



Portland City Auditor

Hearings Office

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File No. LU 15-186900 ZC
(Hearings Office No. 4150021)

Applicant: Lauren Golden Jones
Capstone Partners LLC
1015 NW 11th Avenue, Suite 243
Portland, OR 97209

Attorney: Damien Hall
Ball Janik, LLP
101 SW Main Street, Suite 1100
Portland, OR 97205

Traffic Engineer: Todd Mobley
Lancaster Engineering
321 SW 4th Avenue, Suite 400
Portland, OR 97204

Property Owners: KAL LLC Grant Park Village LLC, Attn.: Chris Nelson
111 N. Post Street, #200 1015 NW 11th Avenue
Spokane, WA 99201 Portland, OR 97209

Hearings Officer: Joe Turner

Bureau of Development Services (BDS) Staff: Mark Walhood

Site Address: 3204 NE Weidler Street

Legal Descriptions: BLOCK 4 LOT 1&2, BROADWAY ADD; BLOCK 4 LOT 3&4, BROADWAY ADD;
BLOCK 4 LOT 5&6, BROADWAY ADD; LOT 16 TL 12400, FERNWOOD; BLOCK 5
TL 11400, CANCEL ACCOUNT / BROADWAY ADD, BLOCK 5 TL 11400,
BILLBOARD, SEE R121894 (R105500500) FOR LAND & IMPS; BLOCK 1 LOT 3
LAND & IMPS SEE R162223 (R276000701) FOR BILLBOARD, HOLLYWOOD WEST
FRED MEYER; BLOCK 4&5 TL 13800 DEFERRED ADDITIONAL TAX LIABILITY,
BROADWAY ADD

Tax Account Nos.: R105500420, R105500440, R105500460, R276000670, R276000702,
R398400050, R398400050, R398400050, R105500470

State ID Nos.: 1N1E25CD 12200, 1N1E25CD 12300, 1N1E25CD 12500, 1N1E25CD 12400, 1N1E25CD 11400A1, 1N1E36BA 06300, 1N1E36BA 06300, 1N1E36BA 06300, 1N1E25CD 13800

Quarter Section: 2833

Neighborhood: Sullivan Gulch

Business District: None

District Coalition: Northeast Coalition of Neighborhoods

Zoning: RXd, CSd (Centra Residential or RX and Storefront Commercial or CS base zones, with Design overlay zoning)

Land Use Review: Type III, ZC (Zoning Map Amendment)

BDS Staff Recommendation to the Hearings Officer: Approval

Public Hearings: The hearing was opened at 1:31 p.m. on August 26, 2015, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 2:44 p.m. The Hearings Officer continued the hearing to 1:30 p.m. on September 21, 2015, in the same location. The September 21, 2015, was closed at 1:57 p.m. The applicant waived applicant's rights granted by ORS 197.763 (6)(e), if any, to an additional 7 day time period to submit written rebuttal into the record. The record closed at the end of the hearing.

Testified at the August 26, 2015, Hearing:

--Mark Walhood
--Damien Hall
--Lauren Golden Jones
--Todd Mobley
--Britt Brewer
--Jim Walker
--Camelia Walker

Testified at the September 21, 2015, Hearing:

--Matt Wickstrom
--Damien Hall
--Todd Mobley
--Jim Walker

Proposal: Grant Park Village is a newer development project in Northeast Portland, located at the intersection of NE Broadway and NE 33rd Avenue, directly north of the Banfield (I-84) Freeway. Phase I, directly fronting onto NE Broadway, was developed recently with a mixed-use project containing 211 apartments and ground floor retail uses, as well as a new grocery store. Phases II and

III are proposed for the area south of Phase 1, bounded on the south by the freeway, and on the west by NE 32nd Avenue and the Hollywood West Fred Meyer.

Previously developed with a fuel distribution business and Dairy Queen, the City amended the comprehensive plan designation of the site to Central Residential and re-zoned the site RX to allow high-density mixed-use development in 2003 under case file LUR 00-00672 CP ZC. As part of that review, a condition of approval (condition E) was imposed limiting the maximum residential density on the site to the minimum density of the RX zone (1 unit per 500 square feet of land), which amounted to 319 dwelling units. Since 211 units were constructed in Phase I, only 108 remaining units can be built in Phases II and III per this condition.

The traffic study for the 2003 zone change evaluated a proposal for only 319 dwelling units on the entire site, which was the reason for the condition of approval in the 2003 zone change. Since the 2003 study, and as part of the development of Phase I, a new traffic signal was installed at NE 32nd and Broadway. The density cap contained in condition E of LUR 00-00672 CP ZC was tied in the findings only to the transportation-related approval criterion in the Zoning Map Amendment, and in part was imposed to avoid signaling the NE 32nd and Broadway intersection.

At this time, the applicant seeks to lift the residential density cap, allowing development of Phases II and III to proceed under the normal maximum density allowed by the RX base zone. The RX base zone allows a maximum density of 4:1 FAR (floor area ratio). A reasonable 'worst-case' scenario under the new proposal would result in Phases II and III having up to 625 additional dwelling units and 41,000 square feet of new retail space (total in both phases). Therefore, because the original condition of approval can only be changed by going back through the same procedure type which created the condition in the beginning, the applicant has requested a Zoning Map Amendment to eliminate condition E of LUR 00-00672 CP ZC.

Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are found at **33.855.050.A-D** (*for this application, only the transportation-related service criterion at 33.855.050.B.2.c is relevant*).

II. ANALYSIS

Site and Vicinity: The site consists of seven distinct tax lots which together cover approximately 4.87 acres of land. Bounded by NE Broadway on the north, NE 32nd on the west, NE 33rd on the east, and the I-84/Banfield Freeway on the south, the northernmost portion of the site is developed with a recently constructed mixed-use apartment and retail project. The southerly portion of the property is vacant, although fenced-off concrete remnants of an old warehouse building occupy the southernmost tax lot, adjacent to the freeway. An asphalt loop access road occupies the unbuilt southern portion of the site as well, linking NE Weidler and Halsey Streets east of NE 32nd Avenue together in a semi-circle.

The surrounding area is diverse in character, with a variety of commercial, residential and light industrial uses and developments. The large Hollywood West Fred Meyer is located immediately west of the site on a large parcel, surrounded by smaller-scale residential homes and apartments.

The character of NE Broadway near the site is also diverse, with commercial uses interspersed among residential and light industrial uses, with both pedestrian- and vehicle-oriented development types. One common pattern found nearby is the large early twentieth-century home which has a ground level commercial space built into the lower floor or basement level, with the upper floors retained as housing or converted to office uses or storage space.

With the exception of the internal street frontages on the vacant portions of the subject site, the surrounding streets are all improved with paved public sidewalks, curbing, street trees, and paved roadways.

Zoning: The Storefront Commercial (CS) base zone is intended to preserve and enhance older commercial areas that have a storefront character: this CS zoning is applied only along the northernmost 90'-0" of the site, abutting NE Broadway. Development typically includes a range of retail and commercial uses, with residential or office space above. Development is intended to be pedestrian-oriented; and buildings with a storefront character are encouraged.

The Central Residential (RX) base zone allows the highest density of all of Portland's multi-dwelling zones. Allowed housing typically includes medium- and high-rise apartments with high building coverage, often with allowed commercial uses on the ground floor. Density in the RX zone is not limited by a maximum number of units per acre, but instead by a maximum allowable floor area ratio (FAR), or building size.

The Design overlay zone seeks to preserve and enhance areas of the city with special architectural, cultural or design significance. In this case, the Design overlay was applied by City Council as part of a zone change in 2003. As did Phase I, Phases II and III of the Grant Park Village project will require prior approval through the Design Review process.

Land Use History: City records indicate that prior land use reviews include the following:

- **VZ 070-63** – A 1963 review to permit more than one sign in an S Zone at 3204 NE Broadway.
- **VZ 377-65** – A 1965 review to permit more than one sign in an S Zone at 3204 NE Broadway.
- **LUR 95-00850 CS** – A 1995 review to approve construction of a convenience store in conjunction with a retail gas station.
- **LUR 00-00672 CP ZC** – Approval of a Comprehensive Plan Amendment from Industrial Sanctuary to Urban Commercial and Zone Change from IG1 General Industrial 1 to CS Storefront Commercial for lots abutting NE Broadway Street, and changing Industrial Sanctuary and General Commercial to Central Residential and Zone Change from IG1 General Industrial 1, IH Heavy Industrial, to RX Central Residential for the remainder of the site. Design Overlay Zone applied to the entire site. This review imposed the condition of approval that is the subject of the present case (LU 154-186900 ZC).
- **LU 06-148501 DZM** – Approval with Modifications for a mixed-use, multi-dwelling development in two construction phases. This decision was never recorded and is now expired.
- **LU 12-186554 DZM AD** – Design Review approval for Phase I of Grant Park Village, with Modifications and Adjustments.

- **LU 12-189581 ZC** – Type III Zoning Map Amendment to amend conditions of approval regarding transportation-related improvements at NE 32nd & Broadway as imposed in LUR 00-00672 CP ZC. Approved as requested.
- **LU 12-211489** – Type I Unassigned Review per requirements in the 2003 zone change to develop a Transportation Demand Management Plan for Grant Park Village. Approved as requested.
- **LU 14-160623 CU** – Approved Conditional Use Review for a rooftop wireless telecommunications facility atop the Grant Park Village Phase I buildings.
- **LU 15-199791 DZ** – Pending/in-process application for changes to two previously-approved New Seasons signs.

Agency Review: A “Request for Response” was mailed July 23, 2015. The following bureaus have responded:

The *Bureau of Environmental Services* (BES) has reviewed the proposal and notes that the current request does not exceed the increase in density originally contemplated by BES staff during the 2003 zone change process. Specific stormwater and sanitary sewer conditions will be considered in detail during the future Design Review applications for development on the site. No objections were raised with regards to the current land use request to eliminate the transportation-related density cap (Exhibit E.1).

