

EXHIBIT " H "

July 13, 2009

8 (c)

BEFORE THE CITY COUNCIL OF THE CITY OF SALEM

IN THE MATTER OF AFFIRMING)	ORDER NO. 2009-05-CPC/NC/ZC
THE DECISION OF THE PLANNING)	
COMMISSION IN COMPREHENSIVE)	
PLAN CHANGE / NEIGHBORHOOD)	
PLAN CHANGE / ZONE CHANGE)	CPC/NC/ZC CASE NO. 08-15
08-15 FOR PROPERTY LOCATED)	
AT 6161 COMMERCIAL STREET SE)	

This matter coming regularly for hearing before the City Council at its April 6, 2009 meeting, and the City Council, having received evidence and heard testimony, makes the following findings, and adopts the following order, affirming the decision of the Planning Commission in Comprehensive Plan Change / Neighborhood Plan Change / Zone Change Case No. 08-15.

FINDINGS:

- (a) On December 2, 2008, the Planning Commission approved the application for the Comprehensive Plan Change / Neighborhood Plan Change / Zone Change of property located at 6161 Commercial Street SE.
- (b) At the January 5, 2009 City Council meeting, the City Council moved to review the decision of the Planning Commission for Comprehensive Plan Change / Neighborhood Plan Change / Zone Change 08-15.
- (c) On April 6, 2009, the City Council held a hearing, received evidence and heard testimony. The record was held open until May 11, 2009.
- (d) On May 11, 2009, the City Council voted to affirm the Planning Commission's decision.
- (e) The Facts and Findings attached hereto as "Exhibit 1," are incorporated herein by this reference.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF SALEM, OREGON:

Section 1. The Planning Commission's decision approving Comprehensive Plan Change / Neighborhood Plan Change / Zone Change 08-15 is hereby affirmed and amended to include the following conditions of approval:

Condition 12: Any development of the subject property will be subject to a "zero net rise" restriction which will require compensatory flood storage to be provided for any fill placed below the 100-year flood elevation.

Condition 13: Prior to development complete a Letter of Map Revision (LOMR) study and provide the findings to the appropriate city staff for review.

Condition 14: Waln Creek shall be improved by allaying the banks and creating sinuosity.

Condition 15: All parking areas shall be constructed out of pervious material.

CPC/NPC/ZC 08-15 - Facts and Findings

APPLICATION: Comprehensive Plan Change/Neighborhood Plan Change/Zone Change 08-15

LOCATION: 6161 Commercial Street SE (Marion County Assessor's Map Number 083W23B tax lots 100, 101, 200, 300, 400 and Map Number 083W23A and tax lots 900, 1000, 1100)

SIZE: Approximately 44.27 acres

REQUEST: To change the Salem Area Comprehensive Plan Map designation from "Parks, Open Space and Outdoor Recreation" to "Commercial", "Multi-Family Residential", and "Single-Family Residential" and the zone district from PA (Public Amusement) to CR (Commercial Retail – 4.67 acres), RM1 (Multiple Family Residential – 10.59 acres), and RS (Single Family Residential – 26.77 acres); and to amend the Liberty-Boone Neighborhood Plan map from "Parks, Open Space" to "Single Family", Multifamily", and "Commercial Retail" for property located at 6161 Commercial Street SE. Approximately 2.27 acres of the site will remain designated "Parks, Open Space and Outdoor Recreation", zoned PA, and maintain its current map designation on the Neighborhood Plan Map.

APPLICANT: Terry Kelly and Mary Rentfro, Applicant
Stew Stone, Representative

DECISION: **APPROVE** subject to the following zone change conditions:

1. As a requirement of any phase of development, the applicant shall provide a Transportation Impact Analysis (TIA) to identify the impacts of the proposed development on the public transportation system in the area, and construct any necessary mitigation measures identified in the TIA. The City Traffic Engineer will review and approve the TIA for conformance with City standards. Construction plans for the development will not be reviewed without an approved TIA.
2. The applicant shall record in deed records of Marion County, Oregon, the provisions of a restrictive covenant that adopts the terms of this condition by reference, and shall run with the land, subject to the amendment or removal only by the City's subsequent amendment or modification of this condition of approval. The property subject to the restrictive covenant shall include the property subject to the Comprehensive Plan and zoning map amendments.

This condition shall limit traffic impacts from future development such that a maximum of 3,669 average daily trips are generated by the proposed use or uses. At the time of development review for any proposed use on the

property subject to the restrictive covenant, the proposed development's average daily trips shall be calculated pursuant to the then-current Institute of Transportation Engineers (ITE) Trip Generation manual. No development on the property shall be allowed that causes average daily trips of the property subject to the covenant to exceed 3,669 average daily trips.

