Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

03/24/2009

TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Larry French, Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment
DLCD File Number 002-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, April 08, 2009

This amendment was not submitted to DLCD for review prior to adoptionPursuant to OAR 660-18-060, the Director or any person is eligible to appeal this action to LUBA under ORS 197.830 to 197.845.

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Heidi Kennedy, City of Bend
Gloria Gardiner, DLCD Urban Planning Specialist

<paa>

FORM 2 **DLCD**

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

Jurisdiction: **City of Bend** Local file number: **PZ07-349**

Date of Adoption: **3/4/2009** Date Mailed: **3/18/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes**Date: 3/18/2009

☒ Comprehensive Plan Text Amendment ☐ Comprehensive Plan Map Amendment

☐ Land Use Regulation Amendment ☒ Zoning Map Amendment

☐ New Land Use Regulation ☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Tax Lots 400 and 500 - Request to change the zoning from Residential Urban Standard Density (RS) to Commercial General (CG) and the Plan Designation from Residential Urban Medium Density (RM) to Commercial General (CG).

Tax Lot 102 - Request to change the zoning from Residential Urban Standard Density (RS) to Commercial General (CG).

Does the Adoption differ from proposal? No, no explaination is necessary

Plan Map Changed from: **Lots 400 and 500 (RM)** to: **Lots 400 and 500 (CG)**

Zone Map Changed from: **Lots 400, 500, 102 - RS** to: **CG- Commercial General**

Location: **Reed Lane between Bend Parkway and Highway 97** Acres Involved: **4**

Specify Density: Previous: **RS and RM Density** New: **NA - CG**

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☒	☒	☐	☐	☐	☒	☐	☐	☒	☒	☒	☒	☒	☐	☐	☐	☐	☐	☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing? ☐ **Yes** ☒ **No**

DLCD FILE No. 002-09(17429)[15446]

If no, do the statewide planning goals apply? ☒ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption? ☐ Yes ☒ No

DLCD file No. ____________________

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Oregon Department of Transportation, Bend La Pine School District, Bend Metro Parks and Recreation

Local Contact: **Heidi Kennedy** Phone: **(541) 617-4524** Extension:

Address: **710 NW Wall Street** Fax Number: **541-388-5519**

City: **Bend** Zip: **97701-** E-mail Address: **hkennedy@ci.bend.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

   ATTENTION: PLAN AMENDMENT SPECIALIST
   DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
   635 CAPITOL STREET NE, SUITE 150
   SALEM, OREGON 97301-2540

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.

6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.

7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax

your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. NS-2115

AN ORDINANCE AMENDING THE CITY OF BEND URBAN AREA ZONING MAP AND GENERAL PLAN MAP BY CHANGING AN APPROXIMATELY 3.12 ACRES OF LAND ZONING DESIGNATION FROM RESIDENTIAL URBAN STANDARD DENSITY TO COMMERCIAL GENERAL AND THE PLAN DESIGNATION FROM RESIDENTIAL URBAN MEDIUM DENSITY TO COMMERCIAL GENERAL.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council opened a public hearing on February 18, 2009, considered the Hearings Officer's findings and record, and has found that the Plan Amendment and Zone Change satisfy the criteria for approval contained in Section 4.6 of the Bend Development Code.

Section 2. The Bend Area General Plan Map and the City's Zoning Map are amended by changing the Plan Designation and zoning of the property described as Tax Lots 400 and 500, Deschutes County Assessor's map 18-12-08AC, as shown in Exhibit "A" and described in Exhibit "B". The Zoning Designation is amended from Residential Urban Standard Density (RS) to Commercial General (CG) and the Plan Designation is amended from Residential Urban Medium Density (RM) to Commercial General (CG).

Section 3. The Bend City Council adopts as findings in support of this ordinance the Hearings Officer's findings in her December 16, 2008, recommendation. The Hearings Officer's recommendation is attached as Exhibit "C".

Read for the first time the 18th day of February, 2009.

Read for the second time the 4th day of March, 2009.

Placed upon its passage the 4th day of March, 2009.

YES: 7 NO: 0

Authenticated by the Mayor the 4th day of March, 2009.

