considered eliminating off-street parking. The Hearings Officer found that the Applicant and PBOT concluded that allowing off-street (on-site) parking, in this case, would lessen the demand for on-street parking on NE 14<sup>th</sup> Avenue. The Hearings Officer concurred with the Applicant's/PBOT's analysis and conclusion that off-street parking, in this case, would soften the demand for on-street parking spaces on NE 14<sup>th</sup> Avenue. The Hearings Officer found Policy 6.27 Objective A was satisfied.

The Applicant, at the hearing before the Hearings Officer, and later in an open-record submission, suggested a condition of approval requiring the use of "shared driveways." BDS staff, during an extension of the open-record period, provided proposed condition of approval language related to "shared driveways." The Hearings Officer found that PCC 33.855.050 B.2.c. could be satisfied if the "shared driveway" condition were included in an approval.

The Hearings Officer found the request, on balance, met the relevant approval criteria for both the Comprehensive Plan Map and Zoning Map Amendments. The proposed zoning would create the potential for a total of eight households on the Subject Property: two attached townhouses per each of the four lots. With approval of the request, the majority of the block face will be zoned R2.5, with three R5 lots immediately abutting to the south: one lot is 5,000 square feet in area, while the other two are 25 X 100 foot lots similar to what can be created under the requested zoning. With the 'a' overlay, the R5a zoned lots in the immediate area have nearly the same development potential as the requested R2.5 zoning; the only significant difference in the applicable development standards is that the height limit in the R2.5 zone is 35 feet while the R5 height limit is 30 feet.

#### IV. RECOMMENDATION

Approval of:

- A Comprehensive Plan Map Amendment to change the designation on the site from High Density Single Dwelling Residential to Attached Residential; and
- A Zone Map Amendment to change the zoning from R5a to R2.5 subject to the following:
  - A. As part of the building permit application submittal, each of the four required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit B-2. The sheets on which this information appears must be labeled, "Proposal as approved in Case File # LU 13-115249 CP ZC."
  - B. The zone map amendment is subject to the following Condition of Approval:
    - Driveways proposed for access to the residential units on the Subject Property shall be paired. There shall be a maximum of four total driveways and each paired driveway shall not exceed 22-feet in width.
    - The distance between driveway wings along NE 14<sup>th</sup> Avenue shall be a minimum of 22-feet.
    - Approval of a Design Exception from PBOT will be necessary if the driveway location does not satisfy the minimum 25-foot dimension requirement from the intersection of the Subject Property's NE 14<sup>th</sup> Avenue and NE Beech Street property lines.

  
\_\_\_\_\_  
Gregory J. Frank, Hearings Officer

10/21/13  
\_\_\_\_\_  
Date

**Application Determined Complete:** March 7, 2013  
**Report to Hearings Officer:** August 29, 2013  
**Recommendation Mailed:** October 23, 2013

**Conditions of Approval.** This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**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 Development Services representative listed in this Recommendation (503-823-7700).

**The decision of City Council, and any conditions of approval associated with it, is final.** The decision may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearings process before the Hearings Officer and/or City Council; and
- a notice of intent to appeal be filed with LUBA within 21 days after City Council's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

**Recording the final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, the final decision may be recorded on or after **the day following the last day to appeal**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of approval.** Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