The *Development Review Section of Portland Transportation* has reviewed the proposal and provided detailed findings in response to the approval criteria, which are included later in this document. No objections or concerns were raised regarding the elimination of the density cap on the site imposed during the 2003 zone change. Exhibit E.2 contains staff contact and additional information.

The *Water Bureau* has reviewed the proposal and responded with no issues or concerns regarding the requested Zoning Map Amendment, but with comments outlining issues to be addressed during the Design Review and building permit process for Phases II and III. City Title 21.12.010 requires developments to have a water service and meter of appropriate size installed within the specific property boundary/frontage which it will serve. Also, the water main in NE 32nd Avenue will need to be extended at the applicant’s expense and request. Finally, the multiple tax lots on the southern portion of the site will need to be consolidated to create a single developable parcel with no internal parcel lines for each Phase, with potential for separate service agreements and other requirements if multiple buildings will be served from one water line connection. Exhibit E.3 contains staff contact and additional information.

The *Fire Bureau* has reviewed the proposal and offered no objections or concerns regarding this land use review. All Fire Code regulations continue to apply, and will be imposed during the building permit review process and eventual construction of Phases II and III (Exhibit E.4).

The *Police Bureau* has reviewed the proposal and responded with regards to the approval criteria that they are capable of serving the proposed use. Concerns and recommendations are made with regards to clear visibility for address numbers, and keeping foliage and trees maintained at the perimeter to allow visibility and meet Crime Prevention through Environmental Design (CPTED)

standards. The applicant is encouraged to work with Police Bureau staff to address any public safety issues or concerns. Exhibit E.5 contains staff contact and additional information.

The following three City reviewers have reviewed the proposal and responded without concerns or detailed comments:

- The *Site Development Section of the Bureau of Development Services* (Exhibit E.6);
- The *Life Safety Section of the Bureau of Development Services* (Exhibit E.7); and
- The *Urban Forestry Division of Portland Parks and Recreation* (Exhibit E.8).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 23, 2015. Three written responses were received in response to the proposal, including responses from the Sullivan's Gulch Neighborhood Association, the Grant Park Neighborhood Association and Jim and Camellia Walker, neighbors who live on NE Weidler Street. In addition Britt Brewer, former chair of the Sullivan's Gulch Neighborhood Association, and Jim and Camellia Walker offered oral testimony at the hearings. Comments relevant to the applicable approval criteria are addressed in the relevant sections below. Other comments are addressed in this section.

Sullivan's Gulch Neighborhood Association

The letter from the Sullivan's Gulch Neighborhood Association noted a unanimous vote in support of Phase Two of the Grant Park Village project. The letter states "limiting the number of residential units is onerous and arbitrary and does not reflect good development strategies nor does (it) support market driven and financeable investment opportunities at this time that may benefit the neighborhood and City."

Public Notice

The letter from the Grant Park Neighborhood Association stated that no notice had been received directly by the neighborhood association. The Hearings Officer continued the August 26, 2015, hearing to September 21, 2015, to allow the Grant Park Neighborhood Association additional time to review and respond to this application.

The Walkers argue that the City failed to provide adequate public notice for this application. The Notice stated that, "A reasonable worst case scenario under the new proposal would result in Phases II and III having up to 624 additional dwelling units and 41,000 square feet of new retail space (total in both phases)." The public notice is based on the applicant's planned development for the site with a 3:1 FAR for Phase II and 3:9 FAR for Phase III. The Walkers argued that the "worst case scenario" under the RX zone is 103,700 square feet of new retail space with a 4:1 FAR, the maximum allowed in the RX zone, in both phases.

The Hearings Officer finds that public notice for this application was adequate. The development assumptions listed in the public notice are consistent with the assumptions used in the applicant's traffic study. The City is not required to consider the absolute worst-case development scenario. The City may limit its review to "likely" development scenarios based on the development limitations of the site. *Bothman v. City of Eugene*, 51 Or LUBA 426, 433-34 (20006). Although the RX allows a maximum 4:1 FAR, Phases II and III of this development are unlikely to develop at that intensity. As

Transportation Services staff noted in Exhibit E.2, Phases II and III of the project are separated and screened from NE Broadway Street by the Phase I development. In addition, the ground floor levels of Phases II and III will be at lower elevation than Broadway Street, making commercial uses in these portions of the building less attractive to intensive retail commercial uses. However, despite these limitations, the applicant's traffic study assumed that the floor area of Phase II would include ground floor retail uses and Phase III would include ground floor office space. In addition, the traffic study assumed smaller than average residential dwelling units, resulting in a conservatively high number of dwelling units. The Hearings Officer finds that that "reasonable worst-case scenario" considered in the traffic study and cited in the public notice is consistent with the development limitations of this site. The public notice provided parties with sufficient information to prepare for the public hearing and address the relevant criteria.