3. In the event that the parcels subject to the restrictive covenant develop in phases under separate land use applications, the number of trips approved during development based on the TIA for each phase shall be used to calculate the remaining number of trips available for the succeeding phases under the overall trip cap of 3,669 net PM peak hour trips.
4. Future uses of the CR (Commercial Retail) portion of the subject property shall be limited to those uses explicitly listed in the following table, developed in accordance with applicable zoning district provisions:

Retail Commercial
Agriculture and forestry
Veterinary services for animal specialties (SIC 0742)
Construction
Offices for any use listed in SIC Division C – Construction
Printing and Publishing
Commercial Printing (SIC 275)
Transportation, communications, electric, gas, and sanitary services
U.S. Postal Service (SIC 431)
Arrangement of passenger transportation (SIC 472)
Telephone communications (SIC 481)
Telegraph and other communication (SIC 482)
Radio and television broadcasting (SIC 483)
Retail Trade
Lumber and other building materials dealers (SIC 521)
Paint, glass and wallpaper stores (SIC 523)
Hardware stores (SIC 525)
Retail nurseries, lawn and garden supply stores (SIC 526)
General merchandise stores (SIC 53)
Miscellaneous general merchandise stores (SIC 539)
Grocery stores (SIC 541)
Meat and fish (seafood) markets, including freezer provisions (no live animals or slaughtering of live animals permitted on site) (SIC 5421)
Fruit stores and vegetable markets (SIC 543)
Candy, nut, and confectionery store (SIC 544)

Dairy products store (no processing, sales on premises only) (SIC 545)
Retail bakeries (SIC 546)
Miscellaneous food stores (SIC 549)
Auto and home supply stores (retail sales only, no service or installation) (SIC 5531)
Apparel and accessory stores (SIC 56)
Furniture, home furnishings, and equipment stores (SIC 57)
Eating and drinking places (SIC 58)
Drug stores and proprietary stores (SIC 591)
Liquor stores (SIC 592)
Miscellaneous shopping goods stores (SIC 594)
Retail stores, not elsewhere classified (SIC 599) including, in addition to uses specifically listed in SIC group 599, electrical and lighting shops, and office machines and equipment stores
Finance, Insurance, and Real Estate
Depository Institutions (SIC 60)
Nondepository credit Institutions (SIC 61)
Security and commodity brokers, dealers, exchanges and services (SIC 62)
Insurance carriers (SIC 63)
Insurance agents, brokers, and service (SIC 64)
Real estate (SIC 65)
Holding, and other investment offices (SIC 67)
Services
Hotels and motels (SIC 701) but excluding casino hotels
Bed and breakfast establishments
Room and board facilities serving five or fewer persons
Personal services (SIC 72) but excluding carpet and upholstery cleaning (SIC 7217) and industrial launderers (SIC 7218)
Advertising (SIC 731)
Consumer credit reporting agencies, mercantile reporting agencies, and adjustment and collection agencies (SIC 732)
Mailing, reproduction, commercial art and photography, and stenographic services (SIC 733)
News syndicates (SIC 7383)
Miscellaneous business services (SIC 738) but excluding research and development laboratories (SIC 8731)
Automobile parking (SIC 752)

Equipment rental and leasing (SIC 7359)
Watch, clock, and jewelry repair (SIC 763)
Repair shops and related services, not elsewhere classified (SIC 7699) but excluding motorcycle repair service
Dance halls, studios, and schools (SIC 791)
Health services (SIC 80) but excluding hospitals (SIC 806)
Legal services (SIC 81)
Educational services (SIC 82)
Social Services (SIC 83), except homeless shelters serving more than five persons
Museums, art galleries, botanical and zoological gardens (SIC 84)
Membership organizations (SIC 86)
Engineering, Accounting, Research, Management, and Related Services (SIC 87)
Services, not elsewhere classified (SIC 899)
Public Administration
Executive offices (SIC 911)
Executive and legislative combined (SIC 913)
Police protection (SIC 9221) excluding jail facilities
Fire protection (SIC 9224)
Public Finance, taxation, and monetary policy (SIC 93)
Administration of human resources programs (SIC 94)
Administration of environmental quality and housing programs (SIC 95)
Administration of economic programs (SIC 96)
National security and international affairs (SIC 97)
Emergency management administration
Other Uses
Accessory buildings and uses normal and incidental to the uses permitted in this district
Transit stop shelters
On-site response actions in accordance with applicable law to discharges of oil and releases of hazardous substances, pollutants, and contaminants
Special Uses
Gasoline service stations (SIC 554)
Used merchandise store (SIC 593)
Secondary dwellings and guest rooms
Entertainment establishments
Antennas attached to existing or approved structures

