BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the	)	Case No. ZC/CP 17-003
	)	
Application of:	)	Clerk's File No.
	)	
R&K PROPERTIES, LLC	)	**Comprehensive Plan Amendment/**
	)	**Zone Change**

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of R&K Properties, LLC to change the comprehensive plan designation from Multi-Family Residential to Commercial and the zone from RM (Multiple-Family Residential) to CR (Commercial Retail) on a 0.14 acre parcel in the 3400 block of Ward Drive NE, Salem, Marion County, Oregon (T7S, R3W, 12AA, tax lot 900).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Salem Area Comprehensive Plan (SACP) and the Marion County Code (MCC) Title 16, especially chapters 16.39 and 16.43.

III. Public Hearing

A public hearing was held on this matter on November 8, 2017. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

1.	Brandon Reich	Marion County Planning Division
2.	Margaret Gander-Vo	Applicant's attorney
3.	Roger Kirschner	Member R&K Properties, LLC

No documents were presented, marked or entered into the record as exhibits. No objections were raised as to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing. Post-hearing documents were received, sealed in an envelope and marked, "Open if appealed to Board." The documents were not considered in making this recommendation.

IV. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is outside the Salem city limits but within the Salem Urban Growth Boundary (UGB). It is designated Multi-Family Residential under the SACP and zoned RM under the MCC.

2. The unimproved parcel is on the west side of Ward Drive, in the 3400 block.

3. The subject parcel is bordered on the north and west by property zoned CR and on the south and east by property in an RM zone. Property to the southeast is inside the Salem city limits.

4. Applicant originally applied to change the SACP designation from Multi-Family Residential to Commercial and the zone from RM to CG (Commercial General) on the subject 0.14 acre parcel. Applicant modified its application to request CR zoning that would allow expansion of its trailer sales business onto the subject property.

5. The Planning Division requested comments from various governmental agencies.

The Marion County Department of Public Works (DPW) Land Development Engineering and Permits (LDEP) commented:

ENGINEERING CONDITION

Public Works Engineering requests that the following condition, lettered A, is included in the approval of the land use case.

Condition A – If the proposed use is in conjunction with planned RV storage on adjacent tax lot 1000 (0.46-ac) under similar ownership, then prior to establishment of the proposed use on the subject property, acquire a Stormwater Permit from MCPW Engineering that will require submission of an engineered grading and drainage plan, and implement any improvements related to stormwater management prior to establishment of the proposed use.

Stormwater detention may be required for 0.5-acres or more of development. The subject 0.14-acre piece combined with the adjacent 0.46-acre parcel will trip this acreage threshold. Stormwater detention is an engineering Requirement; however, the timing for completion is being made into a Condition in the apparent absence of need for building permits under which compliance with any stormwater requirements could otherwise be ensured.

ENGINEERING REQUIREMENT

The following comment lettered B, is informational only regarding Public Works Engineering requirements and issues that the applicant must address if the proposal is approved. Please note that the below requirement will be only generally referenced in a forthcoming Planning Division *Notice of Decision*.

B. Any gate installed in the fencing should either open up to the property side or be a sliding variety.

ENGINEERING ADVISORY

The Applicant should be aware of the following, lettered C:

C. ODOT has maintenance jurisdiction over the section of Ward Drive fronting the subject property. Any modification(s) to access would need to be coordinated though the Region 2 Access Management Coordinator, Casey Knecht.

Oregon Department of Transportation (ODOT) Access Management Coordinator commented:

> The property abuts Ward Drive NE in Salem. This road is owned by the state of Oregon and is subject to state laws administered by ODOT. Ward Drive NE serves as a frontage road near the interchange of Pacific Highway No. 001 (I-5) and Pacific Highway East No. 81 (OR-99E). There is an existing access to the property via Ward Drive NE. There is no permit on file for the property, however, ODOT has determined that the access has the presumption of written permission.
>
> An existing access permit, or the presumption of written permission, can be evaluated under OAR 734-051-3020, Change of Use of a Private Connection. The purpose of the Change of Use evaluation is to determine if thresholds are met based on a change in the traffic volume, or if a demonstrated safety or operational concern exists. If either can be documented by ODOT, the applicant would need to obtain a new access permit. Based on ODOT's evaluation of the applicant's proposal per OAR 734-051-3020, the applicant does not meet administrative rule criteria and will not need to obtain a new access permit.
>
> If the applicant desires to make any physical modifications to the approach, or if the county conditions any improvements to the approach or frontage, the applicant will need to submit an Application for State Highway Approach.
>
> Please note if the applicant or their contractor is required to occupy state highway right-of-way to relocate or reconstruct franchise utilities, a Permit To Occupy Or Perform Operations Upon A State Highway will be necessary... The applicant or their contractor shall obtain the permit 30 calendar days prior to commencing any activities within the state highway right-of-way.
>
> (Emphasis in the original.)