Comprehensive Plan approval criteria

The Walkers argue that Condition E of the City Council's 2003 decision in File No. LU 00-000672 CP ZC (Exhibit G.4) applies to both the comprehensive plan amendment and the zone change approved in that application, because: the two proposals were reviewed as a consolidated application, both approvals were based on a traffic study that assumed development at the minimum density allowed by the RX zone, and the decision approved both applications subject to the same conditions. Therefore, pursuant to Portland Zoning Code ("PZC") Chapter 33.730.140, this application is also subject to the approval criteria for a comprehensive plan amendment.

The Hearings Officer finds that the comprehensive plan approval criteria are not relevant to this application. The conditions of approval adopted by the City Council in 2003 only apply to the zone change. Consolidation of the comprehensive plan and zone change applications does not require that the conditions of approval adopted for the zone change application automatically apply to the comprehensive plan approval. Condition E refers to the zoning; it expressly limits development to the minimum density allowed by the RX zoning. The condition makes no mention of the comprehensive plan designation. The City Council findings only addressed the dwelling unit cap in reference to the zone change criteria. See p. 38 of the 2003 decision. The comprehensive plan findings in the City Council's 2003 decision make no mention of any conditions of approval. Therefore, because the applicant is not seeking any changes to the previously approved comprehensive plan amendment, the applicant is only required to address the zone change criteria of 33.855.050 in this application.

33.855.060

The Hearings Officer finds that 33.855.060 is not an applicable approval criterion for this application. This section provides, in relevant part:

33.855.060 Approval Criteria for Other Changes

In addition to the base zones and Comprehensive Plan designations, the Official Zoning Maps also show overlay zones, plan districts, and other items such as special setback lines, recreational trails, scenic viewpoints, and historic resources. Amendments to all of these

except historic resources and the creation of plan districts are reviewed against the approval criteria stated in this section. ...

This site is subject to the “d” overlay zone. However the applicant did not propose any changes to that, or any other, overlay zones. The applicant is proposing to modify a condition of approval imposed on the base zone for the site. The applicant did not propose to add or delete any overlay zone. Therefore this code section is inapplicable.

Design Review

The Walkers argue that the dwelling unit cap imposed by Condition E influenced the design review commission’s evaluation of Phase I of the development, and removal of the density cap will circumvent the design review commission’s decision. However there is no evidence in the record that the Design Commission directly considered the density cap in its review. Phases II and III of this development will also be subject to Design Review.

Noise

Concerns regarding noise and other impacts from delivery trucks serving the New Seasons store in Phase I of the development are not relevant to the approval criteria for this application.

Connectivity

The Walkers argue, “There has been no recent investment by the City of Portland in the future 2040 Main Street designation of Broadway.” P. 2 of Exhibit H-11. However the Walkers failed to show how the alleged lack of investment is relevant to the applicable approval criteria for this application. As discussed below, adequate transportation capacity is available to serve projected development on the site, based on a reasonable worst-case development scenario. Additional investment in the Main Street designation of Broadway is not needed to allow approval of this application.

Transportation Demand Management

Condition of approval C of the 2003 City Council decision requires the applicant to submit a Transportation Demand Management Plan prior to issuance of building permits for each phase of development on the site. This condition remains in place and will apply to Phases II and III. The applicant previously submitted a Transportation Demand Management Plan for Phase I of the development on this site.

Character of the Neighborhood

The Walkers repeatedly argued that approval of this application will significantly impact and alter the established character of the surrounding neighborhood. However, assuming such impacts will occur, they are not relevant to the applicable approval criteria for this application.

ZONING CODE APPROVAL CRITERIA

Chapter 33.855 Zoning Map Amendments

33.855.010 Purpose

This chapter states the procedures and approval criteria necessary to process an amendment to the base zones, overlay zones, plan districts, and other map symbols of the Official Zoning Maps. The chapter differentiates between amendments which are processed in a quasi-judicial manner and those processed in a legislative manner. A discussion of quasi-judicial and legislative is found in 33.700.070.

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.
 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.
 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.3 must be met.

Findings: The Comprehensive Plan Map was amended in LUR 00-00672 CP ZC to change the site to its current zones of Central Residential (RX) and Commercial Storefront (CS). No additional zone changes are proposed at this time. Therefore, 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.
- 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.
- 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. Limitation on development level or mitigation measures may be necessary in order to assure transportation services are adequate.

Findings: The notified service bureaus have responded to this request, as summarized in the findings below.

The Water Bureau has reviewed the proposal and has no objections with regards to the adequacy of public services for water supply and capacity at the site (Exhibit E.3). Specific regulations and requirements regarding water service connections will be imposed during the Design Review and building permit process for structures in Phases II and III of Grant Park Village, as discussed in the Water Bureau response letter.

The Police Bureau has reviewed the proposal and determined that they are capable of serving the site with the additional units made possible by removing the prior transportation-related density cap on the site (Exhibit E.5). The applicant is encouraged to work directly with the Police Bureau on any site security or safety issues as they arise, and to keep visibility and security in mind when designing the Phase II and III buildings.

The Fire Bureau has reviewed the proposal and responded without any objections or concerns regarding public services for fire protection (Exhibit E.4). All applicable Fire Code regulations will apply to the project regardless of this land use review, as evaluated during the building permit review process.