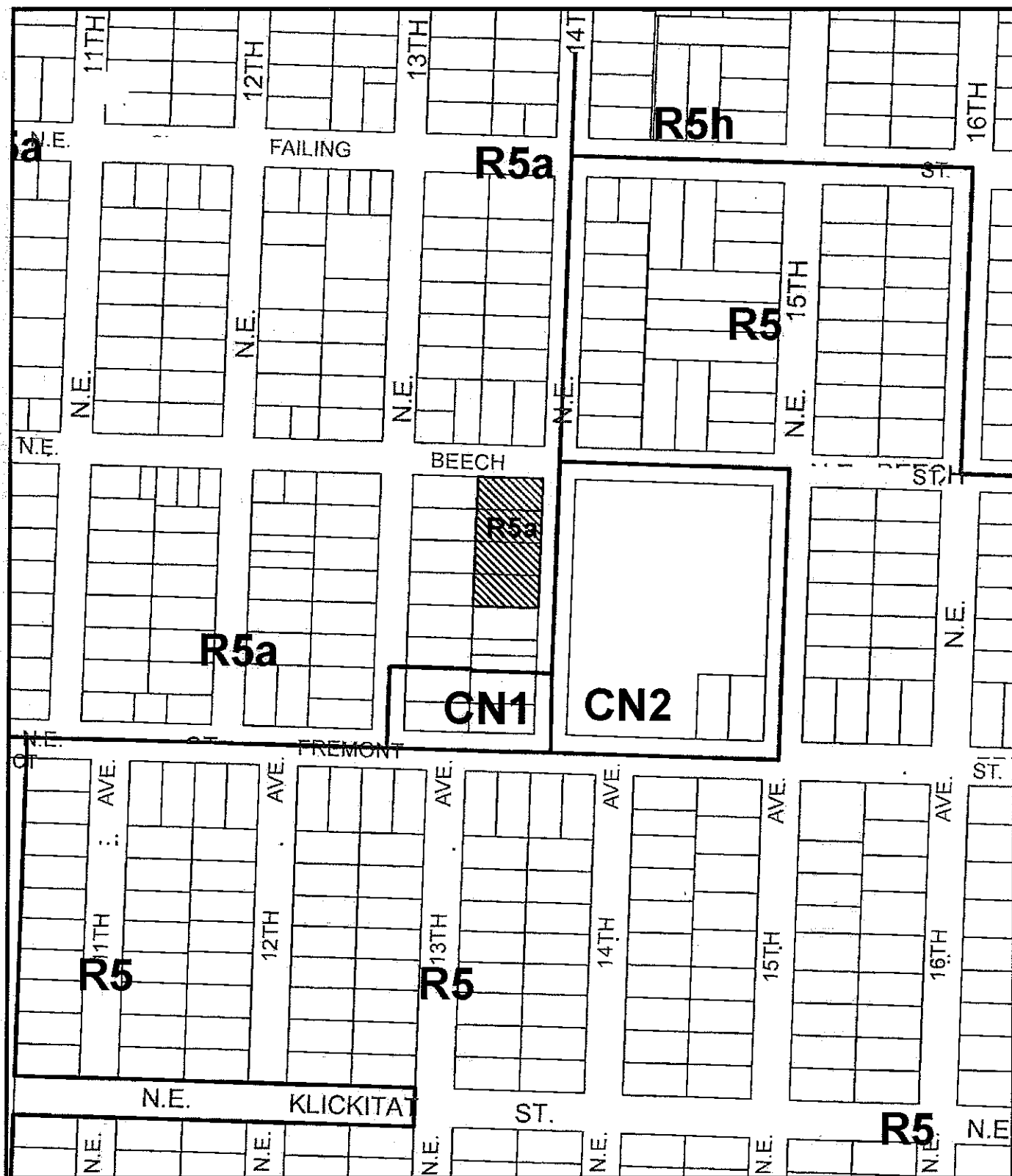
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

**EXHIBITS**  
**NOT ATTACHED UNLESS INDICATED**

- A. Applicant's Statement
  - 1. Application Narrative
  - 2. Transportation Impact Study: Kittelson & Associates
- B. Zoning Map (**attached**)
  - 1. Existing Zoning
  - 2. Proposed Zoning
- C. Plans and Drawings
  - 1. Site Plan (**attached**)
  - 2. Potential Street Elevation/new development
- D. Notification information
  - 1. Request for response
  - 2. Posting letter sent to applicant
  - 3. Notice to be posted
  - 4. Applicant's statement certifying posting
  - 5. Mailing list
  - 6. Mailed notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of Bureau of Development Services
  - 6. Bureau of Parks, Forestry Division
  - 7. Portland Police Bureau
- F. Letters
  - 1. David Sweet, Sabin Community Land Use Chair, April 4, 2013, In Support
  - 2. Rachel Lee, August 22, 2013, In Support
- G. Other
  - 1. Original LUR Application
  - 2. Site History Research
  - 3. Pre Application Conference Summary Notes
- H. Received in the Hearings Office
  - 1. 4/26/13 Memo - McKinney, Susan
  - 2. Request to reschedule - Cate, Sylvia
  - 3. Hearing Notice - Cate, Sylvia
  - 4. Staff Report - Cate, Sylvia
  - 5. 8/29/13 Memo - Cate, Sylvia
  - 6. 9/9/13 E-mail from Janet Walker - Cate, Sylvia
  - 7. 8/29/13 Memo from Mike Coleman, Kittelson & Associates - Cate, Sylvia
  - 8. PowerPoint presentation printout - Cate, Sylvia

