

**BEFORE THE CITY COUNCIL
FOR THE
CITY OF SHERWOOD, OREGON**

In the Matter of an Application)	
For Plan Amendment from LI)	FINAL ORDER
(Light Industrial) to HDR (High)	PA 05-03
Density Residential) or MDRL)	
(Medium Density Residential Low))	
(Sherwood Oaks))	

The above referenced application came before the City Council for the City of Sherwood for public hearing on December 6, 2005 and February 7, 2006. Based on the record created before the Planning Commission, and the testimony and evidence submitted to the City Council, the Council finds as follows:

1. The applicant originally requested a comprehensive plan map amendment and site plan approval, to change the zoning district of the parcel from Light Industrial to High Density Residential for the purposes of establishing an Alzheimer Care Facility and Townhouse development; and
2. The Sherwood Planning Commission conducted a public hearing on the proposed Site Plan application and Plan Map Amendment on September 27 and November 8, 2005; and
3. The Planning Commission determined that, if the zone were changed to a residential zone, the Alzheimer Care Facility portion of the site plan could be approved with conditions but the townhouse portion of the site plan could not be approved; and
4. Upon review of the materials submitted by the applicant and the information provided in the staff report, the Planning Commission voted to forward a recommendation of denial of the plan map amendment to the City Council; and
5. At the Sherwood City Council meeting on December 6, 2005, the applicant requested to modify their proposal to exclude a portion of the site and to change the zone to Medium Density Residential Low as opposed to the original proposal of HDR; and
6. The applicant submitted evidence at that City Council meeting, including their own version of findings and a draft order;
7. The applicant requested an opportunity to submit additional information and to continue the public hearing until February 7, 2006; and
8. The Sherwood City Council has received the application materials, the City's Planning Staff report, the Planning Commission findings, and the Council reviewed the materials submitted and the facts of the proposal and conducted a second public hearing on February 7, 2006; and
9. The Community Development and Zoning Code Section 4.203.02 specifies the criteria to approve a change in the Comprehensive Plan Map, and the Sherwood City Council finds that the subject proposal does not comply based on the findings of the Planning Commission with the exception of the Transportation Planning Rule which would be addressed with the zone change to MDRL.

NOW, THEREFORE, THE CITY COUNCIL ORDERS AS FOLLOWS:


Section 1. Procedures. The application for a Plan Map Amendment (City file No. PA 05-03) to change the map designation for Tax Lot 900, 1000 AND 1100 of WASHINGTON COUNTY ASSESSORS MAP 2S1W29D from light industrial to either high density residential or medium density residential low was subject to full and proper review in compliance with all applicable requirements, and public hearings were held before the Planning Commission on September 27, 2005 and November 8, 2005 and before the City Council on December 6, 2005 and February 7, 2006.

Section 2. Findings Adopted. After full and due consideration of the application, the City Staff report, the record, findings, and of the evidence presented at the public hearing, the Council concludes that the applicable requirements have not been satisfied to support the requested zone change. The Council adopts the findings of fact contained in the staff report dated September 20, 2005, the supplemental staff report dated November 1, 2005, and the findings of identified in the February 7, 2006 staff report to the City Council. These documents are appended hereto as Exhibits A, B and C and are incorporated herein as if fully set forth. Any inconsistencies between the findings shall be resolved in favor of the more recent findings.

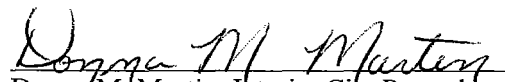
Section 3. Decision. Based on the adopted findings, the request for a Plan Map Amendment is hereby **DENIED** and the map designation remains light industrial.

Duly adopted by the City Council this 7th day of February, 2006.

Approved by the Mayor this 7th day of February, 2006.


Keith S. Mays, Mayor

Attest:


Donna M. Martin, Interim City Recorder

	<u>AYE</u>	<u>NAY</u>
Luman	✓	—
King	✓	—
Henderson	✓	—
Heironimus	✓	—
Grant	✓	—
Durrell	✓	—
Mays	✓	—

Exhibit A: Plan Amendment discussion and finding in the 10-20-05 staff report

Exhibit B: Plan Amendment findings in the 11-1-05 supplemental staff report.

Exhibit C: City Council staff report dated January 30, 2006

Order 2006-001

February 7, 2006

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CITY OF SHERWOOD
Staff Report
Sherwood Oaks

File No.s: PA

PLANNING DEPARTMENT

Pre App. Meeting: September 8, 2004
 App. Submitted: June 2, 2005
 App. Complete: June 20, 2005
 120-Day Deadline: October 14, 2005
(Extended to October 28, 2005)

Julia Hajduk, Senior Planner

Proposal:

The applicant is proposing both an amendment to the Comprehensive Plan and Zone Map and Site Plan approval for an assisted living facility and townhouse development. The Plan Amendment would change the existing Light Industrial (LI) zoning to High Density Residential (HDR) zoning. The proposal includes a 24 room (48 bed), 23,024 square foot assisted living facility on Tax lot 1100 and a 35 unit townhouse development on tax lots 900 and 1000. The applicant has indicated that the townhouse units will be in condominium ownership. The applicant also paid a fee for a lot line adjustment, but provided no narrative or surveys discussing the lot line adjustment. An 8 ½ by 11 copy of the site plan for both the care facility and the townhouse development is included as **Attachment 1**.

Report overview:

- This review involves a complex variety of standards. For this reason, the report has been organized into three distinct parts:

Part 1 – Background information;

Part 2 - Plan Amendment review, findings and recommendation; and

Part 3 – Site Plan review, findings and recommendations.

- Findings and conditions are made for the care facility and townhouse development. In instances where the finding and condition is different, they are distinguished as "care facility" and "townhouse development;" and
- The Planning Commission and City Council will receive a complete packet of information as submitted by the applicant along with this report. To help facilitate review of these materials, staff has prepared a list of exhibits (**Attachment 2**) that includes a detailed list of all the materials submitted by the applicant.

Planning Commission Action Requested:

The Planning Commission will be asked to make a determination on three issues:

- ☐ Make a recommendation to the Council to approve, approve with conditions, or deny the proposed plan amendment from LI to HDR;
- ☐ Approve, approve with conditions, or deny the proposed site plan for the care facility; and
- ☐ Approve, approve with conditions, or deny the proposed townhouse development.

Part I. BACKGROUND

- A. Applicant/Owner:
Lucas Development Corp.
Attn.: Patrick Lucas
18664 SW Boones Ferry Rd.
Tualatin, OR 97062
- B. Location: The site is located at 1210 SW Oregon Street and identified as tax lots 900, 1000 and 1100 on Washington County Tax Assessor's map number 2S1W29D. The three (3) subject parcels are located on the north side of SW Oregon Street, across from SW Hall Street and SW Lower Roy Street. There are no public streets platted or built on the north side of SW Oregon Street.
- C. Parcel Size: Based on review of the tax maps the total site is 4.82 acres. See "E" below for additional discussion on the site size.
- D. Existing Development and Site Characteristics: The property has the remnants of what used to be the Frontier Leather Co. ("Tannery"). In February 2004, the former Tannery building caught fire, and was destroyed beyond repair. The Building Official deemed the building unsafe and ordered the owner to demolish the building. A demolition permit was issued on May 24, 2005. The site is currently under an agreement with DEQ for clean-up of hazardous materials. DEQ has indicated that the clean-up is approximately 70% complete. The site continues to house debris from the destroyed buildings and is surrounded by a six foot temporary chain link fence and public notice signs are visible to provide warning of unsafe conditions. The site has a gentle slope and no known Goal 5 resources. However, there were apparently small isolated wetlands that were approved by DSL to be filled in July 2003.
- E. Site History: This site has a long history:
1. The Tannery was in operation between 1947 and 1997 and was considered a pre-existing non-conforming use for the LI zone. As a result of the tannery activities, there was extensive environmental clean-up required. According to DEQ, the environmental clean-up on this site has not been completed.
 2. A partition was approved in 2002 (MLP 02-02) which created the three parcels in the development (tax lot 900, 1000 and 1100). Upon review of the partition plat, included as **Attachment 3**, staff has a concern about several site issues that are not reflected properly on the proposed plans:
 - *Site size* – the areas of the parcel, individually and as a whole, are not consistent with those shown on the submitted plans. Staff can not adequately determine density without the accurate property size. When adding the site sizes provided individually for the townhome development and the assisted living facility, the site totals 4.17 acres; the recorded partition plat indicates 4.81 acres based on the parcel sizes created and the tax map indicates a total of 4.82 acres. Parcels 2 and 3 (the townhouse site) total 2.05 acres on the partition plat and only 1.57 acres on the site plan submitted, even though the lot line adjustment would increase the acreage of the site. Clearly, there is not a consistent and accurate site size provided.
 - *Access easement* – there is a 30 foot wide private access and utility easement along the western property line of parcel 2 (as it was platted) shown on the recorded plat. This is not shown on any of the plans submitted, but is clearly part of the recorded document. If this easement has been removed, documentation to that affect is necessary.

- *Parcel lines* – the partition plat shows the parcel boundaries differently than the submitted plans. The applicant paid for a lot line adjustment, however there is no discussion in the narrative or submitted plans that discuss an adjustment to the lot line. As such, staff can not review the lot sizes to accurately determine densities or setbacks. Staff will discuss the potential lot line adjustment and actions necessary to review and approve, under Part 3, Section D.
- *Property line abutting the street* – the plans do not clearly reflect the property lines that are shown on the partition plat. Specifically, the partition plat shows that, after dedication, both property lines are even, whereas the plans submitted continue to reflect an uneven property line. Without having this information accurately reflected on the plans, staff can not confirm that the appropriate setbacks, landscaping requirements, or densities are fully met.