The Bureau of Environmental Services has reviewed the proposal for sanitary sewer disposal and stormwater management issues, and has responded without objections or concern (Exhibit E.1). Because the lifting of the transportation-related density cap does not allow for an increase in density beyond what BES contemplated during the 2003 zone change, this application does not change their response to the zone change. Specific comments on stormwater management and sanitary sewer connections will

occur with the future Design Review and building permit process for Phases II and III of Grant Park Village.

The Development Review Section of the Portland Bureau of Transportation ("PBOT") has reviewed the proposal for the transportation-related criteria above at 33.855.050.B.2.c. and responded with detailed information and findings (Exhibit E.2). Supplemented by additional supporting documentation from the applicant's Transportation Impact Study and Addenda (Exhibits A.1 through A.3), the PBOT findings on this criterion are as follows:

PBOT staff concurs with the finding presented in the Transportation Impact Analysis (TIA) prepared by Lancaster Engineering *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.*

The TIS includes detailed traffic analyses that demonstrate that all study-area intersections will operate within PBOT performance standards (level of service D or better) with a reasonable worst-case scenario build-out of Phases II and III of Grant Park Village in place.

The intersections will continue to operate favorably through the planning period, as over a decade of traffic count data has shown that evening peak hour traffic volumes on this segment of NE Broadway have been static, if not declining. For example, the 2003 TIS that was done for the original zone change application documented that there was no growth in traffic on NE Broadway from 1997 to 2000 and that Metro's travel demand model also reflected zero growth through the planning horizon. That TIS was reviewed in detail and approved by PBOT in 2003.

A comparison of the 2003 traffic counts from the prior TIS and the 2012 traffic counts conducted for the 2013 TIS shows that the evening peak hour traffic volumes have changed over this nine-year period by less than 35 vehicles. This is approximately 1.5 percent of the total hourly volume on NE Broadway.

Further comparison shows that the 2015 traffic volumes, even with the first phase of Grant Park Village in place, have *decreased* slightly over the evening two-hour count period compared to the 2012 traffic count data.

The intersections will operate well within the City of Portland's operational standard through the planning period without the dwelling unit cap imposed by the 2003 zone change. No additional mitigation or limitations on development are necessary or recommended.

Section 1.1.1.2 of the City of Portland Technical Manual provides, "The City Transportation Engineer, in consultation with the applicant's engineer, shall determine

the need for and scope of the traffic study. The requirements for the study shall be based on standard transportation engineering practices.” The Hearings Officer relies on the expert testimony of City transportation staff and the applicant’s traffic engineer to find that the applicant’s TIS provided an adequate review of the traffic impacts of the proposed amendment. Mr. Mobely testified that the installation of a traffic signal and removal of the condition prohibiting left turn movements at the NE 32nd Avenue/NE Broadway intersection significantly reduced the development’s traffic impact on NE Weidler Street. The majority of traffic from this development will use this intersection rather than traveling west on NE Weidler Street.

Neighbors argued that the scope of the TIS was too narrow. The applicant should have reviewed certain additional intersections on NE Weidler Street and the analysis should have extended to streets north of Broadway and west of the site. (Exhibit H-11). The Hearings Officer finds that neighbors’ observations of existing traffic is substantial evidence. But their arguments about the scope of the traffic analysis are not supported by substantial evidence, because they are not experts in such matters. The Hearings Officer finds that the expert testimony by the engineers for the applicant and the City is more persuasive than neighbors’ testimony about the necessary scope of the traffic analysis and the extent of traffic impacts from the proposed development.

Neighbor’s testified about increased traffic congestion in the area since Phase I was completed. The Grant Park Neighborhood Association cited to an Oregonian article regarding increased traffic volumes in the City of Portland. However PBOT staff note the applicant’s traffic study demonstrates that traffic volumes on NE Broadway have remained static over time. Neighbors’ perceptions are not consistent with actual traffic counts. (P. 7 of Exhibit E.2).

The Hearings Officer finds that the 2015 TIS provides an accurate projection of the traffic impacts of development on this site. Although Phase I of the development was not fully occupied at the time the traffic counts were conducted for the TIS, the commercial portion of the development was 90% occupied, including New Seasons, and the residential portion was at 50-percent or more occupancy. As Mr. Mobely noted, commercial development generates the majority of traffic from this site. In addition, the TIS included an assumption for future background growth, which accounted for additional occupancy on this site. The majority of intersections within the study area will operate with significant additional capacity (Level of Service B) and therefore can accommodate traffic generated by full occupancy of the Phase I development. PBOT staff reviewed and agreed with the applicant’s analysis. Neighbors’ concerns are not sufficient to overcome the expert testimony of the engineers for the City and the applicant.

Neighbors argued that the TIS is inadequate because it did not consider the absolute worst-case scenario for development on this site under the RX zone without the density cap. However, as discussed above, the applicant is not required to consider the absolute worst-case scenario. The TIS is based on a reasonable worst-case scenario for

development, with a higher than expected FAR and smaller than average residential unit size, which results in a conservatively high traffic generation assumptions. Actual development on the site is likely to be less intensive than assumed in the TIS, because Phases II and III are located away from, and at a lower elevation than, NE Broadway Street, which limits marketability for retail commercial uses on this portion of the site. The traffic study, which is based on reasonable worst-case development assumptions for this site, provides a realistic analysis of the traffic volumes likely to occur from development on this site without the residential density cap.