Freestanding support structures 35 feet or less in height and equipment enclosures
Temporary motor vehicle sales (SIC 551)
Temporary recreational vehicle sales (SIC 556)
One single family dwelling, other than a manufactured home, per lot
Ambulance Station
Ambulance Service Facility
Administrative Conditional Uses
Freestanding support structures between 36 and 70 feet in height and equipment enclosures
Conditional Uses
Crude petroleum and natural gas extraction (SIC 131)
Manufacturing
Jewelry, silverware, and plated ware (SIC 391)
Costume jewelry, costume novelties, buttons, and miscellaneous notions, except precious metals (SIC 396)
Signs and advertising specialties (SIC 3993)
Transportation, communications, electric, gas, and sanitary services
Local and suburban passenger transportation (SIC 411))
Intercity and rural highway passenger transportation within 2,000 feet from the center point of an I-5 interchange and having direct access to a major arterial (SIC 413)
Communication services, not elsewhere classified (SC 489)
Electric services (SIC 491)
Gas production and distribution (SIC 492)
Water supply (SIC 494)
Free standing support structures greater than 70 feet in height and equipment enclosures
Retail
Automotive dealers (SIC 55) BUT EXCLUDING gasoline service stations (SIC 554), and auto and home supply stores as permitted under SRC 152.020(e)(14)
Nonstore retailers (SIC 596)
Services
Camps and recreational vehicle parks (SIC 703)
Carpet and upholstery cleaning (SIC 7217)
Automotive rental and leasing, without drivers (SIC 751)

Automotive repair shops (SIC 753)
Electrical repair shops (SIC 762)
Reupholstery and furniture repair (SIC 764)
Motorcycle repair service
Professional sports club and promoters (SIC 7941)
Homeless shelters and room and board facilities serving 6 to 75 persons
Unlimited number of dwelling units and guest rooms in apartment houses, court apartments, lodging houses, condominiums, and residential hotels.
Other uses
Utilities – secondary truck parking and material storage yard
Recycling depots
Solid waste transfer stations
Off-site response actions in accordance with applicable law to discharges of oil and releases of hazardous substances, pollutants, and contaminants.

5. Provide for a local street connection through the subject property in a location approved by the Public Works Director in compliance with the *Salem Transportation System Plan*.
6. Access to Commercial Street SE shall be limited to one public street connection, with no direct driveway access, in a location to be approved by the Public Works Director.
7. Dedicate drainage easements adjacent to all creeks within the subject property. The open channel drainage easements shall be, at a minimum, the 100-year floodway, 10 feet from the top of recognized bank, or 15 feet from the centerline, whichever is greatest. These easements shall be approved to the satisfaction of the Public Works Director.
8. Construct the City of Salem *Stormwater Master Plan* improvements as defined within the Battle Creek Basin project list to the satisfaction of the Public Works Director.
9. A 30-foot landscape buffer shall be provided as proposed in the application. The buffer shall contain a public access easement and development of a pedestrian trail that has a minimum width of six (6) feet and at a minimum provides a smooth mulch surface.
10. The perimeter trail/buffer (PA-zoned land) shall be linked to internal and external pedestrian walks and trails.

11. The development shall comply with the other landscaping and irrigation requirements of SRC Chapter 132.
12. Any development of the subject property will be subject to a "zero net rise" restriction which will require compensatory flood storage to be provided for any fill placed below the 100-year flood elevation.
13. Prior to development, complete a Letter of Map Revision (LOMR) study and provide the findings to the city for review.
14. Waln Creek shall be improved by allaying the banks and creating sinuosity.
15. All parking areas shall be constructed out of pervious material.

APPLICATION PROCESSING

Subject Application:

On September 22, 2008, Stew Stone, on behalf of Terry Kelly and Mary Rentfro, filed a Comprehensive Plan Change/Zone Change application. The application was deemed complete on October 20, 2008.

Notice was given in accordance with Section 114.050 to 114.070 of the Salem Revised Code. A public hearing was held before the Planning Commission on November 18, 2008, at which time witnesses were heard and evidence received. On December 2, 2008, the Planning Commission having carefully considered the entire record of the proceeding including the testimony presented at the hearing, after due deliberation and being fully advised unanimously approved the matter with conditions of approval that limited the following: average daily trips to the site; uses allowed in the CR (Commercial Retail) portion of the property; access to Commercial Street SE; and required the following: a local street connection through the property; dedication of drainage easements along the creek; construction of Stormwater Master Plan improvements; and a 30-foot wide buffer along the perimeter of the property which will include a 6-foot wide pedestrian trail.

At the January 5, 2009 City Council meeting, the City Council moved to review the decision of the Planning Commission. On April 6, 2009 the City Council held a hearing, at which time witnesses were heard and evidence received. The record was held open until May 11, 2009. On May 11, 2009, the City Council having carefully considered the entire record of the proceeding including the testimony presented at the hearing, after due deliberation and being fully advised unanimously voted to affirm the Planning Commission's decision with the addition of four additional conditions of approval to be incorporated as follows:

- Condition 12. Any development of the subject property will be subject to a "zero net rise" restriction which will require compensatory flood storage to be provided for any fill placed below the 100-year flood elevation.