- F. Zoning Classification and Comprehensive Plan Designation: The existing zone is Light Industrial (LI). Section 2.111 of the Sherwood Zoning and Community Development Code (SZCDC) lists the permitted uses in this zone. The proposed zone is High Density Residential (HDR). Compliance with the permitted uses in the HDR zone is identified in Section 2.105 of the SZCDC and discussed under Part 3, Section II.A of this report.
- G. Adjacent Zoning and Land Use: The properties on the east and west are zoned Light Industrial (LI). The property to the north is currently zoned General Industrial (GI) because a concomitant Plan Amendment and Site Plan was approved in 2003 (PA 03-02), effectively changing the property from LI to GI in order to construct a mini-storage facility. The storage facility has not been constructed, the site plan expires in December 2003, and a pre-application meeting was held on September 7, 2005 to discuss another Plan Amendment from GI to Medium High Density Residential High (MDRH). The properties to the south, across SW Oregon Street, are zoned low density residential (LDR) and Medium Density Residential Low (MDRL).
- H. Review Type: Because the total floor area and parking for the care facility and townhouse development is greater than 40,000 square feet, the site plan requires a Type IV, with a decision made by the Planning Commission. The Plan Amendment requires a Type V review, which involves a public hearing before both the Planning Commission and City Council. The Planning Commission will make a recommendation to the City Council. In the event that the Planning Commission decision on the site plan is appealed, the City Council will also hold a public hearing and make a decision on the appeal. Any appeal of the City Council decision would go directly to the Land Use Board of Appeals.
- I. Public Notice and Hearing: Notice of the September 27, 2005 Planning Commission hearing and the October 18, 2005 City Council public hearing on the proposed applications was published in the Tigard/Tualatin Times, posted and mailed to property owners within 100 feet of the site in accordance with Section 3.202 and 3.203 of the SZCDC.
- J. Review Criteria:
The required findings for the Plan Amendment are identified in Section 4.203.02 of the Sherwood Zoning and Community Development Code. In addition, applicable Comprehensive Plan criteria are: Chapter 4 – E (residential), H (economic) and J (industrial); applicable Metro standards are: Functional Plan Titles 1 and 4; and applicable State standards are: Statewide Planning Goal 9 and Goal 12 as well as applicable OARs. Compliance with the applicable criteria is discussed in “Part 2”

The required findings for the Site Plan are found in section 5.102.04 of the SZCDC. The following SZCDC sections are also applicable: 2.105, 2.204, 2.301, 2.302, 2.303, 4.203, 5.102, 5.202, 5.203, 5.301, 5.302, 5.303, 5.400, 5.403, 5.502, 6.300, 6.304, 6.305, 6.307, 6.400, 6.500, 6.600, 6.700, 6.800, 7.601, and 8.304. Compliance with the applicable criteria is discussed in “Part 3”.

II. PUBLIC COMMENTS

The applicant submitted a letter with additional information after the review of the application materials and preparation of this staff report. The letter is included as **Attachment 4**. Staff will respond to the materials in detail at the public hearing.

No other public comments were received as of the date of this report.

III. AGENCY COMMENTS

Staff e-mailed notice to affected agencies on July 7, 2005. The following comments were received and are separated by application type. Copies of full comments are attached to the staff report.

Plan Amendment:

Department of Environmental Quality (DEQ) – Staff spoke with Mark Pugh, project manager with DEQ, who indicated that there is an agreement to clean up the site. He said that because the clean-up is not complete, a residential use is not appropriate at this time. He indicated that the clean up project is approximately 70% complete and that it would take no less than 3 months to complete. After the verbal contact, Mr. Pugh submitted the following written comments on August 23, 2005 (**Attachment 5a**).

An investigation and remedial action is being conducted by the permittee at the site under an agreement with DEQ. DEQ has identified acceptable cleanup standards based on current and reasonably likely future land use (i.e., zoning) that must be met before the site can be developed. Under terms of our agreement, the site cannot be redeveloped without a determination from DEQ that the site is protective of human health and environment. If a change in zoning to high density residential is granted, then we would ensure that those standards are met.

Washington County - The application is required to include findings and evidence to demonstrate compliance with the Transportation Planning Rule (TPR). This proposal does not contain TPR findings, and there is no evidence to support or even determine that the change complies with the TPR. The TPR requires an evaluation of future traffic from both the existing designation, and the proposed designation based on a "reasonable worst case" scenario for each. (**Attachment 5b**)

Response – The applicant has submitted a traffic analysis after this comment was received. This is addressed in detail below under Part 2, Section I, 4.203.

Department of Land Conservation and Development (DLCD) – Provided comments (**Attachment 5c**) indicating that the proposal triggers the Goal 9 administrative rule 660-009-0010(4). They indicate that to meet the requirements of this rule, Sherwood must make findings that this proposal is consistent with the projections and data contained in its most recent Economic Opportunities Analysis (EOA) and the economic development strategies of the Comprehensive Plan. If this is not possible, a new EOA must be conducted to justify the amendment. The DLCD staff also indicates that the City must include analysis of whether or not this proposal will result in the conversion, loss, or impacts to prime industrial land. DLCD also indicated that the findings must indicate how the proposal complies with Statewide Planning Goal 12. Specifically, findings must be made regarding whether this proposal will result in a "significant affect" on the transportation system as defined by OAR 660-12-0060.

Metro – Provided the following comments (**Attachment 5d**): "The applicant has not addressed Urban Growth Management Functional Plan requirements, specifically Title 1 (Requirements for Housing and Employment Accommodation) and Title 4 (Industrial and Other Employment Areas). Industrial land in this region is at a premium. Efforts to rezone industrial land to other uses raises issues that will need careful examination."

Site Plan:

PGE has provided the following comments (**Attachment 5e**), which are discussed under the Chapter 6 discussion (Part 3, Section II.C):

The "pole line that runs E/W along NE Oregon St is 12,500 volts phase to phase and is part of our feeder line. However, there is a PGE transmission easement with a 57,000 Volt transmission line running through it that makes a turn North off of NE Oregon Street at about the Southeast corner of the developer's property and then runs pretty much due North through our easement that appears to abut the East property line of their site. That line is scheduled to be upgraded in the future to 115,000 or 230,000 volts.

As it relates to this project PGE will need to have, at the very least, an overhead guy attached to a pole somewhere to the West of the intersection where Roy Rd. is to extended North of NE Oregon. Right now our downguy backing up the existing 70' transmission pole at that corner would be right in the new road, so the guying will need to be extended West to clear the new road and be deadended on some kind of pole & downguy along NE Oregon even if other facilities to the West will be required to be undergrounded."

Tualatin Valley Water District (TVWD) - has reviewed the proposal and provided the following comments (**Attachment 5f**): "No water is shown on the layout so I can not provide any constructive comments regarding the water system layout at this time. We will need 3 sets of plans for review and approval when they get to that stage in the development. A 12" water line is available in NW Oregon Street to supply water to the project.

The City of Sherwood Engineering Department provided comments which have been incorporated into this decision. The Engineering Department also provided some general comments (**Attachment 5g**) which are provided below:

Grading and Erosion Control:

Retaining walls within public easements or the public right-of-way, with a height of 4 feet or higher shall require engineering approval. Retaining walls with a height of 4 feet or higher located on private property will require a permit from the building department.

City policy requires that prior to grading, a permit is obtained from the Building Department for all grading on the private portion of the site.

The Engineering Department requires a grading permit for all areas graded as part of the public improvements. The Engineering permit for grading of the public improvements is typically reviewed, approved and released as a part of the public improvement plans.

Other Engineering Issues:

Public easements are required over all public utilities outside the public right-of-way. Easements dedicated to the City of Sherwood are exclusive easements unless otherwise authorized by the City Engineer.

This site is currently in the process of an environmental clean-up with oversight by DEQ. It is engineering staff's recommendation that no development of the site occur until DEQ has signed-off on the clean-up.

The City Engineer may require a geotech report if questions arise regarding the constructability of the proposed public improvements.

Tri-Met, Tualatin Valley Fire and Rescue (TVFR), Sherwood School District, Oregon Department of Transportation (ODOT) and Pride Disposal were also given the opportunity to comment on the proposal, but provided no written comments.

PART 2 - PLAN AMENDMENT REVIEW

I. PLAN AMENDMENT REQUIRED FINDINGS

4.203.02

Map Amendment - This section states that an amendment to the City Zoning Map may be granted, provided that the proposal satisfies all applicable requirements of the adopted Sherwood Comprehensive Plan, the Transportation System Plan and this Code,

The applicable Comprehensive Plan policies are discussed under Section II below. Section 1.101.08 requires that all development adhere to all applicable regional, State and Federal regulations. Applicable Regional regulations are discussed under Section III and applicable State regulations are discussed under Section IV.

FINDING: This is discussed in detail below.

Additional criteria:

Section 4.203.02 also provides the following additional standards that must be met before a map amendment can be approved:

A. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan and the Transportation System Plan.

Compliance with this standard is addressed under Section II, below.

FINDING: This is discussed in detail below.

B. There is an existing and demonstrable need for the particular uses and zoning proposed, taking into account the importance of such uses to the economy of the City, the existing market demand for any goods or services which such uses will provide, the presence or absence and location of other such uses or similar uses in the area, and the general public good.

The applicant has submitted a market study that demonstrates that there is a need for more care facilities in the area. However, how the "area" is defined is an important factor in determining if this Plan Amendment should be approved. The applicant's narrative referencing the market study leads one to think that the market study showed this need for an additional 102 beds by 2008 within the City of Sherwood only. The applicant argues that, by not approving this Plan Amendment and care facility on this site, Sherwood residents will be forced to go out of town to find a care facility for their loved ones. The applicant states that: "This is an unfortunate burden and inconvenience for these individuals and their families who would prefer a care facility closer to home." Upon review of the market study, however, the area evaluated includes a 4 mile radius around the facility and "encompasses approximately 50 square miles in southeastern Washington County, and includes small portions of Clackamas and Yamhill Counties on its southern boundaries." Clearly, the residents of this facility will not only be Sherwood residents. Furthermore, as discussed under "D" below, the applicant has not adequately substantiated that there is a need for this use at this particular location, and that there is not available land in another permitted zone in Sherwood already suitable for the proposed use.

