



City of Tigard Memorandum

To: Mayor John L. Cook, City Councilors

From: Gary Pagenstecher, Associate Planner

Re: Response to Public Testimony and Council Questions from the January 12, 2016 Council Hearing regarding Comprehensive Plan Amendment (CPA) 2015-00005/Zone Change (ZON) 2015-00007

Date: January 26, 2016

Background

The city has initiated this legislative Comprehensive Plan and Zoning Map Amendment to facilitate preservation of R-12 zoned land and ensure it is applied in a location that supports residential use in support of the City's Housing Goal. The Planning Commission voted 6-1 in favor of the proposal. In response to public testimony at its January 12th hearing, Council continued the hearing and directed staff to respond to public testimony to clarify issues related to land use process and to neighborhood livability at Site A.

Public Testimony

The property owners and development representatives for Sites A and B testified in favor of the proposed zone changes at Sites A and B.

Staff Response: While the City's proposal furthers owners' interests, the city's legislative proposal also implements Comprehensive Plan Goal 10.1 to "provide opportunities for a variety of housing types at a range of price levels to meet the diverse housing needs of current and future City residents." The public interest component of the proposal and the unique opportunity to swap zones in two different locations is the reason the city is processing this as a legislative matter. The City's activism in this matter opportunistically takes advantage of the timing of development applications to pursue its housing policy through preservation of R-12 zoned land and ensuring it is applied in a location that supports residential use.

Neighborhood residents in the vicinity of Site A testified in opposition to the proposed zone change at Site A. Seven neighbors testified that the zone should either remain Professional Commercial, or be changed to Low-Density Residential or to a zone that would preserve open space (Parks and Recreation). General concerns were raised about potential development impacts associated with future development of Site A under the R-12 zone, including loss of character and livability, increased traffic, height, density, and parking, and loss of open space. Neighbor testimony was not opposed to the proposed zone change at Site B.

Staff Response: Future development of Site A would be subject to the use and development standards in the Tigard Development Code. It is important to note that both use and development intensity are greater under the existing C-P zone versus the proposed R-12 zone. A brief comparison between the C-P and R-12 zones indicates that a variety of institutional and commercial uses which are permitted outright in the existing C-P zone, are permitted conditionally in the R-12 zone. Some uses such as office and personal service are permitted outright in the C-P zone but are prohibited in the R-12 zone. In addition, several neighbors mentioned objections to the potential height of residential development in the R12. The development standards in the existing C-G zone actually allow more intense development including greater maximum height (C-P: 45' vs R-12: 35') and greater site coverage (C-P: 85% vs R-12: 80%).

Jim Long, Chair of CPO-4M (serving East Tigard, Metzger and Durham) submitted written testimony on a number of specific issues, which are addressed here:

Testimony asserts that the Type III quasi-judicial process is applicable, not Type IV, and is a detriment to citizen involvement, in this case.

Staff Response: In general, legislative actions involve the adoption of law or policy applicable Citywide or to a broad geographical area of the City. Quasi-judicial actions involve the application of existing law or policy to a small area or a specific factual situation. There are different legal requirements for the processing of these two types of actions. In general, quasi-judicial actions require greater notice and procedural protections than do legislative actions. In the Tigard Development Code, Legislative is defined as a land use decision that applies to a large number of individuals or properties (18.120.030.105); Quasi-Judicial is defined as an action that involves the application of adopted policy to a specific development application or amendments (18.120.030.143).

The city decided to use the Type IV process in support of the city's housing policy because the proposed commercial-to-residential zone swap involved two separate sites and potential modification of important policy issues that would not be possible under a quasi-judicial action.

Type III notice requirements that are not required under the Type IV process include notice to property owners within 500 feet of the subject property and posting of a notice on the subject property. The city, however, went beyond the minimum required under the Type IV procedure and instead followed the Type III notice procedures in this case to ensure broader citizen input on an import issue for which the city is an advocate.

Testimony asserts a violation of due process, which denies interested parties full and fair opportunity for citizen involvement. Specifically, 1) the posted notices have the wrong date and time for the City Council hearing, had blown down and were not re-erected, 2) the mailed notice included an ineffective phone number, 3) notices were not received by five neighbors within 200 feet, and 4) documents cited in the notice were not available for timely review.