The 2003 traffic study, which assumed minimum residential density on this site, was not a basis for review of this application. Staff and the applicant only relied on the traffic counts included in the 2003 and 2013 traffic study as a baseline for comparison of current traffic counts in the area, to identify changes in traffic volumes on area streets over time.

Neighbors argued that the TIS should have included a comprehensive study of all travel modes, including pedestrian and bicycle traffic, as well as an analysis of on-street parking demand. However such analysis exceeds the required scope of the TIS. As the applicant noted, PBOT staff previously concluded:

[T]here is no connection between 'on-street parking impacts' and the Zone Change specific approval criteria associated with 'adequacy of services.' To this point, it is typical PBOT practice and protocol to require the submittal of supporting documentation relative to intersection capacity only, when reviewing Zone change requests. It is PBOT's position that 'on-street parking impacts' should not be considered in the evaluation of applicable Zone Change approval criteria."

p. 3 of Exhibit H-9, citing a City hearings officer decision in LU 13-116096 ZC.

The Hearings Officer agrees with and adopts the above PBOT analysis to find that on-street parking demand, pedestrian and bicycle safety and similar concerns are not relevant to a determination of the adequacy of transportation services under PCC 855.050.B.1 and .B.2.c. The applicant did not request any adjustments to the minimum parking requirements. Future development on the site will be required to meet the minimum parking standards identified in Portland Zoning Code Section 33.266.110.

Comprehensive plan policy 6.18, cited by the Walkers, is not relevant to this application. The applicant's did not request a comprehensive plan amendment.

TRANSPORTATION PLANNING RULE

The Transportation Planning Rule (TPR) is in place to ensure that the transportation system is capable of supporting possible increases in traffic intensity that could result from changes to adopted plans and land use regulations. Modification of conditions of approval on a prior zone change

application triggers the need for consideration of the TPR. The applicable elements of the TPR are quoted in italics below, with a response directly following.

660-012-0060

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system;

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

Subsections (a) and (b) are not triggered, as the proposed removal of the dwelling unit cap will not alter the functional classification of any street or change the standards for implementing the functional classification system. Similarly, subsection (c) is also not triggered as the transportation system will operate within the applicable performance standards even with the dwelling unit cap removed.

As such, the proposed land-use action will not significantly affect the transportation system. Therefore, PBOT has no objection to approval of the request.

SUMMARY FINDING FOR 33.855.050.B.1-2: The five relevant City of Portland reviewing agencies have evaluated the proposal for adequacy of public services as discussed above, and offered no objections or mandatory conditions of approval. Therefore, 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: This land use review does not involve a request to rezone the site to IR, Institutional Residential. Therefore, 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: Because this does not involve a request to rezone the site to IR, Institutional Residential, 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 site is within the City's boundary of incorporation. This criterion is therefore met.

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. CONCLUSIONS

The applicant proposed the elimination of a transportation-related density cap on the Grant Park Village site which was imposed on a prior zone change decision (LUR 00-00672 CP ZC). The original condition limiting density at the site was a technical condition warranted only because the traffic study contemplated no more than a maximum of 319 units on the site. At this time, based on the signalization of NE 32nd & Broadway that occurred with Phase I, the relevant City agencies who review this application for adequacy of public services have no objections to eliminating the old density cap. Therefore, the request must be approved.

IV. DECISION

Approval of a Zoning Map Amendment for the Grant Park Village site, to void condition of approval E from LUR 00-00672 CP ZC, eliminating the 319-unit density cap on the site and allowing Phases II and III to develop under the RX zone maximum density (currently 4:1 FAR).



Joe Turner, Hearings Officer

10-6-15

Date

Application Determined Complete:	July 20, 2015
Report to Hearings Officer:	August 14, 2015
Revised Report to Hearings Officer:	September 11, 2015
Decision Mailed:	October 6, 2015
Last Date to Appeal:	4:30 p.m., October 20, 2015
Effective Date (if no appeal):	October 21, 2015

Conditions of Approval. If approved, 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.

Appeal of the decision. The decision of the Hearings Officer may be appealed to City Council, who will hold a public hearing. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Who can appeal: You may appeal the decision only if you write a letter which is received before the close of the record for the hearing, if you testify at the hearing, or if you are the property owner/applicant. Appeals must be filed within 14 days of the decision. **Appeals must be filed within 14 days of the decision. An appeal fee of \$5,000.00 will be charged (one-half of the BDS application fee, up to a maximum of \$5,000).**

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chairperson or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to 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.

- 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.