Regarding the townhouse development site, the applicant has not demonstrated a need for this development, other than stating that there is a "healthy demand". Housing in the entire Portland Metro area is in demand, but that is not justification to change all zones to residential.

All communities, including Sherwood, need a balance of residential and employment in order to be a complete community. Sherwood's housing market is strong and the retail market is growing. The community needs to encourage more development of the industrial lands to increase jobs for community members. Simply changing the zone to meet a perceived need or because development is not occurring at the site, or at a rapid pace, is not smart development or planning. The City has applied for a state grant to update the employment lands (Goal 9) inventory, which would be a precursor to a Comprehensive Plan update. Without more current information, the City cannot make policy decisions about whether and how to focus efforts to increase development.

FINDING: The applicant has not provided adequate information to show that this standard has been met.

C. The proposed amendment is timely, considering the pattern of development in the area, surrounding land uses, any changes which may have occurred in the neighborhood or community to warrant the proposed amendment, and the availability of utilities and services to serve all potential uses in the proposed zoning district.

The applicant asserts that the amendment is timely because the community of Sherwood is aging and there is a greater need for this type of facility, and because the transportation system has isolated this property from other industrially zoned land. Staff does not concur with these statements for the following reasons:

- The applicant has not provided any quantitative evidence to support their arguments, such as population estimates, demographics, or availability of land. While it is known fact that the baby boom generation is aging, the applicant has provided little evidence to support the need for this facility in this location and has not provided any evidence to support the townhouse development.
- While the applicant states that the demand for industrial land is decreasing, they have provided no comprehensive or factual evidence to support this claim. Sufficient evidence would be an analysis of needs based on the existing market conditions, as well as long term projected market conditions prepared by someone qualified to make such projections.
- Regardless of what the *current* market demands are, the City is required, via Goal 9 of the Statewide Land Use Planning System, to have a 20 year supply of land for residential and employment growth. The acknowledged Comprehensive Plan (1991) met that requirement and actions taken by the City in past years to comply with the Metro Functional Plan requirements continues to provide the required balance. The fact that industrial land has not developed at the same pace as residential merely indicates that more focus and emphasis is needed to develop an economic development strategy and that market conditions fluctuate depending on supply and demand for uses, goods, and services. No evidence was submitted to support a change based on market demand.
- The applicant makes additional arguments for the timeliness of this project, citing the fact that the recently adopted Transportation System Plan lowers the classification of SW Oregon Street from an arterial to a collector, and suggesting that the closure of the SW Oregon Street crossing acts to isolate the old Tannery site from the rest of industrial uses in Sherwood. However, road classification is merely a description of type of trips intended to be accommodated. A collector street is intended to collect local traffic and carry it to the arterials, which in turn, carry traffic to the highways. The status of classification has little bearing on the type of use proposed; rather it reflects connectivity standards and not mobility. For example, Galbreath, a street providing access to newly developing industrial sites is classified as a collector, as are Meinecke and Langer Dr.

There is also great concern that approval of this Plan Amendment would set a precedent for additional amendments in this vicinity as there are several industrially zoned parcels that have

access on SW Oregon Street. Staff is aware of other property owners in the vicinity that are watching this proposal closely to determine whether to propose a similar zone change. In fact, the Planning Department held a pre-application meeting regarding the property directly to the north for a proposed plan amendment and medium density residential development. Again, as no quantitative analysis of needs of the existing industrial, commercial and residential land use was provided, it would be premature to approve a plan amendment that would set the precedent for future plan amendments without clear analysis and findings of fact.

The applicant indicates that the recently approved mini storage facility on the contiguous parcel directly north of the site underscores the decreasing demand for light industrial uses in this area. The site in question was changed from light industrial to general industrial in 2003 for the sole purpose of placing the mini-storage facility on that site. Furthermore, the general industrial zone is actually a more intensive industrial zone, which would indicate that there remains a need and a market for industrial zones in this area.

Finally, this proposal is not timely because the site is currently under DEQ clean-up action. DEQ has indicated that a residential use is not appropriate until the site has completed the clean-up process. The applicant's statements that this site would be ready to be developed if it were zoned residential is misleading. DEQ has indicated that, at minimum, the site is three or more months away from being cleaned up and no activity has occurred on the site in recent months.

FINDING: The applicant has not shown that this proposal is timely.

D. Other lands in the City already zoned for the proposed uses are either unavailable or unsuitable for immediate development due to location, size or other factors.

This site is not available for immediate development due to the DEQ clean-up action. DEQ has indicated that residential uses are not appropriate until they have completed the clean-up process.

That being said, the applicant has indicated that:

Most of the HDR District is already developed, and large parcels were developed in lower-density residential (i.e. Edy Village; Sherwood Village) before the Metro Functional Plan Title 1 compliance measure took effect, to require minimum density in the HDR zone. For the existing supply of HDR land, there is not another lot of appropriate size, located on a public right-of-way such as Oregon Street, fully supported by existing municipal services and already zoned HDR available for purchase or suitable for the immediate development of the Alzheimer's facility and townhouse community.

Staff conducted a quick review of all parcels in the City 2.5 acres or greater (the size of the proposed care facility site) that are vacant (or have only one dwelling) with a zone that would allow a residential care facility either outright or conditionally. There are 20+ parcels that fit this definition (**Attachment 6**), one of which is actually owned by the applicant. The fact that there are over 20 parcels that are currently zoned appropriately and of adequate size to accommodate the facility confirms that the applicant has not demonstrated the need for this plan amendment. In addition, regardless of the individual analysis by staff, the applicant makes conclusive statements without quantitative or qualitative evidence to support the claim.

FINDING: The applicant has not shown that this standard has been met.

4.203.03 - Transportation Planning Rule Consistency

- A. Review of plan and text amendment applications for effect on transportation facilities. Proposals shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-12-0060 (the TPR). Review is**

required when a development application includes a proposed amendment to the Comprehensive Plan or changes to land use regulations.

- B. "Significant" means that the transportation facility would change the functional classification of an existing or planned transportation facility, change the standards implementing a functional classification, allow types of land use, allow types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility, or would reduce the level of service of the facility below the minimum level identified on the Transportation System Plan
- C. Per OAR 660-12-0060, Amendments to the Comprehensive Plan or changes to land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan.

The City received a transportation study for this project on August 19, 2005. This report was forwarded to City Engineer, Gene Thomas, PE for full review. Mr. Thomas sent the traffic study, along with the addendum information submitted August 29, 2005 to DKS Associates, the consulting firm that prepared the City's Transportation System Plan, for a third party, professional review and comments. Mr. Thomas submitted a memo (**Attachment 7**) outlining the deficiencies DKS found in the traffic study that require further analysis to ensure compliance with the Transportation Planning Rule (TPR). As prepare, the traffic study does not demonstrate compliance with the TPR.

FINDING: The applicant has not shown that this standard has been met.

II. APPLICABLE COMPREHENSIVE PLAN POLICIES

The applicant has indicated that the Growth Management Policies are applicable to this proposal. While this may appear to be the case when the policy is read by itself, the Growth Management section is intended to comply with Statewide Planning Goal 14 – Urbanization. The goals and policies identified in the Growth Management Section of the Comprehensive Plan relate to development in the urban areas and those areas transitioning from rural to urban and are not applicable to this proposal. The applicable portions of the Comprehensive Plan include Chapter 4, Land Use, Section E – Residential; Section H - Economic Development; and Section J – Industrial.

Residential Land Use

Policy 1 Residential areas will be developed in a manner which will insure that the integrity of the community is preserved and strengthened.

Policy 2 The City will insure that an adequate distribution of housing styles and tenures are available.

Policy 3 The City will insure the availability of affordable housing and locational choice for all income groups.

Policy 4 The City shall provide housing and special care opportunities for the elderly, disadvantaged and children.

Policy 5 The City shall encourage government assisted housing for low to moderate income families.

Policy 6 The City will create, designate and administer five residential zones specifying the purpose and standards of each consistent with the need for a balance in housing densities, styles, prices and tenures.

While the proposal does provide special care opportunities for the elderly, the City's zoning ordinance already complies with this policy by allowing residential care facilities in most residential and commercial zones. With or without the proposed amendment, the City's zoning addresses the policies identified in the Comprehensive Plan. The proposed amendment is not inconsistent with the residential policies.

Economic Development Policies and Strategies

Policy 2 The City will encourage economic growth that is consistent with the management and use of its environmental resources.

Policy 5 The City will seek to diversify and expand commercial and industrial development in order to provide nearby job opportunities, and expand the tax base.

The applicant has indicated that the development of the site, as proposed, will promote responsible economic growth, by supporting the remediation and conversion of a previously contaminated industrial site into a site suitable for locating a needed Alzheimer's care facility, its residents, and the prospective townhouse residents. Staff would argue that the remediation is already in process and required regardless of potential development. Although laudable, clean up of a brownfield is not *quid pro quo* for a zone change. Conversely, a brownfield is better suited for reuse and redevelopment as light industrial since contamination continues to be an issue in view of future owner liability.

In addition, the proposed amendment and development of the townhouse development is inconsistent with Policy 5 because it is removing the possibility for additional jobs within the community of Sherwood. While the care facility will provide some jobs, there is uncertainty as to whether more jobs could be provided if the site developed in accordance with the zoning designation. The applicant does not provide any evidence to support the new use based on an economic impact.

Industrial Planning Designations

Policy 1 Industrial uses will be located in areas where they will be compatible with adjoining uses, and where necessary services and natural amenities are favorable.