Kathie Eckman

Kathie Eckman, Mayor

Approved as to form:

Mary Winters, City Attorney

ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder

EXHIBIT B

PARCEL A

The North half of Tract Fifteen, REED HIGHWAY ACREAGE, Section 2, Deschutes County, Oregon, EXCEPTING that portion lying West of the East boundary of U.S. Highway 97.

PARCEL B

That part of Tracts Thirteen and Fourteen of REED HIGHWAY ACREAGE, SECTION 2, Deschutes County, Oregon, described as follows:

Beginning at the Northwest corner of Tract 14 and running thence South on the West line of said Tract, a distance of 194.32 feet; thence East at right angles, a distance of 440 feet to a point on the East line of said Tract 13; thence North on the said East line of said Tract 13, a distance of 198 feet, more or less, to the Northeast corner of said Tract 13; thence West on the North line of said Tracts 13 and 14 to the point of beginning.

ORDINANCE NO. NS-2116

AN ORDINANCE AMENDING THE CITY OF BEND ZONING MAP BY CHANGING THE ZONING OF APPROXIMATELY 0.77 ACRES OF LAND FROM RESIDENTIAL URBAN STANDARD DENSITY TO COMMERCIAL GENERAL.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council opened a public hearing on February 18, 2009, considered the Hearings Officer's findings and record, and has found that the zone change satisfies the criteria for approval contained in Section 4.6.300B of the Bend Development Code.

Section 2. The City of Bend Zoning Map is hereby amended by changing the zoning of the property described as Tax Lot 102, Deschutes County Assessor's map 18-12-08AC, as shown in Exhibit "A" and described in Exhibit "B" from Urban Standard Density Residential (RS) to Commercial General (CG).

Section 3. The Bend City Council adopts as findings in support of this ordinance the Hearings Officer's findings in her December 16, 2008, recommendation. The Hearings Officer's recommendation is attached as Exhibit "C".

Read for the first time the 18th day of February, 2009.

Read for the second time the 4th day of March, 2009.

Placed upon its passage the 4th day of March, 2009.

YES: 7 NO: 0

Authenticated by the Mayor the 4th day of March, 2009.

Kathie Eckman

Kathie Eckman, Mayor

Approved as to form:

Mary Winters, City Attorney

ATTEST:

Patricia Stell

Patricia Stell, City of Bend Recorder

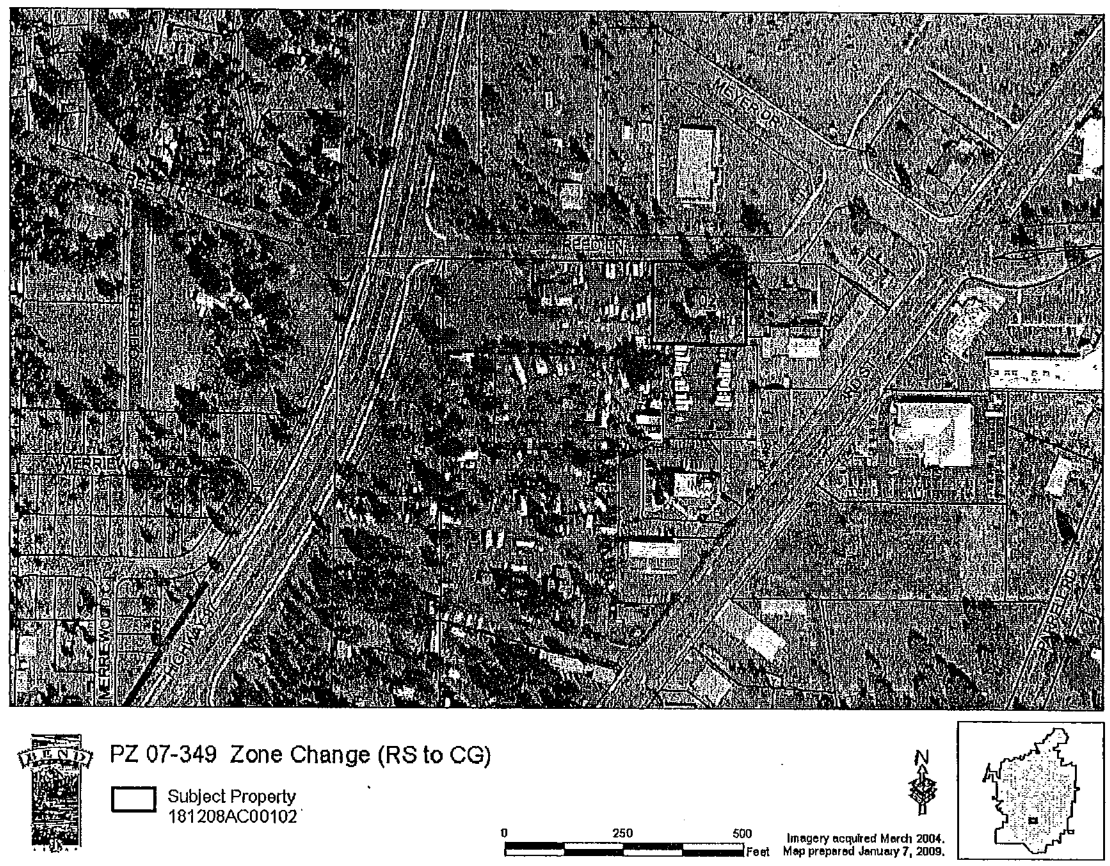

EXHIBIT B

A portion of Tract 12, REED HIGHWAY ACREAGE, Section 8, Township 18 South, Range 12, East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Beginning at the Northwesterly corner of said Tract 12; thence East 195 feet; thence South 172 feet; thence West 195 feet; thence North 172 feet to the point of beginning.

Exhibit C

Ordinance NS-2115
and
Ordinance NS 2116

(See following pages)

Exhibit C

Ordinance NS-2115
and
Ordinance NS 2116

FINDINGS AND RECOMMENDATION OF
CITY OF BEND HEARINGS OFFICER

FILE NUMBERS: PZ-07-348 (Type II Site Plan)
PZ-07-349 (Plan Amendment/Zone Change)
PZ-07-350 (Type I Site Plan)
PZ-07-637 (Class C Variance)

APPLICANT/ PROPERTY OWNER: Nase Company, LLC
P.O. Box 3032
Bend, Oregon 97707

APPLICANT'S ATTORNEY: Liz Fancher
644 N.W. Broadway Street
Bend, Oregon 97701

APPLICANT'S ENGINEER: Bussard Williams, LLC
389 S.W. Scalehouse Court, Suite 100
Bend, Oregon 97702

REQUEST: Tax Lot 102: The applicant is requesting approval of a zone change from RS to CG to match the plan designation (07-349), and site plan approval to convert an existing dwelling to office use (07-350).

Tax Lots 400 and 500: The applicant is requesting a plan amendment and zone change from RS to CG (07-349), and site plan approval to expand the existing RV storage area (07-348).

All Tax Lots: The applicant is requesting an exception to the applicable block length and perimeter standards (07-637).

STAFF REVIEWER: Heidi Kennedy AICP, Senior Planner

HEARING DATE: October 23, 2008

RECORD CLOSED: November 4, 2008

I. APPLICABLE STANDARDS AND CRITERIA

A. Bend Development Code, Ordinance No. NS-2016

1. **Chapter 2.2, Commercial Districts**
2. **Chapter 3.1, Access, Circulation and Lot Design**
3. **Chapter 3.2, Landscaping, Street Trees, Fences and Walls**
4. **Chapter 3.3, Vehicle Parking, Loading and Bicycle Parking**
5. **Chapter 3.4, Public Improvement Standards**
6. **Chapter 3.5, Other Design Standards**
7. **Chapter 4.1, Land Use Review and Procedures**
8. **Chapter 4.2, Site Development and Design Review**
9. **Chapter 4.6, Land Use District Map and Text Amendments**
10. **Chapter 4.7, Transportation Analysis**
11. **Chapter 5.1, Variances**