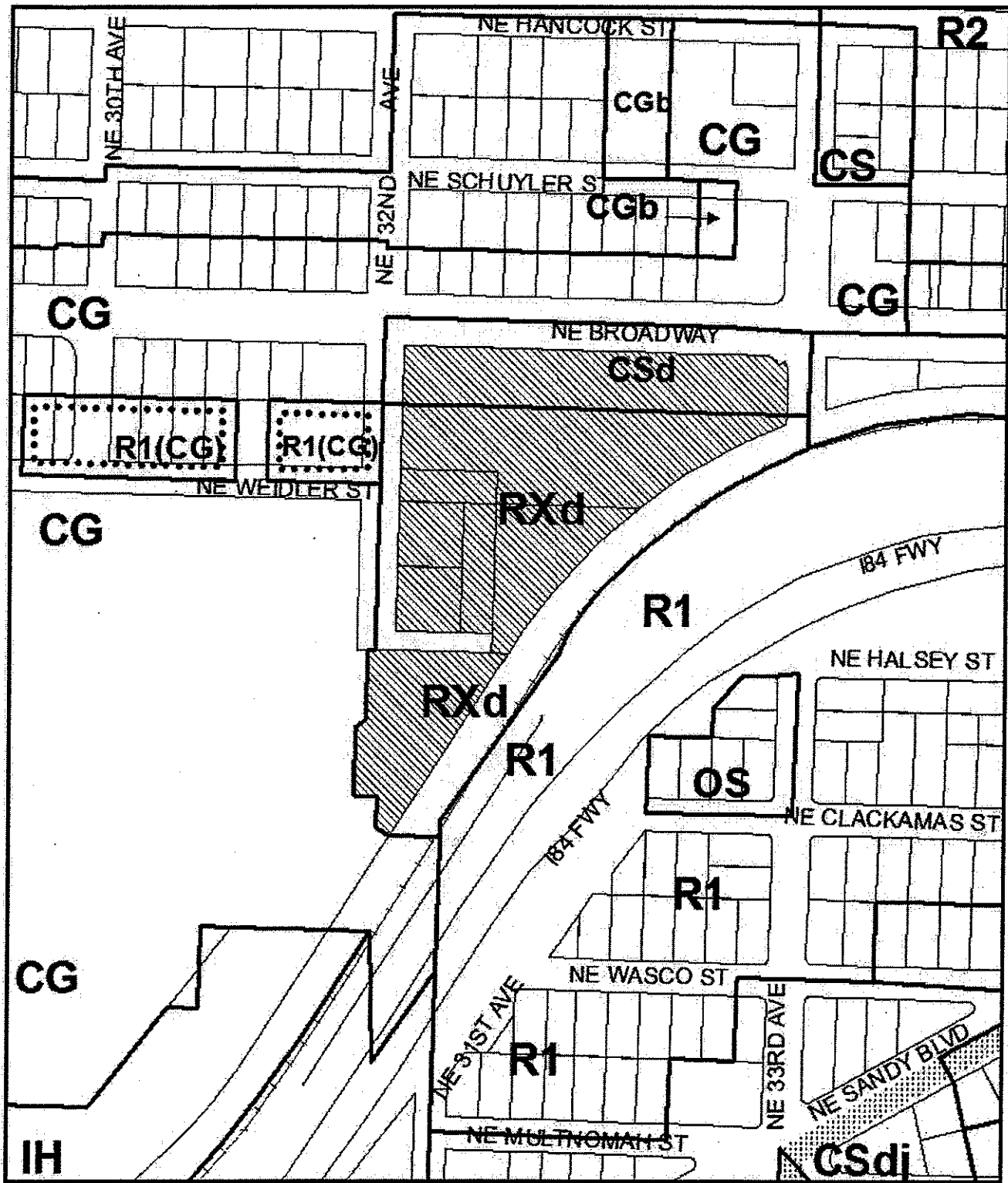
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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 Statements
 - 1. Original application submittal, including zoning narrative and appendices, including original Transportation Impact Study
 - 2. Traffic Impact Study addendum, received 8/10/15
 - 3. Final TIS addendum, received 8/12/15
- B. Zoning Map (**attached**)
- C. Plans and Drawings
 - 1. Site Plan (**attached**)
- D. Notification information
 - 1. Request for response
 - 2. Posting information and notice as sent to applicant
 - 3. Applicant's statement certifying posting
 - 4. Public notice mailing list
 - 5. Postmarked copy of mailed public notice
- E. Agency Responses
 - 1. Bureau of Environmental Services
 - 2. Development Review Section of Portland Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Police Bureau
 - 6. Site Development Review Section of the Bureau of Development Services
 - 7. Life Safety Section of the Bureau of Development Services
 - 8. Urban Forestry Division of Portland Parks and Recreation
- F. Letters
 - 1. Brittain Brewer, Sullivan's Gulch Neighborhood Association, support
 - 2. Grant Park Neighborhood Association, neighborhood position and vote on proposal
 - 3. Camellia and James Walker, NE Weidler neighbors, opposition
- G. Other
 - 1. Original LUR Application Form and Receipt
 - 2. Request for completeness documents, including follow-up e-mail from staff to applicant requesting additional information, as sent 7/17/15
 - 3. E-mail from staff to applicant verifying completeness and requesting submittal of additional information, as sent 7/20/15
 - 4. City Council Findings and Decision, LU 00-00672 CP ZC (Albina Fuel)
- H. Received in the Hearings Office
 - 1. Hearing Notice -- Walhood, Mark
 - 2. Staff Report -- Walhood, Mark
 - 3. 8/22/15 letter -- Peterson, Kenneth B.
 - 4. 8/25/15 letter from Camellia & James Walker -- Wickstrom, Matt
 - 5. 8/22/15 letter from Kenneth B. Peterson/Grant Park NA -- Wickstrom, Matt
 - 6. 3/3/15 letter from L. Brittain A. Brewer/Sullivan's Gulch NA -- Wickstrom, Matt