The Comprehensive Plan indicated that Light Industrial designations should be placed in areas where the development will be compatible with existing or planned long range land use patterns and will not detract from existing environmental assets. The fact that this site was designated light industrial and the property across SW Oregon Street was designated residential indicates that this was a suitable zoning designation that is compatible with the surrounding area. The Light Industrial designation encourages the development of suitable uses into industrial subdivisions or parks. Light Industrial zones allow a wide range of uses suitable for development adjacent to residential uses. Staff would argue that SW Oregon Street creates a suitable buffer (60 feet of ROW) between residential and industrial uses. Again, there is concern about setting a precedent about the appropriateness of an industrial boundary adjacent to residential uses. Staff is already aware of property owners waiting to see the outcome of this proposal that are considering additional plan amendments. Lastly, a new tannery operation would not be allowed at this site, and new uses would have less of an impact than the prior use. This would address concerns from the neighborhood about the compatibility of new light industrial uses.

Policy 2 The City will encourage sound industrial development by all suitable means to provide employment and economic stability to the community.

While the applicant has indicated that the care facility will provide an additional 30 jobs within the community, they have not addressed the entire area included in the proposal. The townhouse development will create no additional jobs and the precedent set of changing industrial zones to residential could result in the loss of even more employment opportunities. The City's economic analysis conducted for the development of the Comprehensive Plan in 1991 indicated the need for a greater balance between residential and employment development. Currently, according to the Washington County Tax Assessor's office the City's tax base is 80 percent residential and 20 percent employment. Clearly, this imbalance would be exacerbated by the proposed zone change. In addition, the strategy identified in the Comprehensive Plan to address this policy was to allocate land to meet the current and future industrial space needs to provide an appropriate balance to residential and commercial activities. The applicant has provided no quantitative evidence substantiating that the community has an appropriate balance of uses within the current or future 20 year planning period.

The applicant indicates that this site could not be developed consistent with Comprehensive Plan policies. They indicate that this site has been "passed over" for many years and that there have been few inquiries into this property over the past 5 years. While this may be true, the applicant indicates that one of the reasons is an underdeveloped collector street and site with environmental contamination. It is possible that this site would not be as "passed-over" if the street was improved to City standards and the site contamination was cleaned up. A zone change is not necessary to make these site improvements.

FINDING: While the proposal is not inconsistent with the Comprehensive Plan policies regarding residential zones, the proposal is not consistent with the economic and industrial policies of the Comprehensive Plan.

III. APPLICABLE REGIONAL (METRO) STANDARDS

The applicable Functional Plan criteria are Title 1 – Housing and Title 4 – Employment. The City of Sherwood is currently in compliance with the Functional Plan and any amendment to the zoning must show that the community continues to comply. The applicant has provided no discussion of how this Plan Amendment will continue to comply with the applicable Functional Plan elements. Without confirmation that Sherwood will comply, staff cannot recommend approval of the Plan Amendment. A copy of Functional Plan Title 1 is included as **Attachment 8** and Title 4 is included as **Attachment 9**. Below is a brief description of what each Title states and requires.

Metro Functional Plan Title 1

This Title requires that cities provide, and continue to provide, at least the capacity specified in Table 3.01-7. Table 3.01-7 indicates that Sherwood's dwelling unit capacity is 5,216 and the job capacity is 9,518.

Metro Functional Plan Title 4

This site is identified as an "industrial area" on the Metro 2040 Growth Concept map. Section 3.07.430 of the Functional Plan requires that "No city or county shall amend its land use regulations that apply to lands shown as Industrial Area on the Employment and Industrial Areas Map" to authorize retail commercial uses—such as stores and restaurants—and retail and professional services that cater to daily customers—such as financial, insurance, real estate, legal, medical and dental offices—in order to ensure that they serve primarily the needs of workers in the area.

By allowing this Plan Amendment, the City would be changing the land use regulation for a site designated as industrial. Without an amendment to the 2040 Growth Concept Map, such amendment would not be consistent with the Metro Functional Plan.

Furthermore, the applicant has not provided any discussion regarding the compliance with the employment capacity impacts that such an amendment would have. The applicant has indicated that the existing vacant industrial land in the City demonstrates that there is surplus. However, the required capacity for employment remains the same regardless of whether it develops quickly or over time. The applicant must demonstrate that the employment capacity on the remaining industrially vacant land meets or exceeds the required employment capacity. The argument that additional land on the eastern boundary of Sherwood was brought in for industrial use does not address the issue. The act of bringing additional land into the UGB is a reflection of a regional need for a 20 year supply and does not decrease the local jurisdiction's capacity requirements.

FINDING: The applicant has not shown that the Metro Functional Plan standards are met

IV. APPLICABLE STATE STANDARDS

The applicable Statewide Planning Goals include: Goal 2, Goal 9 and Goal 12.

Goal 9 – Economy of the State

Goal 9 calls for diversification and improvement of the economy. It asks communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.

When the City completed its Comprehensive Plan it was required to identify and provide for a long term (20 year) supply of Industrial and Commercial land in accordance with OAR 660-009-000, which implements Goal 9. A full copy of OAR 660-009 is included as **Attachment 10**. OAR 660-009-0010(4) states that:

- (4) Notwithstanding paragraph (2), above, a jurisdiction which changes its plan designations of lands in excess of two acres to or from commercial or industrial use, pursuant to OAR 660, division 18 (a post acknowledgment plan amendment), must address all applicable planning requirements; and:*
 - (a) Demonstrate that the proposed amendment is consistent with the parts of its acknowledged comprehensive plan which address the requirements of this division; or*
 - (b) Amend its comprehensive plan to explain the proposed amendment, pursuant to OAR 660-009-0015 through 660-009-0025; or*
 - (c) Adopt a combination of the above, consistent with the requirements of this division.*

OA R 660-009-0015 outlines the required elements for an Economic Opportunities Analysis (EOA). As stated previously, the City has applied for grant funding to complete an updated EOA, however, this process has not begun. The applicant has not discussed compliance with Goal 9 or the OAR and has provided no documentation that staff could use to make findings. It is impossible for staff to recommend approval of this plan amendment since the applicant has not addressed or shown compliance with this standard.

Goal 10 - HOUSING

This goal specifies that each city must plan for and accommodate needed housing types, such as multifamily and manufactured housing. It requires each city to inventory its buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.

This Goal is addressed by the existing Comprehensive Plan. While the City anticipates the need to complete an update to the Comprehensive Plan in the future, the current plan is acknowledged and addresses housing needs. It would be premature to consider changing zones to increase residential zones without conducting a thorough review of both existing housing and employment needs throughout the City. The applicant has provided no quantitative data that would allow staff to support an amendment to the Comprehensive Plan and Zone Map without this necessary comprehensive review. Furthermore, the City complies with Metro Functional Plan requirements for housing and employment. In order to show compliance with the Metro Functional Plan, the City, in coordination with Metro, conducted a detailed analysis in 1997.

Goal 12 - TRANSPORTATION

The goal aims to provide "a safe, convenient and economic transportation system." It asks for communities to address the needs of the "transportation disadvantaged."

Goal 12 is implemented by OAR 660-012-0000. Compliance with this Goal and the OAR was discussed above.

FINDING: The applicant has not shown that State standards have been met.

Staff assessment and recommendation on Plan Amendment: Based on the analysis above, the applicant has provided inadequate information to make findings in support of the proposed amendment. In addition to the lack of information, the analysis above illustrates that the proposal is not appropriate or timely given the lack of an updated economic inventory. Therefore, Staff recommends denial of the proposed plan amendment.

NOT INCLUDED: Part 3 of the 10-20-05 staff report to the Planning Commission

CITY OF SHERWOOD
Supplemental Staff Report
Sherwood Oaks

File No.s: PA 0000, 01 0000, LLA 0000

PLANNING DEPARTMENT

Pre App. Meeting: September 8, 2004
 App. Submitted: June 2, 2005
 App. Complete: June 20, 2005
 120-Day Deadline: January 18, 2006
(Extended from October 28, 2005)

Julia Hajduk, Senior Planner

- A. Applicant/Owner:
 Lucas Development Corp.
 Attn.: Patrick Lucas
 18664 SW Boones Ferry Rd.
 Tualatin, OR 97062
- B. Location: The site is located at 1210 SW Oregon Street and identified as tax lots 900, 1000 and 1100 on Washington County Tax Assessor's map number 2S1W29D. The three (3) subject parcels are located on the north side of SW Oregon Street, across from SW Hall Street and SW Lower Roy Street. There are no public streets platted or built on the north side of SW Oregon Street.

The Planning Commission opened the public hearing on September 27, 2005 to consider the proposed plan amendment and site plan for an Alzheimer care facility and townhouse development. The applicant requested an opportunity to submit additional information to support their proposed plan amendment and to respond to issues raised in the staff report. The applicant submitted additional information on October 14, 2005, which is included as Attachment 1 of this report. The additional narrative submitted by the applicant addresses the Plan Amendment only. The original staff report including findings and recommendations, dated September 20, 2005, and associated exhibits, are attached by reference. This supplemental staff report responds to the applicant's additional information and will supplement the findings identified as Part 2 of the original staff report.

Planning Commission Action Requested:

The Planning Commission will be asked to make a determination on three issues:

- ☐ Make a recommendation to the City Council to approve, approve with conditions, or deny the proposed plan amendment from LI to HDR;
- ☐ Approve, approve with conditions, or deny the proposed site plan for the care facility; and
- ☐ Approve, approve with conditions, or deny the proposed townhouse development.

SUPPLEMENT TO PART 2 - PLAN AMENDMENT REVIEW

I. PLAN AMENDMENT REQUIRED FINDINGS

4.203.02

Map Amendment - This section states that an amendment to the City Zoning Map may be granted, provided that the proposal satisfies all applicable requirements of the adopted Sherwood Comprehensive Plan, the Transportation System Plan and this Code.

The applicable Comprehensive Plan policies are discussed under Section II below. Section 1.101.08 requires that all development adhere to all applicable Regional, State and Federal regulations. Applicable Regional regulations are discussed under Section III and applicable State regulations are discussed under Section IV.

FINDING: This is discussed in detail below.

Additional criteria:

Section 4.203.02 also provides the following standards that must be met before a map amendment can be approved:

A. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan and the Transportation System Plan.