B. **Bend Urban Area General Plan**

C. **Oregon Administrative Rules (OAR) Chapter 660**

1. **Division 12, Transportation Planning**

   *** OAR 660-012-0060, Plan and Land Use Regulation Amendments**

2. **Division 15, Oregon Statewide Planning Goals**

II. <u>FINDINGS OF FACT:</u>

A. **Location:** The subject property consists of three contiguous tax lots identified as Tax Lots 102, 400 and 500 on Deschutes County Assessor's Map 18-12-08AC. The property abuts Reed Lane and is located in between the Bend Parkway (the "Parkway") and Third Street (Highway 97 Business). Tax Lot 500 abuts the east side of the Parkway. Tax Lots 102 and 400 abut the south side of Reed Lane.

B. **Zoning and Plan Designation:** Tax Lots 400 and 500 are zoned Residential Standard Density (RS) and are designated Residential Medium Density (RS) on the Bend Area General Plan map. Tax Lot 102 is zoned RS and is designated Commercial General (CG) on the Bend Area General Plan map.

C. **Site Description:** The subject property consists of approximately 3.88 acres and is irregular in shape. It is relatively level with a gentle slope down from east to west. Vegetation consists of scattered mature pine trees and native grasses. An overhead power line runs along the property's northern boundary along Reed Lane, a designated local street. Reed Lane connects to Meyer Drive which connects to Third Street, a designated arterial. Reed Lane also provides access to and from the northbound lanes of the Parkway with a right-turn-only limitation and a stop sign at the Parkway. The subject property has no access to the Parkway because it is a designated expressway. Tax Lot 500 abuts the Parkway for its entire length.

Tax Lot 102: Tax Lot 102 is the easternmost tax lot of the three tax lots making up the subject property. It is rectangular in shape, relatively level, and consists of approximately .77 acres. This tax lot is developed with two structures -- a 1,222-square-foot dwelling and a 735-square-foot detached garage – and three paved parking spaces. Vegetation consists of a few mature trees grouped near the tax lot's northeastern corner, one large tree in the front yard along Reed Lane, and a few scattered trees behind the structure. Adjacent to the dwelling is a paved driveway providing access to Reed Lane as well as to the garage and parking spaces.

Tax Lot 400: Tax Lot 400 is roughly rectangular in shape and located west of Tax Lot 102 and consists of approximately 2 acres. It is relatively level and is developed with a dwelling, an attached two-car garage, a paved area in front of the dwelling, and a gravel-surfaced recreational vehicle (RV) storage area. There is a paved driveway providing access to Reed Lane. The dwelling is surrounded by a chain-link fence separating it from the existing RV storage area. There also is a sight-obscuring fence running along the southern boundary of the tax lot separating it from the adjacent Scandia RV and Mobile Home Park. The tax lot also has a number of mature trees.

Tax Lot 500: Tax Lot 500 is roughly triangular in shape with its narrowest dimension – four feet of width – along Reed Lane at its intersection with the Parkway. Tax Lot 500 consists of approximately 1.12 acres and is located south of Tax Lot 400, southwest of Tax Lot 102, and at a slightly lower elevation than these two other tax lots to the northeast and slightly lower than the Parkway to the west. The record indicates that prior to construction of the Parkway, Tax Lot 500 was a part of a 2.5-acre rectangular lot. That lot was bisected by the Parkway right-of-way acquired by the Oregon Department of Transportation (ODOT) through condemnation, and resulted in the creation of three tax lots -- 500, 501 and 502. Tax Lot 500 is developed with a dwelling and unpaved driveway that crosses Tax Lot 400 and provides access to Reed Lane. Without this driveway Tax Lot would not have access to a public street. The property has mature trees grouped around the dwelling and along the western border. No sound barrier exists along the Parkway.

D. **Surrounding Zoning and Land Uses:** The subject property is located at the north end of an area of commercial-zoned land developed with commercial uses and bounded by the Parkway on the west, Reed Lane on the north, Third Street on the east, and Powers Drive on the south. The majority of surrounding land is designated and zoned CG.