Staff Response: 1) All notices included a City Council hearing date of "Tuesday, January 12, 2015," which should have read "2016;" While this error is regrettable, it is an obvious error given the time of year. Regardless, if a person were to be confused by the error they had multiple other sources to consult to confirm the date including by contacting staff directly. 2) Four different types of notices were sent out. The published and posted notices included the correct planner's phone number, but the mailed notice included a typo with one digit incorrect in the planner's phone number. Again, while the error is

regrettable, the planners name was clearly spelled out so that they could have been contacted by calling the city and asking for him by name; 3) Notice is sent to property owners, which may partially explain this outcome if the referenced neighbors are not owners. Again, the Type IV procedure does require a notice to specific neighbors. The CD department provided the mailed notice to all property owners within 500 feet as a courtesy to allow them to be part of the process. All neighbors who signed up to testify are owners and are included in the mailed notification list; 4) Notices refer to documents available on file for review by the public. At the time of the request, the staff report and supporting documents had not yet been generated, but were available seven days prior to the Planning Commission hearing, as required. However, at that time Mr. Long met with both John Floyd and Gary Pagenstecher and the details of the proposal were explained to him. Additionally, CD staff have repeatedly offered to answer questions or provide any information that might be requested.

Testimony identifies a commercial real estate sign at Site B that does not meet city code and is misleading.

Staff Response: While this sign is notable in the context of the proceeding, it is not a material part of the subject land use process. The city is empowered to authorize temporary signs (18.780.100) which are identified as balloons, banners and lawn signs in the code. Commercial real estate signs such as the one identified, are neither prohibited nor authorized and are therefore not regulated in Tigard. Advertising a property currently zoned residential as a commercial property is misleading, which comes at some risk to the realtor.

Testimony asserts that the application title "R-12 Preservation" is misleading, that both commercial zoned property and R-12 zoned property are in deficit, that the annexation report creating Site A's C-P zone may support leaving it zoned commercial.

Response: The project description accompanying the title helps to clarify the city's intention. The intent of the proposal is to preserve opportunities for R12 zoning. The report does find that both commercial and R-12 zoned lands are in deficit, but the city has specific policies regarding preserving opportunities for housing affordability and diversity that the proposal is focused on. The original annexation application ZCA2006-00003 for Site A approved the zone that was closest to the Washington County zone it replaced, consistent with the standards for annexations in 18.320.020.C. There was no more consideration given to the chosen C-P zone than that.

Council Questions

Mayor Cook inquired about the notice date error raised in public testimony and requested the site be reposted.

Staff Response: The notice date error is addressed above in the staff response to public testimony. Staff reposted both Sites A and B on January 19th for the February 2, 2016 hearing.

Councilor Snider inquired about the process issues raised in public testimony, including appeal of a legislative decision, and whether Site A had ever been considered by the city for use as a park.

Staff Response: The process issues are addressed above in the staff response to public testimony. An appeal of a Council legislative decision is heard by the Land Use Board of Appeals (LUBA). The city's

Parks and Facilities manager does not recall Site A ever being brought to the city's attention and specifically, that it was not considered during the Park Bond acquisition process.

Councilor Woodard asked what zone applies to the residences along 74th Avenue at Spruce Street, what the parking issue is referred to in the public testimony, and whether other zones, e.g. R-7 were considered in addition to the proposed R-12 zone.

Staff Response: The R-4.5 zone flanks SW 74th Avenue south from Spruce Street until it turns and becomes SW Torchwood Street where the zone becomes R-12(PD) at White Oak Village. Neighbors contend that parking spill over from White Oak Village contributes to cars parking along 74th. The city's proposal did not consider any zone other than R-12 zoning both because the property owner expressed interest in that zone as an alternative to the existing C-P zone and the city wanted the R-12 zone to avoid its loss on Pacific Hwy. Staff believes that a lower density residential zone would not provide a significant buffer between the commercially zoned property to the south and east and the low-density residential zone to the north, which is an express function of the C-P zone. The site is ideal for R12 zoning given its location near transit and abundant services and there are several similarly zoned R12 areas nearby.

Councilor Henderson inquired about the commercial real estate sign identified in public testimony.

Staff Response: The commercial real estate sign issue is addressed above in the staff response to public testimony.

Staff Recommendation

Support the city's housing goal to ensure housing choice and affordability by preserving the R12 zoning and approve the proposed zone changes on Sites A and B (Ordinance A).

Alternatively, deny the proposed zone change on Site A and approve the proposed zone change on Site B (Ordinance B) in support of the TTSD's rezone proposal.