Compliance with this standard is addressed under Section II, below.

FINDING: This is discussed in detail below.

B. There is an existing and demonstrable need for the particular uses and zoning proposed, taking into account the importance of such uses to the economy of the City, the existing market demand for any goods or services which such uses will provide, the presence or absence and location of other such uses or similar uses in the area, and the general public good.

The applicant has submitted a market study that demonstrates that there is a need for more Alzheimer care facilities in the area. As discussed further under 4.203.02.D, however, the market study demonstrating a need is not tied specifically to this property.

The applicant's supplemental narrative failed to provide any additional evidence supporting the need for the zone change for the townhouse development. The original narrative simply stated that there is a "healthy demand" for this type of housing. The applicant did not provide documentation to support the demand for High Density Residential land. In the future, the City may be able to assist in this documentation when we have completed an update to our employment lands inventory, however, since this information has not been updated and the applicant has provided no quantitative data, staff can not make findings that there is a need for additional residential land in relation to the economic importance of needed employment lands. The existing economic opportunities analysis (EOA) in the Comprehensive Plan is acknowledged by the state, and therefore is applicable to the proposal. However, the applicant has failed to provide findings linking the EOA to the need or availability of light industrial land.

Housing in the entire Portland Metro area is in demand; however, demand alone does not adequately justify a zone change from industrial to residential. If demand of a particular use alone were just cause for a zone change, an applicant could justify a zone change for any use as long as they had a market analysis substantiating the need.

FINDING: The applicant has not provided adequate information to show that this standard has been met.

C. The proposed amendment is timely, considering the pattern of development in the area, surrounding land uses, any changes which may have occurred in the neighborhood or community to warrant the proposed amendment, and the availability of utilities and services to serve all potential uses in the proposed zoning district.

The applicant's supplemental narrative indicates that this standard only requires the analysis of whether public facilities are presently appropriate to serve the use. However, the standard requires consideration of four (4) elements. The amendment must be determined to be timely after considering: (1) the pattern of development in the area; (2) the surrounding land uses; (3) changes to the community to warrant the amendment; AND (4) the availability to utilities and services to serve all potential uses. The applicant asserts that the amendment is timely because the community of Sherwood is aging and there is a greater need for this type of facility (presumably addressing #3) and because the transportation system has isolated this property from other industrially zoned land (presumably also addressing #3). Staff will evaluate compliance with this standard based on the four applicable components. Consideration of all four (4) elements must be factored and supported by findings of fact. If the proposal is timely when considering one element, but un-timely when considering another element, the applicant has not met the burden of proof.

1. While not specifically stated, the applicant suggests that the lack of development on the site in question and on surrounding properties is the development pattern and that the zone change is timely because the "pattern" of development will be improved if the zone is changed to accommodate the proposed use. Staff concurs that this element of the standard is addressed, but has concerns that the applicant has not demonstrated full compliance with this standard as discussed in more detail below.
2. The applicant has not addressed the surrounding land uses and, in fact, insinuates that surrounding land use is not a factor because of the quasi-judicial land use process. However, the criterion clearly requires the City to consider the surrounding land uses in determining whether an amendment is timely. Staff would argue that adjacent properties and the potential (or lack) of re-development or even re-zoning, must be considered when determining if a proposed change on a small adjacent piece of property is timely. In this case, consideration of "spot zoning" a particular piece of property entails the aforementioned level of analysis for staff to make findings regarding the timeliness of the zone change.

While it is not staff's intent to address every statement made by the applicant in their supplemental narrative, staff feels the need to address the portion of the applicant's narrative that indicates staff has weighed in on the issue of changing the GI zone to the north to residential. Staff has not provided an opinion or assessment of a potential zone change on that site, other than to indicate that the property owner is considering it, vis a vis a pre-application conference, and that the Planning Commission must factor in surrounding land uses and development patterns when considering the timeliness of a proposed plan amendment.

3. The applicant's original narrative indicated that the project was timely because the demand for industrial land is decreasing, while the need for senior housing was increasing. Other than a market study to support the need for an Alzheimer care facility in the general area, they have provided no comprehensive or factual evidence, whether quantitative or qualitative, to support the claim that the need for industrial land is decreasing or that the need for residential land (for the townhouse development) is increasing. While it is known fact that the baby boom generation is aging, the applicant has provided little evidence that the aging of the population is above and beyond the projected needs provided for in the comprehensive plan nor does the applicant provide any evidence of current and projected light industrial inventory.

The applicant mentions that Area 48, a UGB expansion area brought into the regional UGB in December 2004, is a change to the community that will more than off-set any industrial land

needs. This area is not in the city limits and is not expected to be in the next five years due to the process to concept plan, implement, and annex land for urban uses. This area can not be included in the local inventory of available land until the area is included in the Comprehensive Plan. Area 48 is discussed in more detail under Section III, below.

The applicant makes additional arguments for the timeliness of this project, citing the fact that the recently adopted Transportation System Plan (TSP) lowers the classification of SW Oregon Street from an arterial to a collector, and suggesting that the closure of the SW Oregon Street crossing acts to isolate the old "Tannery" site from the rest of industrial uses in Sherwood. However, road classification is merely a description of the number and type of trips intended to be accommodated. A collector street is intended to collect local traffic and carry it to the arterials, which in turn, carry traffic to the highways. The status of classification has little bearing on the type of use proposed; it reflects connectivity standards and not mobility. For example, SW Galbreath Drive, a street providing access to newly developing industrial sites, is classified as a collector, as are SW Meinecke Road and SW Langer Drive. Furthermore, SW Oregon Street provides connectivity because it feeds into Tualatin-Sherwood Road and SW Tonquin Road, which are both arterials serving light industrial employment uses.

In the applicant's supplemental narrative, they disagree with the staff analysis and cite Industrial Policy 1, Strategy 5 "industrial land will be restricted to those areas where adequate major roads, and/or rail, and public services can be made available." While the classification of SW Oregon Street was changed from an arterial to a collector, a collector is still considered a major road. The TSP acknowledgement that the function of SW Oregon Street does not fall within the "arterial" definition and subsequent re-classification is not evidence that the zoning should be changed to residential. Furthermore, the applicant states that they would be "surprised to hear staff advocate" zoning areas along arterials for residential use or areas along local streets for commercial or industrial uses. However, the City has several examples (Sunset, Sherwood Blvd and Murdock) where the functional classification is arterial and the prominent land use is residential and others (Galbreath, Langer Drive, and Borchers) where the functional classification is a collector street with the prominent use being commercial or industrial. Staff states this not to advocate for certain uses along a specific classification of road, but rather to further illustrate the fact that the functional classification reflects the capacity, connectivity, and functional order¹ of a road, not the uses or zoning adjacent to it.

4. Utilities are available to serve the proposed use.

FINDING: Based on the analysis above, the applicant has not adequately demonstrated that the Plan amendment is timely when considering surrounding land uses and changes that may have occurred in the community.

¹ Page 8-5 of the TSP adopted March, 2005 defines the differences between an arterial and collector street. **Arterial streets** serve to interconnect and support the principal arterial highway system. These streets link major commercial, residential, industrial and institutional areas.

Collector streets provide both access and circulation within and between residential and commercial/industrial areas. Collectors differ from arterials in that they provide more of a citywide circulation function, do not require as extensive control of access (compared to arterials) and penetrate residential neighborhoods, distributing trips from the neighborhood and local street system.

Neighborhood routes are usually long relative to local streets and provide connectivity to collectors or arterials. Because neighborhood routes have greater connectivity, they generally have more traffic than local streets and are used by residents in the area to get into and out of the neighborhood, but do not serve citywide/large area circulation.

Local Streets have the sole function of providing access to immediate adjacent land. Service to "through traffic movement" on local streets is deliberately discouraged by design.

D. Other lands in the City already zoned for the proposed uses are either unavailable or unsuitable for immediate development due to location, size or other factors.

The market analysis demonstrating a need for the Alzheimer care facility is based on a 4 mile radius around the facility and “encompasses approximately 50 square miles in southeastern Washington County, and includes small portions of Clackamas and Yamhill Counties on its southern boundaries.” Clearly, the market analysis does not suggest that this is the only site in the study area suitable to meet the needed demand.

This site is not available for immediate development due to the DEQ clean-up action. DEQ has indicated that residential uses are not appropriate until they have completed the clean-up process.

That being said, the applicant has indicated that:

Most of the HDR District is already developed, and large parcels were developed in lower-density residential (i.e. Edy Village; Sherwood Village) before the Metro Functional Plan Title 1 compliance measure took effect, to require minimum density in the HDR zone. For the existing supply of HDR land, there is not another lot of appropriate size, located on a public right-of-way such as Oregon Street, fully supported by existing municipal services and already zoned HDR available for purchase or suitable for the immediate development of the Alzheimer's facility and townhouse community.

The care facility could be placed in a variety of zones. The applicant has not demonstrated that other land is unavailable for the uses proposed. Staff conducted a cursory review of all parcels in the City 2.5 acres or greater (the size of the proposed care facility site) that are vacant (or have only one dwelling) with a zone that would allow a residential care facility either outright or conditionally. There are 20+ parcels that fit this definition (Attachment 6 of the 9/20/05 staff report), one of which is actually owned by the applicant. The fact that there are over 20 parcels that are currently zoned appropriately and of adequate size to accommodate the facility confirms that the applicant has not demonstrated the need for this plan amendment. The applicant's supplemental narrative states that “simply pointing out vacant parcels does not substantiate whether they are ready for development.” It is the applicant's burden of proof to demonstrate that the criteria are met. Staff identified potential development sites because the applicant provided no data to support their argument that there were no other parcels that were suitable. If staff's analysis of vacant or under-developed parcels of the same size as the proposed site revealed no parcels, staff would have indicated such in the original findings. Furthermore, while the applicant has verbally provided some anecdotal discussion of why this site is suitable and others are not, the discussion is centered entirely on the care facility use. The applicant has provided no evidence that: 1) there is a need, or 2) that other sites in the City are un-suitable for the residential component. Finally, the applicant's final statement that “staff ignores the primary factor making the site suitable for the care facility is the proximity Old Town” is not relevant. The market analysis verified a need for a care facility in the area, but did not indicate the need in only this location near Old Town. The applicant must demonstrate that the existing sites are not available for the proposed use due to location², size or other factors (utilities, traffic, etc). Without this demonstration, staff can not find that this is the only suitable location given the number of existing care facilities in Sherwood and the region that are located on sites similar to those identified as potentially suitable by staff.