North: Reed Lane abuts the subject property to the north. Further to the north across Reed Lane are four parcels, the easternmost of which is owned by ODOT, is approximately .39 acres in size, is vacant and covered with mature trees. Two parcels to the east of the ODOT parcel recently received city approval of a zone change from RS to RM (Residential Medium Density) and CH

(Highway Commercial). The RM-zoned parcel is developed with a 132-unit apartment complex called Eagle's Landing. The CH-zoned parcel has received approval for an office use (PZ-04-483/04-490). Further to the east is a parcel zoned CG and developed with a Pappy's Pizza restaurant. Further to the north across Meyer Drive is the Fred Meyer shopping complex on Third Street.

West: The Parkway and its right-of-way abut the subject property on the west. Land west across the Parkway is zoned residential, developed with residential uses including single- and multi-family dwellings, and separated from the Parkway by a noise buffering wall.

East: Property to the east is zoned CG and is developed with a structure housing a weight-loss business with a paved parking area and a paved driveway providing access to Reed Lane. Further to the east is the George Moreland Plumbing business on land zoned CG.

South: To the south are parcels zoned CG. The abutting property to the south is developed with the Scandia Mobile Home Park and Scandia RV Park owned and managed by the applicant. The record indicates the Scandia RV Park is now the only RV park within the Bend city limits. Parcels east of the RV Park along Third Street are zoned commercial and developed with a variety of commercial uses.

E. **Procedural History:** The subject plan amendment, zone change and site plan applications were filed on June 18, 2007. By a letter dated July 18, 2007, the city advised the applicant that the applications were incomplete, and identified the missing information. The applicant submitted a revised traffic impact analysis, and a public hearing was scheduled for October 25, 2007. However, by a letter dated September 6, 2007 the city again advised the applicant that the applications were incomplete, and the scheduled public hearing was cancelled. By a letter dated December 7, 2007 the applicant requested that the city put the applications "on hold." In late 2007 and early 2008 the applicant submitted the missing information, including revised traffic studies and an application for a variance to the block standards.

A public hearing on the applications was held on October 23, 2008. At the hearing, the Hearings Officer received testimony and evidence, left the written evidentiary record open through October 30, 2008, and allowed the application through November 6, 2008 to submit final argument pursuant to ORS 197.763. The applicant submitted final argument on November 4, 2008 and the record closed on that date. Because the applications include a request for a plan amendment for two of the three tax lots constituting the subject property, and because the proposed zone changes for all three tax lots and the proposed site plans are dependent upon approval of the plan amendment, the Hearings Officer finds the time limitations for completing the applications and for issuing a final local land use decision under ORS 227.178 do not apply.

F. **Proposal:** The applicant requests approval of a zone change from RS to CG for Tax Lot 102 to match its CG plan designation (07-349), and site plan approval to convert the existing dwelling on the tax lot to office use (07-350). The applicant requests approval of a plan amendment and zone change from RS to CG for Tax Lots 400 and 500 (07-349), and site plan approval to expand the existing RV storage area from 55 to 105 spaces (07-348). The applicant also requests an exception to block length and perimeter standards (07-637).

G. **Public/Private Agency Notice:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the City of Bend Traffic Engineer, Fire Department, Grading and Drainage, Public Works, Long-range Planning, and Building Department; ODOT; Arnold Irrigation District; and PacifiCorp. These comments are included in the record.

H. **Public Notice and Comments:** The Planning Division mailed individual written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 250 feet of the subject property. In addition, notice of the public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action. As of the date the record in this matter closed, the city had received no comments from the public. No members of the public testified at the public hearing.[1]

I. **Lot of Record:** Both the applicant's burden of proof and the staff report include a detailed analysis of the lot-of-record status of the subject property. The Hearings Officer understands this discussion is included because the city will not consider or approve a proposed land use unless the subject property constitutes at least one legal lot of record. However, I have found nothing in the city's development code that establishes as a prerequisite to approval of a plan amendment, zone change or site plan that the affected property be a legal lot of record. Section 4.6.300 authorizes quasi-judicial amendments to the plan and zoning ordinance for "a single or limited group of *properties*" (emphasis added). Section 4.2.200 requires site plan approval for "all new *uses*, buildings, *outdoor storage* or sales *areas* and parking lots or alterations" (emphasis added). Nevertheless, because the subject property's lot-of-record status was addressed by both the applicant and staff I include the following findings.