ODOT Development Review Coordinator commented:

> Ward Drive is not part of the state highway system so we would not be in a position to recommend anything. The property in question fronts Ward Drive...I also pulled our right-of-way map from the interchange work we did some years back to see if any access control was acquired by ODOT when Ward Drive was

realigned with the interchange work. No[] access control was obtained. All this being said, ODOT has no concerns with the applicant's proposal.

City of Salem Community Development commented:

In 2014, the City of Salem conducted a Housing Needs Analysis (HNA), which found that based on a 20-year population forecast, there is a 207-acre deficit of land designated for multifamily housing (2,897 units) in Salem's portion of the UGB. As noted in the application, the City of Salem is conducting a three-phased work plan, accepted by the City Council in 2016, to address this projected deficit.

The proposed Zone Change/Comprehensive Plan Change would convert vacant land from a Comprehensive Plan designation of Multi-Family Residential to Commercial. Generally, the City of Salem is looking to increase, not decrease, the amount of land available for multifamily housing. Multifamily housing is not an allowed use in the Commercial General (CG) zone. The subject property is small (0.14 acres) and was not included as vacant multi-family land on the City's Buildable Lands Inventory. Therefore, it was not considered land that was available to meet the multi-family housing deficit and its conversion will not affect the projected deficit. Additionally, the HNA assumes a certain amount of multifamily housing will be developed on properties that are designated Commercial in the Comprehensive Plan.

There are no water or sewer mains located in Ward Drive NE, and Ward Drive NE is not a City street. At the time of development, the City would prefer that there be shared access from the existing trailer sales property under common ownership to the north pursuant to Salem Revised Code 804.035. Any connections to City water or sewer would require annexation since the subject property is contiguous to the City of Salem city limits.

Marion County Fire District 1 (MCFD1) commented on fire protection standards and access requirements.

All other contacted agencies either failed to respond, or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met.

2. The subject property is outside the Salem city limits but within the Salem UGB. Marion County has jurisdiction in this area but must coordinate land use applications with the City of Salem. Comments from the City of Salem are set out above.

3. The Department of Land Conservation and Development (DLCD) must be notified of any proposed comprehensive plan amendment. DLCD was notified as required but provided no comment on the proposal.

4. Under MCC 16.43.000(A), a non-legislative plan amendment involves a change to the land use designation of five or fewer different ownerships. This application involves one ownership and is a non-legislative plan amendment.

5. MCC 16.43.020 contains the following criteria for non-legislative plan amendments:

   A. Conformance with the Comprehensive Plan goals, policies and intent, and any plan map amendment criteria in the plan, or intergovernmental planning coordination agreement, pertaining to unincorporated lands.

   B. The addition of the subject property to the inventory of lands in the proposed map designation and the corresponding inventory reduction in the current designation are consistent with projected needs for such lands in the Comprehensive Plan.

   C. Uses allowed in the proposed designation will not significantly adversely affect planned uses on adjacent lands.

   D. Public facilities and services necessary to support uses allowed in the proposed designation are available or are likely to be available in the near future.

6. The subject property is in the Salem UGB and subject to the SACP. Under SACP III(B)(4), Marion County has exclusive jurisdiction over land use actions within the Salem UGB. Under SACP II(A)(1), the SACP is intended to project the most desirable pattern of land use in the Salem area. Under SACP II(A)(3)(c), designated Commercial areas provide for shopping and service opportunities. Many plan policies are aspirational in nature. The following SACP policies are examined.

   General development policy 7 - Structures and their siting in all residential, commercial, and industrial developments shall optimize the use of land. The cumulative effect of all new residential development in the Salem urban area should average 6.5 dwelling units per gross acre of residential development. Development should minimize adverse alteration of the natural terrain and watercourses, the potential for erosion and adverse effects upon the existing topography and soil conditions.