9. Elevations Plan - Kusyk, Peter
10. Floor Plan - Kusyk, Peter
11. Record Closing Information - Hearings Office
12. Letter of Transmittal - Kusyk, Peter
  - a. 9/13/13 Letter from Bruce Vincent - Kusyk, Peter
  - b. Description of Paired Driveway - Kusyk, Peter
  - c. Oversize Plan - Kusyk, Peter
  - d. 9/11/13 Memo from Mike Coleman - Kusyk, Peter
13. 9/18/13 Letter - Vincent, Bruce
14. 9/19/13 Memo from Cate - McKinney, Susan
15. 9/24/13 Memo - Cate, Sylvia

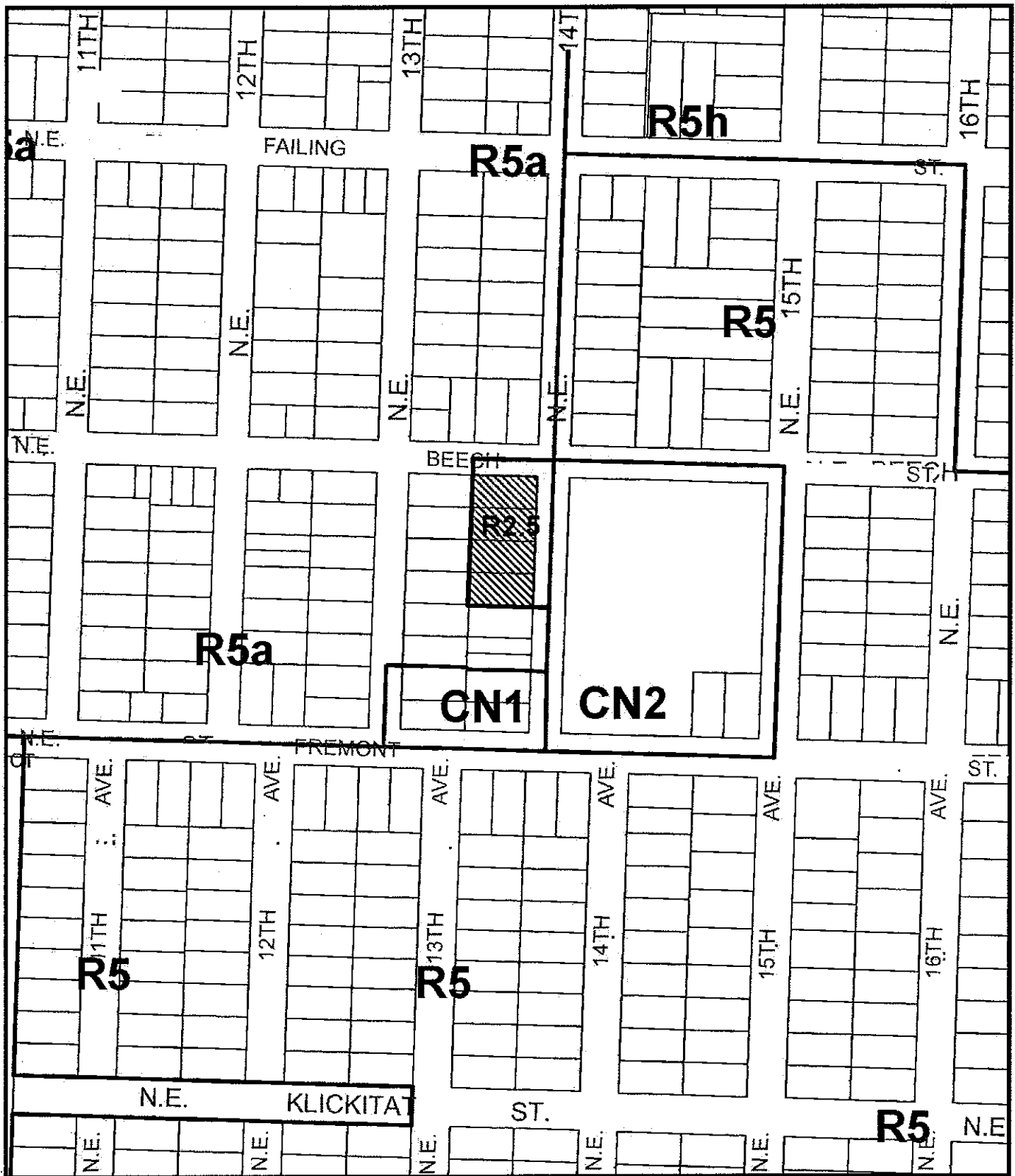




# ZONING EXISTING



File No. LU 13-115249 CP,ZC  
 1/4 Section 2631  
 Scale 1 inch = 200 feet  
 State\_Id 1N1E23CD 19400  
 Exhibit B1 (Mar 26, 2013)



# **ZONING PROPOSED**

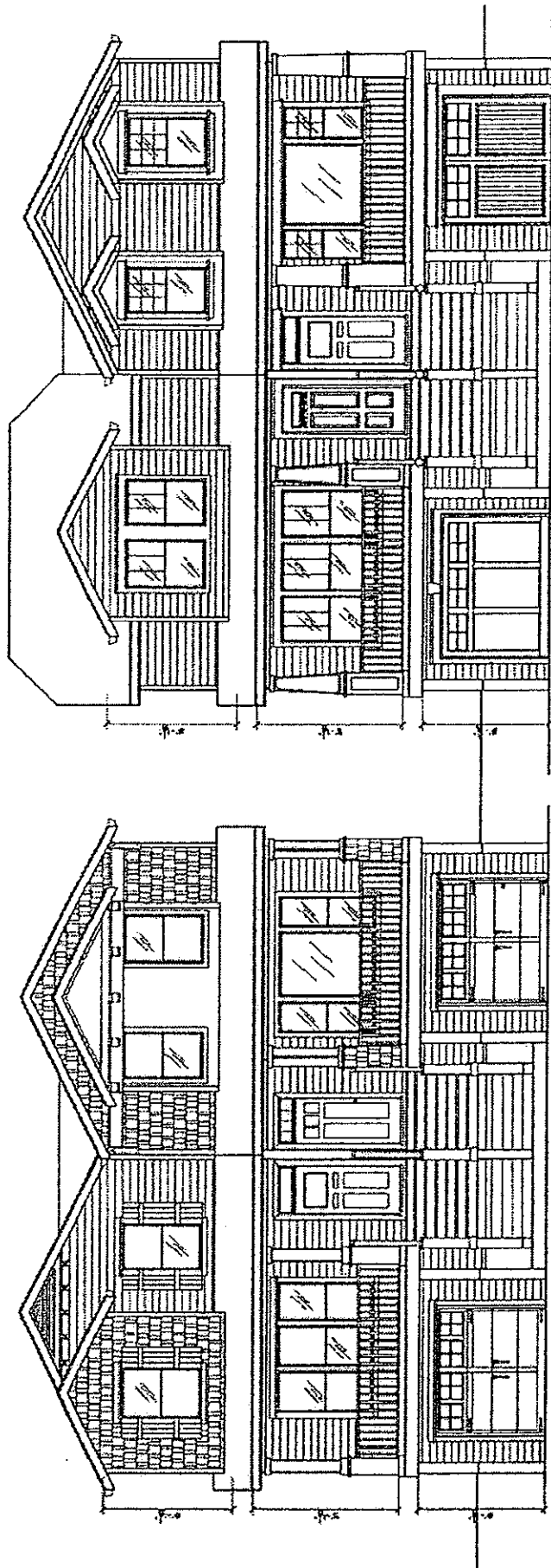


Site



NORTH

File No. LU 13-115249 CP,ZC  
 1/4 Section 2631  
 Scale 1 inch = 200 feet  
 State\_Id 1N1E23CD 19400  
 Exhibit B2 (Mar 26, 2013)



STREETSCAPE  
08-11-06

LU 13-115249 2PZC  
EA12-178278 PC