Tax Lot 102: The record indicates Tax Lot 102 was found by Deschutes County to be a legal lot of record in 1991 before it was annexed by the city. A copy of the county's lot-of-record determination is included in the record as Exhibit J to the applicant's burden of proof statement, and shows Tax Lot 102 was created by the recording of a deed prior to the effective date of the county's land division

[1] The applicant also sent notice of the required public meeting concerning its application on November 9, 2006 and held the public meeting on November 27, 2006. The record indicates no neighbors or other members of the public attended the meeting.

regulations.

Tax Lot 400: The applicant's burden of proof includes an extensive lot-of-record analysis that shows Tax Lot 400 consists of at least two legal lots of record. This information shows Tax Lot 400 in its current configuration was created by a deed recorded on February 21, 1964 that conveyed the northern part of two separate subdivision lots -- Lots 13 and 14 of Reed Highway Acreage Section 2. This conveyance occurred prior to the effective date of the county's land division regulations. A copy of the deed is included in the record as Exhibit M to the applicant's burden of proof. The applicant's burden of proof states that in the absence of a lawful vacation or replat of that subdivision, under ORS 92.017 the historic lot lines remain, and therefore the 1964 deed had the effect of creating two separate legal lots.

Tax Lot 500: As discussed in the findings above, prior to acquisition of right-of-way for, and construction of, the Parkway Tax Lot 500 consisted of a 2.5-acre parcel. The applicant's burden of proof states the original Tax Lot 500 was created by a 1954 conveyance and was a legal lot of record because the conveyance predated the county's land division regulations. A copy of this deed is included in the record as Exhibit O to the applicant's burden of proof. Construction of the Parkway resulted in the creation of three separate tax lots: Tax Lot 500 (part of the subject property), Tax Lot 501 (part of the Parkway), and Tax Lot 502 (the small portion of the former Tax Lot 500 located west of the Parkway). Tax Lots 500 and 502 remain part of the same lot of record.

The applicant's proposal would apply CG zoning only to Tax Lot 500. The applicant asserts, and the Hearings Officer agrees, that ODOT's failure to obtain partition approval prior to acquiring what is not Tax Lot 501 for public purposes by condemnation did not render the resulting property division that created Tax Lot 501 unlawful. As the applicant notes, right-of-way acquisition that results in the division of a lot is excluded from the partition definition in ORS 92.010(7). As a result, Tax Lots 500 and 502 remain a single legal lot of record divided by the Parkway. Moreover, I also have found nothing in the city's development code that precludes land use approval for a plan amendment, zone change or site plan that would affect only a *part* of a lot of record – i.e., Tax Lot 500 but not Tax Lot 502.

For the foregoing reasons, the Hearings Officer finds the applicant has established that the subject property constitutes at least one legal lot of record.

III. <u>CONCLUSIONS OF LAW:</u>

PLAN AMENDMENT AND ZONE CHANGE STANDARDS

A. Bend Development Code

1. Chapter 4.6, Land Use District Map and Text Amendments

a. **Section 4.6.300, Quasi-Judicial Amendments**

A. **Applicability, Procedure and Authority. Quasi-judicial amendments generally refer to a plan amendment or zone change affecting a single or limited group of properties and that involves the application of existing policy to a specific factual setting. Quasi-judicial amendments shall follow the Type III procedures, as governed by Chapter 4.1, Land Use Review and Procedures, using the standards of approval in Section 4.6.300.B, Criteria for Quasi-judicial Amendments below. Based on the applicant's ability to satisfy the approval criteria, the application may be approved, approved with conditions, or denied.**

FINDINGS: The applicant is requesting approval of a quasi-judicial plan amendment for Tax Lot 400 and 500 and a quasi-judicial zone change for Tax Lots 102, 400 and 500. These applications are being processed through a Type III procedure, and the proposal's compliance with the standards in Section 4.6.300 is discussed in the findings immediately below.