² Industry data identifying locational standards along with discussion as to why other care facilities located closer to arterials, away from Old Town and adjacent to retirement facilities can not be used as a comparison when determining whether another location is appropriate. (i.e. – has the industry standard changed?)

FINDING: The applicant has not shown that this standard has been met.

4.203.03 - Transportation Planning Rule Consistency

- A. Review of plan and text amendment applications for effect on transportation facilities. Proposals shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-12-0060 (the TPR). Review is required when a development application includes a proposed amendment to the Comprehensive Plan or changes to land use regulations.**
- B. "Significant" means that the transportation facility would change the functional classification of an existing or planned transportation facility, change the standards implementing a functional classification, allow types of land use, allow types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility, or would reduce the level of service of the facility below the minimum level identified on the Transportation System Plan**
- C. Per OAR 660-12-0060, Amendments to the Comprehensive Plan or changes to land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan.**

The City received a transportation study for this project on August 19, 2005. This report was forwarded to City Engineer, Gene Thomas, PE for technical review. Mr. Thomas forwarded the traffic study, along with the addendum information submitted August 29, 2005 to DKS Associates, the consulting firm that prepared the City's Transportation System Plan (TSP), for a third party, professional review and comments. Mr. Thomas submitted a memo (Attachment 7 of the 9/20/05 staff report) outlining the deficiencies DKS found in the traffic study that require further analysis to ensure compliance with the Transportation Planning Rule (TPR).

The applicant disagrees with the determination of what constitutes a "worst-case" scenario for development of the existing zoning. The applicant assumes the LI site would likely develop at a .53 FAR³, whereas the traffic consultant contracted to review the applicant's study projected a more likely FAR would be .30-.35. The TPR requires the proposed change to be evaluated based on worst case, but it does not require the same for the existing zone. The City confirmed with DKS that they used the Metro model for trip generation when they prepared the TSP. These numbers are less than what is in the ITE for each use and are meant to average and to take time into consideration since everything will not be built the day the TSP is adopted. Therefore, the consideration of how other industrial sites in the City have developed is appropriate to determine the likely FAR of an industrial building in this location. The applicant's supplemental narrative lists 5 sites in Sherwood as an example to illustrate that the .53 FAR assumed is appropriate. Staff reviewed the FAR by looking at the land use approvals and/or building permits for these 5 sites, as well as 5 additional industrially zoned sites and find the average FAR to be substantially less than that suggested by the applicant. Two of the five sites referenced by the applicant are .47 FAR and .46 FAR; however three are between .30 and .34⁴. Of the five additional sites randomly reviewed by staff, the FAR ranged between .13⁵ and .32⁶ FAR. Using an average FAR for only the 5 sites referenced by the applicant,

³ FAR= Floor to Area Ratio. It is calculated by dividing the total square footage of a building by the square footage of the parcel. (a 5,000 square foot building on a 10,000 square foot lot will have a FAR of .5)

⁴ 20707 Wildrose FAR =.47; 20551 Wildrose FAR = .46; 13985 Tualatin-Sherwood FAR=.32; 13939 Tualatin-Sherwood FAR= (approx) .30; 13565 Tualatin-Sherwood FAR = .34.

⁵ 14085 SW Galbreath Drive and 14985 SW Tualatin-Sherwood Road

⁶ 13920 SW Galbreath Drive

results in a FAR of .37. This equates to an average daily trip (ADT) of 541. Comparing this ADT to the potential estimated 673⁷ trips if the HDR zone is built to full density (115 units), shows that the proposed zone change must comply with the TPR standards.

FINDING: The applicant has not shown that this standard has been met.

II. APPLICABLE COMPREHENSIVE PLAN POLICIES

The applicant has indicated that the Growth Management Policies are applicable to this proposal. While this may appear to be the case when the policy is read by itself, the Growth Management section is intended to comply with Statewide Planning Goal 14 – Urbanization. The goals and policies identified in the Growth Management Section of the Comprehensive Plan relate to development in the urban areas and those areas transitioning from rural to urban and are not applicable to this proposal. The applicable portions of the Comprehensive Plan include Chapter 4, Land Use, Section E – Residential; Section H – Economic Development; and Section J – Industrial.

Residential Land Use

Policy 1 Residential areas will be developed in a manner which will insure that the integrity of the community is preserved and strengthened.

Policy 2 The City will insure that an adequate distribution of housing styles and tenures are available.

Policy 3 The City will insure the availability of affordable housing and locational choice for all income groups.

Policy 4 The City shall provide housing and special care opportunities for the elderly, disadvantaged and children.

Policy 5 The City shall encourage government assisted housing for low to moderate income families.

Policy 6 The City will create, designate and administer five residential zones specifying the purpose and standards of each consistent with the need for a balance in housing densities, styles, prices and tenures.

While the proposal does provide special care opportunities for the elderly, the City's zoning ordinance already complies with this policy by allowing residential care facilities in most residential and commercial zones. With or without the proposed amendment, the City's zoning addresses the policies identified in the Comprehensive Plan.

FINDING: The proposed amendment is not inconsistent with the residential policies.

Economic Development Policies and Strategies

Policy 2 The City will encourage economic growth that is consistent with the management and use of its environmental resources.

⁷ This number is based on the ITE manual trip rate for a townhouse development which provides a trip rate of 5.86 trips per unit. A Low rise apartment provides a trip rate of 6.59 trips per unit, which results in 757 trips per day.

Policy 5 The City will seek to diversify and expand commercial and industrial development in order to provide nearby job opportunities, and expand the tax base.

The applicant has indicated that the development of the site, as proposed, will promote responsible economic growth, by supporting the remediation and conversion of a previously contaminated industrial site into a site suitable for locating a needed Alzheimer's care facility, its residents, and the prospective townhouse residents. Staff would argue that the remediation is already in process and required regardless of potential development. Although laudable, clean up of a brownfield is not *quid pro quo* for a zone change.

In addition, the proposed amendment and development of the townhouse development is inconsistent with Policy 5 because it is removing job opportunities on this portion of the site. The applicant does not provide any evidence to support the new use based on an economic impact, i.e. living wage jobs, assessed valuation, etc.

All communities, including Sherwood, need a balance of residential and employment in order to be a complete community. Sherwood's housing market is strong and the retail market is growing. The community, through the economic development policies, encourages development of the industrial lands to increase jobs for community members. Regardless of what the *current* market demands are, the City is required, via Goal 9 of the Statewide Land Use Planning System, to have a 20 year supply of land for residential and employment growth. The acknowledged Comprehensive Plan (1991) met that requirement and actions taken by the City in past years to comply with the Metro Functional Plan requirements continue to provide the required balance. Simply changing the zone to meet a perceived need or because development is not occurring at the site as quickly as the property owner would like, does not address the economic development policies to "diversify and expand" industrial development. The fact that industrial land has not developed at the same pace as residential, merely indicates that more focus and emphasis is needed to develop an economic development strategy to further implement the economic development strategies.

FINDING: The applicant has not provided evidence demonstrating that this change will diversify and expand commercial and industrial development or, through an economic opportunities analysis, that the City does not need this land to meet the industrial land needs.

Industrial Planning Designations

Policy 1 Industrial uses will be located in areas where they will be compatible with adjoining uses, and where necessary services and natural amenities are favorable.

The Comprehensive Plan indicated that Light Industrial designations should be placed in areas where the development will be compatible with existing or planned long range land use patterns and will not detract from existing environmental assets. The fact that this site was designated Light Industrial and the property across SW Oregon Street was designated residential indicates that this was a suitable zoning designation that is compatible with the surrounding area. The Light Industrial designation encourages the development of suitable uses into industrial subdivisions or parks and allows a wide range of uses suitable for development adjacent to residential uses. SW Oregon Street creates a suitable buffer (60 feet of ROW) between residential and industrial uses. There is concern about setting a precedent about the appropriateness of an industrial boundary adjacent to residential uses. Staff is already aware of property owners waiting to see the outcome of this proposal that are considering additional plan amendments. Lastly, a new tannery operation would not be allowed at this site, and new uses would have less of an impact than the prior use. This, along

with performance standards in the zoning code, would address concerns from the neighborhood about the compatibility of new Light Industrial uses.

As discussed under Section I.C.3 of this report, the applicant disagrees that an industrial use is appropriate along a collector street. They state that this classification change "does not simply support, but actually suggests the proposed re-zone." As staff's discussion previously demonstrates, this is clearly not true. If it were, all property along SW Sunset Boulevard and SW Murdock Street should be changed to commercial or industrial and all land along SW Galbreath Drive, SW Langer Drive and SW Borchers Drive should be re-zoned to residential. This is neither appropriate nor warranted. The applicant has not demonstrated that this location is inappropriately zoned or that it is now inconsistent with the industrial location standards.

Policy 2 The City will encourage sound industrial development by all suitable means to provide employment and economic stability to the community.

While the applicant has indicated that the care facility will provide an additional 30 jobs within the community, they have not addressed the entire area included in the proposal. The townhouse development will create no additional jobs and the precedent set of changing industrial zones to residential could result in the loss of even more employment opportunities. The City's economic analysis, which was conducted for the development of the Comprehensive Plan in 1991, indicated the need for a greater balance between residential and employment development. Currently, according to the Washington County Tax Assessor's office the City's tax base is 80 percent residential and 20 percent employment. This imbalance would be exacerbated by the proposed zone change. In addition, the strategy identified in the Comprehensive Plan to address this policy was to allocate land to meet the current and future industrial space needs to provide an appropriate balance to residential and commercial activities. The applicant has provided no quantitative evidence substantiating that the community has an appropriate balance of uses within the current or future 20 year planning period.