7. 8/26/15 letter from Todd E. Mobley -- Wickstrom, Matt
8. PowerPoint presentation printout -- Wickstrom, Matt
9. 9/2/15 Memo with attachments -- Hall, Damien
 - a. Decision of the Hearings Officer LU 12-189581 -- Hall, Damien
 - b. Decision of the Hearings Officer LU 14-116096 ZC -- Hall, Damien
10. Revised Staff Report -- Walhood, Mark
11. 9/21/15 letter -- Walker, Jim
 - a. Parking Chart -- Walker, Jim
 - b. Photos -- Walker, Jim



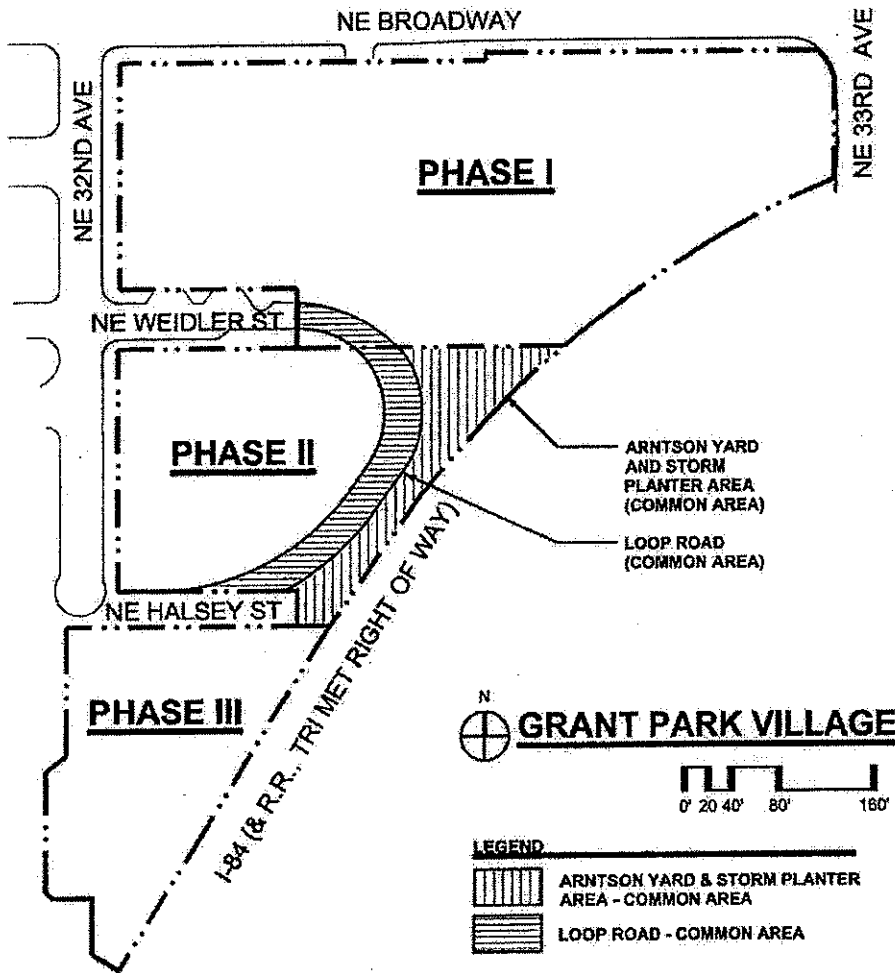
ZONING

 Site





File No. LU 15-186900 ZC
 1/4 Section 2933 2833
 Scale 1 inch = 200 feet
 State Id 1N1E25CD 12200
 Exhibit B (Jun 18, 2015)

ZONING MAP AMENDMENT TO ELIMINATE
 CONDITION E OF LUR 00-00672 CP ZC,
 ALLOWING PHASES II AND III TO PROCEED
 UNDER MAXIMUM DENSITY OF RX ZONE (4:1 FAR)



GRANT PARK VILLAGE

LEGEND

	ARNTSON YARD & STORM PLANTER AREA - COMMON AREA
	LOOP ROAD - COMMON AREA

- NOTES**
1. "BUILDING AREA" IS THE AREA OF EACH PHASE EXCLUSIVE OF COMMON AREAS
 2. FUTURE RIGHT OF WAY DEDICATION REQUIRED BY CITY NOT SHOWN.

12/31/12

LU 15-186900 ZC