B. **Criteria for Quasi-Judicial Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:**

1. **Approval of the request is consistent with the relevant Statewide Planning Goals that are designated by the Planning Director or designee;**

FINDINGS: The statewide planning goals are implemented through the city's comprehensive plan and land use regulations which have been acknowledged by the Land Conservation and Development Commission (LCDC). Therefore the applicant need not demonstrate the proposed zone change conforms with the goals. However, the Hearings Officer finds the applicant must demonstrate the proposed plan amendment for Tax Lots 400 and 500 conforms with the applicable goals, discussed in the findings below.

1. **Goal 1, Citizen Involvement**

FINDINGS: The Hearings Officer finds the applicant's proposal is consistent with this goal because the city has provided opportunities for public comment and involvement in the proposed plan amendment, I held a public hearing on the plan amendment applications, and a public hearing or meeting will be held by the Bend City Council

(council) before the plan amendment and zone change can be approved. Owners of record of property located within 250 feet of the subject property received individual written notice of the proposal and the public hearing, and the public hearing also was noticed through publication in the "Bend Bulletin" newspaper and by posting the subject property.

2. Goal 2, Land Use Planning

FINDINGS: The Hearings Officer finds the applicant's proposal is consistent with this goal because it has been reviewed under the city's comprehensive plan and zoning ordinance, and a public hearing has been conducted in accordance with the city's land use procedures.

3. Goal 3, Agricultural Lands

FINDINGS: The Hearings Officer finds this goal is not applicable because the subject property is not designated or zoned for agriculture.

4. Goal 4, Forest Lands

FINDINGS: The Hearings Officer finds this goal is not applicable because the subject property is not designated for forest use.

5. Goal 5, Open Spaces, Scenic and Historic Area and Natural Resources

FINDINGS: The Hearings Officer finds this goal is not applicable because the subject property does not have any inventoried Goal 5 resources.

6. Goal 6, Air, Water and Land Resources Quality

FINDINGS: The Hearings Officer finds the applicant's proposed plan amendment is consistent with this goal because it will have no effect on water or land resources quality.

7. Goal 7, Areas Subject to Natural Disasters and Hazards

FINDINGS: The Hearings Officer finds this goal is not applicable because the record indicates there are no identified natural disasters or hazards on the subject property.

8. Goal 8, Recreational Needs

FINDINGS: The Hearings Officer finds this goal is not applicable because the applicant does not propose to use the subject property for a destination resort or other recreational uses.

9. Goal 9, Economic Development

FINDINGS: This goal requires the city to provide adequate opportunities for a variety of economic activities, to inventory areas suitable to serve industrial and commercial development, and to include such inventories in the comprehensive plan. As discussed in the findings above, Tax Lot 102 already is designated CG and therefore planned for commercial development. The applicant's proposed plan amendment from RS to CG for Tax Lots 400 and 500 would result in an increase the city's commercial lands inventory by approximately 3.88 acres of land suitable for commercial development. Attached to the applicant's burden of proof as Exhibit H is the city's recent inventory of industrial, commercial and employment lands. This document indicates the city currently lacks the 20-year supply of industrial land required by Oregon Administrative Rules (OAR) 660-009-0025. For these reasons, the Hearings Officer finds the proposed plan amendment is consistent with Goal 9.

10. Goal 10, Housing

FINDINGS: The applicant's burden of proof includes the following discussion of Goal 10:

> *"Goal 10 requires cities to provide a sufficient supply of land for residential use that is <u>suitable</u> for residential development. In the case of cities over 25,000 in population, a twenty year supply of residential land is required during periodic review or during a legislative amendment of the comprehensive plan. ORS 197.296. At other times, including during the review of a quasi-judicial plan amendment, the twenty-year supply requirement does not apply.*
>
> *The City has been working under a grant from DLCD* [Department of Land Conservation and Development] *to complete a number of tasks related to Goal 10. One of the studies that the City has prepared relates to the buildable lands inventory. This buildable lands inventory shows that in the year 2004, the City had 2,070 total vacant acres of RS land and 138 acres of vacant RM land. This information is from the Community Development Department Buildable Lands Inventory, City of Bend Residential Lands Study (June 30, 2005). The conclusion of this study states that the City has approximately 2,297 acres of vacant residential lands within its UGB and most of this land is zoned RS.*
>
> *The City's data shows that an adequate supply of residentially zoned land will exist after approval of this request to meet current housing needs. Additionally, the City plans to add thousands of acres of lands to the urban growth boundary while this application is pending before the City. The UGB expansion will provide a full twenty year supply of residential land. As explained by City of Bend Long Range Planner Brian Shetterly at an open house meeting on April 26, 2007 regarding the planned UGB amendment, the City may include a twenty year supply at that time but no more than a twenty-year supply. That position is consistent with the*