No residential development is proposed. The subject property is flat, undeveloped and proposed for trailer storage use. No structures are proposed. The property contains no on-site watercourses. Little to no grading will result, and the potential for erosion and adverse effects on the existing topography and soil conditions is negligible. General development policy 7 is met.

General development policy 15 - Exterior lighting shall be designed to provide illumination to the site and not cause glare into the public right-of-ways and adjacent properties.

Requiring a lighting plan at permitting that shows how lighting will be placed to illuminate the property and not cause glare in the public rights-of-way or adjacent properties will satisfy general development policy 15.

Growth management policy 7 - Within the Salem urban area, residential subdivisions, mobile home parks, multi-family residential, commercial and industrial development shall be permitted only within the County service districts or within the City of Salem where public sewer and water services are available and other urban facilities are scheduled pursuant to an adopted growth management program. Exceptions to this policy may only be permitted if mutually agreed to by the City and the appropriate County.

No water or sewer services are established on the subject property and none are proposed. The proposal will expand existing trailer storage from a contiguous property. Only electrical service will be extended to the subject property. Growth management policy 7 is met.

Commercial development policy 4 - Community shopping and service facilities shall be located adjacent to major arterial streets and shall provide adequate parking and service areas. Land use regulations shall include provisions for siting and development that discourage major customer traffic from outside the immediate neighborhoods from filtering through residential streets and provisions for connectivity to the facilities for pedestrian and bicyclists from residential neighborhoods.

The subject property has direct access to Ward Drive NE but customer and most other access will be from the other property already in use for existing trailer sales north on Ward Drive NE. On-site access use will be limited to occasional movement of inventory. Because the parent commercial use is already in place, commercial development policy 4 is not applicable.

Commercial development policy 5 - Unless the existing development pattern along arterials and collectors commits an area to strip development, new commercial development shall be clustered and located to provide convenience goods and services for neighborhood residents or a wide variety of goods and services for a market area of several neighborhoods. New commercial development will generally be within a range of sizes of commercial centers, such as convenience shopping centers, neighborhood shopping centers, and community shopping centers. The size of the

commercial center should be scaled and consistent with the character of surrounding and nearby residential development.

The subject property will be used to expand an existing trailer sales business. Because the parent commercial use is already in place, commercial development policy 5 is not applicable.

Conclusion: With a lighting plan condition, the proposal conforms to SACP goals, policies and intent. MCC 16.43.020(A) is satisfied.

7. The Northgate Neighborhood Land Use Chair noted a multifamily housing deficiency in Salem and asked to offset the loss of this property by adding additional property to the inventory. The City of Salem acknowledged its 2014 Housing Needs Analysis found, based on a 20-year population forecast, there is a 207-acre deficit of land designated for multifamily housing (2,897 units) in Salem's portion of the UGB. But, the city also noted the subject property is small, was not included as vacant multi-family land on the City's Buildable Lands Inventory, was not considered land available to meet the multi-family housing deficit, and said its conversion will not affect the projected deficit. Removing the subject property from the Multi-Family residential inventory and adding it to Commercial inventory will have no significant affect on the overall land inventory within the UGB. MCC 16.43.020(B) is satisfied.

8. Lands north and west of the subject property are already designated Commercial and zoned CR, the zone proposed here by applicant. There will be no increase in potential uses over those already allowed on those parcels. Property east and south are designated Multi-Family Residential and are zoned for multiple-family residential use. Property directly south contains a single family dwelling. The MCC contains requirements for commercial development adjacent to residential zones that will be imposed on development. Ward Drive NE is directly east of the subject property and appears to have a 65' to 70' right-of-way in the area of the subject property. The Ward Drive right-of-way provides adequate buffering between the subject property and properties to the east across Ward Drive NE. Uses allowed in the proposed Commercial designation will not significantly adversely affect planned uses on adjacent lands. With the lighting plan required to meet SACP policies, MCC 16.43.020(C) will be satisfied.

9. Water and sewer service are not requested or required. Telephone, electric and public transportation services are available at the site. Adequate public facilities and services are or will be available to support CR use of the property. MCC 16.43.020(D) is met.

10. Comprehensive plan amendment approval is recommended.

ZONE CHANGE

11. MCC 16.39.050 contains the following zone change criteria:

A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.

B. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.