The applicant indicates that this site could not be developed consistent with Comprehensive Plan policies. They indicate that this site has been "passed over" for many years and that there have been few inquiries into this property over the past 5 years. While this may be true, the applicant indicates that one of the reasons is an underdeveloped collector street and site with environmental contamination. It is possible that this site would not be as "passed-over" if the street was improved to City standards and the site contamination was cleaned up. A zone change is not necessary to make these site improvements.

The applicant cites Chapter 4 of the Comprehensive Plan, pg. 36 (which provides a map of the zoning designations) as evidence that the City did not intend for this area to be zoned industrial in the long term. The applicant argues that if it had been intended to be industrial for the long term, residential zoning would not have been designated across the street. By "down-zoning" the "Tannery" to Light Industrial, the Comprehensive Plan acknowledged the incompatibility of the site compared to the residential zone across the street, and ensured compatibility when re-development occurred through the down-zone. Furthermore, Policy 2 of the economic development section and related strategies further spoke to compatibility by suggesting that the city "adopt and implement environmental quality performance standards" and "seek to attract non-polluting industries". Second guessing the map policies of an acknowledged Comprehensive Plan may be warranted during a city-initiated review of the Comprehensive Plan (periodic review), but when a change is proposed outside of the City's comprehensive review process, the burden of proof is to demonstrate the problems exist and that the change will address the problems, not state the problem as fact.

FINDING: The applicant has not demonstrated that the existing zoning designation is inappropriate or inconsistent given the industrial policies identified in the Comprehensive Plan.

III. APPLICABLE REGIONAL (METRO) STANDARDS

The applicable Functional Plan criteria are Title 1 – Housing and Title 4 – Employment. The City of Sherwood is currently in compliance with the Functional Plan and any amendment to the zoning must show that the community continues to comply. The applicant has provided no discussion of how this Plan Amendment will continue to comply with the applicable Functional Plan elements. Without confirmation that Sherwood will comply, staff cannot recommend approval of the Plan Amendment.

A copy of Functional Plan Title 1 is included as Attachment 8 of the 9/20/05 staff report and Title 4 is included as Attachment 9 of the 9/20/05 staff report. Below is a brief description of what each Title states and requires.

Metro Functional Plan Title 1

This Title requires that cities provide, and continue to provide, at least the capacity specified in Table 3.01-7. Table 3.01-7 indicates that Sherwood's dwelling unit capacity is 5,216 and the job capacity is 9,518. The applicant acknowledges in their narrative that this re-zone will decrease the City's job capacity, but state that "Area 48" will more than off-set this reduction. As discussed below, staff can not confirm this to be true.

Metro Functional Plan Title 4

This site is identified as an "industrial area" on the Metro 2040 Growth Concept map. Section 3.07.430 of the Functional Plan requires that "No city or county shall amend its land use regulations that apply to lands shown as Industrial Area on the Employment and Industrial Areas Map" to authorize retail commercial uses—such as stores and restaurants—and retail and professional services that cater to daily customers—such as financial, insurance, real estate, legal, medical and dental offices—in order to ensure that they serve primarily the needs of workers in the area.

By allowing this Plan Amendment, the City would be changing the land use regulation for a site designated as industrial. Without an amendment to Title 4 Map, such amendment would not be consistent with the Metro Functional Plan.

Furthermore, the applicant has not provided any discussion regarding the compliance with the employment capacity impacts that such an amendment would have. The applicant has indicated that the existing vacant industrial land in the City demonstrates that there is surplus. However, the required capacity for employment remains the same regardless of whether it develops quickly or over time. The applicant must demonstrate that the employment capacity on the remaining industrially vacant land meets or exceeds the required employment capacity. The argument that additional land on the eastern boundary of Sherwood was brought in for industrial use does not address the issue. Staff spoke with the Metro Planning Manager on October 25, 2005 who confirmed that the act of bringing additional land into the UGB is a reflection of a regional need for a 20 year supply and does not decrease the local jurisdiction's capacity requirements. The applicant's argument that there will be surplus land and that the capacity will be met when the Area 48 land is brought into the City and developed is not accurate. In fact, Metro indicated that LCDC recently remanded their UGB expansion, in part, because the region is still 300 acres (after the industrial areas, including area 48 are brought in) short of the regional industrial land need. Metro also confirmed that Title 4 is intended to

preserve industrial land, not just from retail uses but from any non-industrial uses. Metro indicated that any change to the Title 4 industrial lands map would require Metro Council approval and would require Metro to re-calculate their regional industrial land capacity.

FINDING: The applicant has not demonstrated compliance with the Title 1 or Title 4 Metro Functional Plan standards.

IV. APPLICABLE STATE STANDARDS

The applicable Statewide Planning Goals include: Goal 2, Goal 9 and Goal 12.

Goal 9 – Economy of the State

Goal 9 calls for diversification and improvement of the economy. It asks communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.

When the City completed its Comprehensive Plan it was required to identify and provide for a long term (20 year) supply of Industrial and Commercial land in accordance with OAR 660-009-000, which implements Goal 9. A full copy of OAR 660-009 is included as Attachment 10 of the 9/20/05 staff report. OAR 660-009-0010(4) states that:

(4) Notwithstanding paragraph (2), above, a jurisdiction which changes its plan designations of lands in excess of two acres to or from commercial or industrial use, pursuant to OAR 660, division 18 (a post acknowledgment plan amendment), must address all applicable planning requirements; and:

(a) Demonstrate that the proposed amendment is consistent with the parts of its acknowledged comprehensive plan which address the requirements of this division; or

(b) Amend its comprehensive plan to explain the proposed amendment, pursuant to OAR 660-009-0015 through 660-009-0025; or

(c) Adopt a combination of the above, consistent with the requirements of this division.

As discussed above, Goal 9 is implemented in the Comprehensive Plan via Chapter 4, Section H, policies 1-6. The proposed amendment is not consistent with the policies 2 and 5 as discussed under Section II of this report. The applicant has not demonstrated via the original narrative or the supplemental narrative that it is consistent with the economic development policies, therefore, staff can not make compliance findings based on (a) above. The applicant has not provided an explanation of the amendment pursuant to OAR 660-009-0015 through 660-009-0025 in order to make finding based on (b) or (c) above. As stated previously, the City has applied for grant funding to complete an updated EOA, however, this process has not begun, and therefore, staff does not have documentation to provide the applicant that might help them in establishing findings that demonstrate compliance. It is impossible for staff to recommend approval of this plan amendment since the applicant has not addressed or shown compliance with this standard.

FINDING: The applicant has not demonstrated that the proposal is consistent with the economic development policies of the Sherwood Comprehensive plan or provided documentation to support a finding of compliance pursuant to OAR 660-009-0015 through 660-009-0025.

Goal 10 - HOUSING

This goal specifies that each city must plan for and accommodate needed housing types, such as multifamily and manufactured housing. It requires each city to inventory its buildable residential lands, project future needs for such lands, and plan and zone enough buildable

land to meet those needs. It also prohibits local plans from discriminating against needed housing types.

This Goal is addressed by the existing Comprehensive Plan. While the City anticipates the need to complete an update to the Comprehensive Plan in the future, the current plan is acknowledged and addresses housing needs. It would be premature to consider changing zones to increase residential zones without conducting a thorough review of both existing housing and employment needs throughout the City. The applicant has provided no quantitative data that justifies the need for an amendment to the Comprehensive Plan and Zone Map without this necessary comprehensive review. Furthermore, the City complies with Metro Functional Plan requirements for housing and employment. In order to show compliance with the Metro Functional Plan, the City, in coordination with Metro, conducted a detailed analysis in 1997.

The applicant's supplemental narrative refers to the study conducted in 1997 and states that the study "acknowledged that low-density housing occurred in high-density zones, and that more density was needed to accommodate Sherwood's share of the Metro-region housing burden." Staff agrees with this statement. However, this finding was similar to that found around the region by many jurisdictions conducting the same analysis. The tool used by most jurisdictions was to impose a minimum density standard to ensure densities were built close to those anticipated with the Comprehensive Plan zoning. The fact that Sherwood has demonstrated compliance with Title 1 indicates that with the existing zoning built to minimum densities, the City would be able to provide for the required housing units without the need for additional up-zoning or zone changes.

FINDING: A proposed change to HDR would not be in conflict with Goal 10; however a change is not necessary as the existing Comprehensive Plan already complies with the Statewide Planning Goal 10.

Goal 12 - TRANSPORTATION

The goal aims to provide "a safe, convenient and economic transportation system." It asks for communities to address the needs of the "transportation disadvantaged."

Goal 12 is implemented by OAR 660-012-0000. Compliance with this Goal and the OAR was discussed above.

FINDING: The applicant has not shown that State standards have been met.

Staff assessment and recommendation on Plan Amendment: Based on the analysis above, the applicant has provided inadequate information to make findings in support of the proposed amendment. Therefore, Staff recommends that the Planning Commission recommend denial of the proposed plan amendment to the Sherwood City Council.

Attachments:

1. Supplemental narrative submitted October 14, 2005
2. Original staff report and attachments, dated September 20, 2005 (by reference – Please contact the Planning Department if new packet materials are needed)

Council Meeting Date: February 7, 2006

Agenda Item: Public Hearing

TO: Sherwood City Council
FROM: Julia Hajduk, Senior Planner
Through: Rob Dixon, Community Development Director
Subject: Public Hearing concerning Tax lot 2S129D00900, 1000 and 1100, Sherwood Oaks Zone Change (PA 05-03)

EXECUTIVE SUMMARY

Summary: The applicant currently proposes to change the zoning of the former Tannery site comprised of 2.76 acres from Light Industrial (LI) to Medium Density Residential Low (MDRL). The original proposal reviewed by the Planning Commission (PC) was a proposal to change the zoning of 4.82 acres of the former Tannery site from LI to High Density Residential (HDR). The PC recommended denial of that rezone, but has not been presented or reviewed the current proposal before the Council.