C. The request shall be consistent with the purpose statement for the proposed zone.

D. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

12. With the condition requiring a lighting plan at time of development, the proposed comprehensive plan amendment conforms to applicable SACP policies. If the comprehensive plan amendment is approved, the proposed CR zone will be appropriate for the Commercial comprehensive plan designation, and MCC 16.39.050(A) will be satisfied.

13. As noted above, adequate public facilities are available or can be made available with conditions of approval. MCC 16.39.050(B) is satisfied.

14. Under MCC 16.06.000, the purpose of the CR zone is to provide areas suitable professional and general commercial offices, retail sales within a building, eating and drinking places, commercial accommodations and commercial services. The commercial retail zone is appropriate in those areas designated commercial in the applicable urban area comprehensive plan and where the location has access to a collector or arterial street.

    If the comprehensive plan amendment is approved, the proposed property will be designated Commercial and the CR zone will be appropriate. The subject site is on Ward Drive NE, which applicant identifies as a minor arterial roadway, and is in an area of commercial and residential uses. If the comprehensive plan amendment is approved, MCC 16.39.050(C) will be satisfied.

15. The CO zone is the least intensive commercial zone appropriate for the commercial designation. The CR zone is one step higher in intensity. Lands north and west of the subject property are already designated Commercial and zoned CR, the same zone proposed by applicant. There will be no increase in the intensity of potential uses over those already allowed on those parcels. Property east and south are designated Multi-Family Residential and are zoned for multiple-family residential use. Property directly south contains a single family dwelling. The MCC contains requirements for commercial development adjacent to residential zones that will be imposed on development. Ward Drive NE is directly east of the

subject property and appears to have a 65' to 70' right-of-way in the area of the subject property. The Ward Drive right-of-way provides adequate buffering between the subject property and properties to the east across Ward Drive NE. With the lighting plan required to meet SACP policies and application of development standards on development, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses, and MCC 16.39.050(D) will be met.

16. The proposed zone change is recommended.

VI. Recommendation

It is hereby found that applicant has met the burden of proving the applicable standards and criteria for approval of a comprehensive plan amendment from Muti-Family Residential to Commercial and zone change from RM to CR have been met. Therefore, the hearings officer **recommends** the Marion County Board of Commissioners **GRANT** the comprehensive plan amendment and zone change applications, subject to the conditions set forth below. The conditions are necessary for the public health, safety and welfare.

A. Applicant shall obtain all permits required by the Marion County Building Inspection Division.

B. Applicant shall meet MCC 16.06.200 and MCC 16.06.250 requirements for landscaping, screening of outdoor storage areas, exterior lighting, roof equipment, special setbacks and height limitations.

C. All current and future development on the property must satisfy development standards in the CR zone and applicable general development standards in MCC chapters 26 through 31.

D. Prior to building permit approval, applicant shall provide evidence that required permits or agreements have been filed with the City of Salem.

E. If required, the applicant shall acquire a Stormwater Permit from MCPW Engineering requiring submission of an engineered grading and drainage plan, and implement any improvements related to stormwater management prior to establishment of the proposed use.

F. Any gate installed in the fencing should either open up to the property side or be a sliding variety.

G. The lot shall be paved with a concrete or asphalt hard surface as required by Marion County Public Works.

VII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application

after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 12th day of January 2018.

Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

R & K Properties
3250 Ward Dr. NE
Salem, OR 97305

Margaret Gander-Vo
Mark Shipman
Saalfeld Griggs PC
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P.O. Box 470
Salem, OR 97308

Roger Kirschner
453 63rd Ave. NE
Salem, OR 97317

Lisa Anderson-Ogilvie
City of Salem
555 Liberty St. SE, Rm. 305
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Casey Knecht
ODOT Region 2
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Salem, OR 97301

Agencies Notified
Planning Division *(via email: gfennimore@co.marion.or.us)*
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PW Engineering *(via email: jrasmussen@co.marion.or.us)*
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Neighborhood Association B
Joyce Judy *(via email: pacajoyce@sbcglobal.net)*
Northgate Neighborhood Land Use Chair

Jason Cox
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Salem, OR 97301

Brenda Johnson
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by mailing to them copies thereof, except as specified above for emailed copies. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon, on the 12th day of January 2018, and that the postage thereon was prepaid.

Christi Klug
Secretary to Hearings Officer