Previous Council Action: Council opened a public hearing on December 6, 2005, heard testimony, closed the hearing, deliberated, reopened the hearing at the developer's request and continued the public hearing to February 7, 2006.

Background/Problem Discussion: City staff, in great detail in numerous documents, has evaluated various sequential data submissions by the applicant and repeatedly found the conditions to justify the rezone request not satisfied based on the City's Code, Metro regional and State requirements. The current proposal, reviewed by City staff, has similarly been determined to not meet the conditions to justify the rezone based on City Code, Metro regional and State requirements. Additionally, the Community Development Director recommends against the rezone as bad public policy when the City is currently significantly underdeveloped in LI. Yet, the proposed Alzheimer's facility is potentially a true asset to the City and its residents if located in a more appropriate zone.

Alternatives: The applicant could pursue the numerous available parcels zoned VLDR, LDR, MDRL, MDRH, and HDR within the City for the proposed project. Current land owner could also proceed expeditiously with site clean up and coordinate with City staff to facilitate marketing the site for development per the LI zoning.

Financial Implications: Several of the financial implications of rezoning the subject parcel from LI to MDRL are: 1) If the facility is built, a developed parcel is added to the tax rolls providing additional general fund revenue. 2) Long-term the developed parcel functions similar to other apartment-style residential development and generates less or at best equal tax revenues relative to the costs of general government services it requires. 3) Precedent may be set that encourages further rezoning of adjacent LI land to similar lower tax revenue generating zones relative to general government expenses and thereby reducing long-term economic sustainability for the City. 4) A residential-type facility adjacent to other LI parcels potentially discourages the development of those parcels consistent with the LI zone. The delayed development of these adjacent LI parcels adversely impacts City general fund revenues. 5) The proposed rezoning potentially jeopardizes Sherwood's future requests for additional LI land from Metro. If the City changes the LI land to MDRL with no compelling evidence or reason in our code, Metro regional or State requirements, this could have very long reaching financial implications. A similar action by the City of Cornelius has resulted in repeated denial of LI land expansions.

Recommendation: Staff recommends that the City Council deny the proposal to rezone Tax Lot 2S129D001100 from Light Industrial to Medium Density Residential Low.

Proposed Motion: Staff recommends that the Sherwood City Council *adopt* the attached Order denying the proposed zone change from Light Industrial to Medium Density Residential Low for Tax Lot 2S129D001100.

STAFF REPORT

ISSUE:

Should the City approve the applicant's request for a zone change from Light Industrial (LI) to Medium Density Residential Low (MDRL) or High Density Residential (HDR) for the purposes of constructing an Alzheimer Care Facility?

BACKGROUND:

The current request is to change the zone at the former Tannery site comprised of 2.76 acres from LI to MDRL. It should be noted that the Planning Commission review and recommendation was based on the original proposal which involved a 4.82 acre piece of property and changed the zone to HDR. The Planning Commission drafted a letter to make this fact clear. The letter is included as attachment 1.

The applicant submitted information which was included in the packet for the December 6th City Council meeting. The applicant also submitted additional information after the December 6th Council meeting, which is included as Attachment 2, Exhibits 1-10.

REQUIRED FINDINGS

The Comprehensive Plan map amendment must be found to be in compliance with the applicable criteria. For Council's convenience, the City Attorney has provided a memo (attachment 3) which clarifies the specific considerations that Council must legally make. Staff has prepared reports evaluating the applicant's submittal in relation to the applicable criteria (included as Exhibits A and B of the December 6th Council packet). It is recommended that Council re-review Exhibits A and B from the December 6th packet to be fully informed on the consideration given in respect to each of the criteria. As stated in these documents the applicant has not addressed all of the applicable criteria. In the next section, a brief overview of the applicable criteria that remain unmet is provided.

The Council may find it confusing when they review the request since the applicant states that they have met the criteria and staff states the criteria are not met. Staff has evaluated this proposal against the applicable criteria based on the information provided by the applicant and staff from outside agencies as well as considering the immediate and longer term impacts approval of this zone change may have. While the Council can make the determination on whether some of the Comprehensive Plan standards are met, the Council must be aware of the precedent set by these decisions.

APPLICABLE CRITERIA

Development Code Section 4.203.02.B - There is an existing and demonstrable need for the particular uses and zoning proposed, taking into account the importance of such uses to the economy of the City, the existing market demand for any goods or services which such uses will provide, the presence or absence and location of other such uses or similar uses in the area, and the general public good.

Staff questions whether the need has been demonstrated when considering the impacts on the economy and the public good. In addition to the reduction in the industrial land supply in general, City Manager Ross Shultz briefly discussed at the December 6th Council meeting the potential negative economic impact of allowing this zone change because of the costs to serve residential property compared to industrial and commercial property. Attachment 4 documents a study supporting this statement prepared by the City of Gresham.

Development Code Section 4.203.02.C - The proposed amendment is timely, considering the pattern of development in the area, surrounding land uses, any changes which may have occurred in the neighborhood or community to warrant the proposed amendment, and the availability of utilities to serve all potential uses in the proposed zoning district.

While the applicant has made an argument that the proposal is timely, staff has discussed in the previous staff reports why their argument is flawed. The Council must consider the precedent being set by their findings if they accept the applicant's statement to determine timeliness. The fact that land has a prospective developer should not be a consideration of timeliness. If Council disagrees, this same standard must be applied to other potential zone change applicants. In addition, the re-classification of a street is also not justification of timeliness. Furthermore, the extension of Adams Avenue is planned which will make this entire area much more accessible to vehicles. It is not timely to consider a zone change that will set the precedent for additional requests when there are major road improvement plans in process that will enhance the current zoning.

Development Code Section 4.203.02.D - Other lands in the City already zoned for the proposed uses are either unavailable or unsuitable for immediate development due to location, size or other factors.

The use is allowed conditionally in the VLDR, LDR, MDRL, MDRH, and GC zones and allowed outright in the HDR zone. Combined, these zones represent the majority of the City. The applicant has provided documentation that asserts no other sites are available or suitable for the proposed use. In response to this Council must consider the following:

- Walkability to Old Town should not be used as justification in determining whether there are other properties available for the proposed use when it is located outside of Old Town and other, similar uses are located in areas that are not walkable to Old Town and appear to function adequately.
- If the Council accepts walkability as a factor to determine if other sites are unsuitable, they must be prepared to accept this same argument from other potential zone change applicants in the area.
- What level of "availability" will be acceptable to determine whether other properties are available? Staff believes that available does not have to mean that land is currently on the market, but rather consideration must be given to whether there is a supply of suitable land.

Comprehensive Plan Economic Development Policies:

Policy 2 – the City will encourage economic growth that is consistent with the management and use of its environmental resources.

Policy 5 – the City will seek to diversify and expend commercial and industrial development in order to provide nearby job opportunities, and expand the tax base.

The removal of industrial land from the City's inventory does not comply with the economic development policies.

Comprehensive Plan Industrial Planning Designations

Policy 1 – Industrial uses will be located in areas where they will be compatible with adjoining uses, and where necessary services and natural amenities are favorable.

Policy 2 – The City will encourage sound industrial development by all suitable means to provide employment and economic stability to the community.

Currently the light industrial zoning designation is buffered from the residential zone by SW Oregon Street, a Collector. If the zone change were approved, the new zone (MDRL) would be immediately adjacent to light industrial zoning on 3 sides. Increasing the proximity of these two zones increases the potential for incompatibility of adjacent uses.

Encouraging sound economic development can not be achieved by removing industrial land from the inventory and setting the stage for additional re-zone requests that might remove more of the inventory. The Council must consider the precedent this will set for other industrially zoned property in this area.

Attachment 5 is memo discussing the City's current inventory of land by zoning classification. This attachment is at the request of the City Council, but also further illustrates the need to retain industrially zoned land when compared to residential land.

Metro Functional Plan - Title 4

The Council can not interpret Metro and State requirements. While the applicant has stated that the Metro Functional Plan Title 4 does not prohibit the zone change, staff received confirmation from Metro staff (included in Exhibit B of the 12-6-05 packet) that Title 4 does in fact apply. Metro indicates that any change to the Title 4 industrial lands map will require Metro Council approval and will require Metro to recalculate their regional land capacity. The City can not simply ignore Regional requirements.

Statewide Planning Goal 9 – Economy of the State

The current Comprehensive Plan complied with this goal. The Economic Opportunities Analysis grant recently received may update this portion of our Comprehensive Plan, however at this time, the City does not have the information to substantiate if the future needs for industrial land would continue to be met if the zone change is approved.

COUNCIL OPTIONS:

Staff has identified three potential options that the City Council can take on this proposal:

1. Approve the proposed change with detailed and specific findings sufficient for staff to forward to Metro and DLCD to show compliance with applicable standards.
2. Deny the requested zone change
3. Obtain an additional 120-day waiver and send the request back to the Planning Commission so that the Commission can review and make a recommendation based on the current proposal to change from LI to MDRL.

RECOMMENDATION:

Based on the findings included in this staff report and Exhibits A and B of the 12-6-05 Council packet, staff recommends denial of the proposed zone change. If the Council agrees, the Council may adopt the attached draft Order.

Attachments:

- 1 – Memo from the Planning Commission dated January 27, 2006
- 2 – Applicant's supplemental submittal dated January 12, 2006 including Exhibits 1-10
- 3 – Memo from the City Attorney's office dated February 7, 2006
- 4 – City of Gresham report *"Property Tax Cost-Benefit relationships: Businesses Compared to Individuals in the City of Gresham"*
- 5 – Memo on Sherwood's land inventory