language of ORS 197.296, the law that implements Goal 10 for cities of 25,000 and more residents. In such a regulatory setting, the supply of residential land will fall below the twenty-year supply mark as soon as the inventory is expanded due to ongoing residential development and zone changes and plan amendments.

Rezoning Tax Lot 102 does not affect the City's compliance with Goal 10 because the property is designated for commercial, not residential, uses. Therefore, this land is not accounted for in the City's acknowledged buildable lands inventory. Additionally, this tax lot is zoned RS. As the results of the 2004-2005 residential lands study show, the City has over 2,000 acres of vacant RS zoned lands inside the City's UGB. Rezoning .77 acres will not prevent compliance with Goal 10.

Tax Lots 400 and 500 are designated for residential development as well as zoned for residential development. Although approval of the zone change and plan amendment would rezone and re-designate approximately 3.11 acres of land set aside for residential uses, approval of this application is consistent with Goal 10. Based upon the City's 2004-2005 residential lands study, the City has 138 acres of developable RM lands and over 2,000 acres of RS lands. A rezone of 3.11 acres leaves over 130 acres of RM land and over 2,000 acres of RS land. Thus, following the rezone the City is still in compliance with Goal 10.

Goal 10 requires that the land available for residential uses be suitable for such use. Neither Tax Lot 400 nor Tax Lot 500 is suitable for residential uses. Tax Lot 400 contains a grandfathered, nonconforming RV storage use. The applicant intends to continue and expand that use, a commercial use, beyond the boundaries of use that have been recognized by the City code enforcement officer to include lands it has used in the past for RV storage. Thus, the land is not available for residential development. The use of the property for RV storage is essential to the continued success of the applicant's adjacent Scandia RV Park and Mobile Home park businesses. The applicant does not believe that residential development is not [sic] *appropriate for this property because the property is part of a block of commercially-zoned and developed properties that is separated from nearby residential uses by Reed Lane and the Parkway.*

Tax Lot 500 is not suited for residential uses because it abuts the Parkway and lacks any sound barriers to soften the traffic noise. The east part of Tax Lot 400 is also unsuited to residential use due to noise impacts from the Bend Parkway. The Parkway bisected Tax Lot 500 and created a triangular remainder lot that lacks any access to an adjacent road. The triangular shape of the lot makes development of medium density housing at City-required densities extremely difficult. It makes it impossible for the applicant to set residential development far enough back from the parkway *to avoid harming the health of potential residents.*

The applicant believes that the lack of sound protection from the Parkway makes Tax Lot 500 and the east part of Tax Lot 400 particularly undesirable for residential uses. The Parkway is extremely noisy. High levels of noise damage the hearing of humans. It would be prohibitively expensive for the applicant to construct sound barriers like those provided to other residential property in the area. Such barriers would also make the property unattractive to potential tenants as it would block light as well as sound.

The location of Tax Lots 400 and 500 near the Bend Parkway is an unsafe location for children. A person was recently hit and killed while crossing the Parkway a short distance to the north of the subject property.

The parcel to the north of Reed Lane that was approved to be developed with a 132-unit apartment complex, Eagle's Landing, has different characteristics that allowed the use of the subject property for apartments. The south part of Eagle's Landing, is separated from the Parkway by a vacant parcel of land owned by ODOT that is covered by mature trees. Many of the apartment units are set back farther from the Parkway than would be possible for Tax Lot 500 because of the width of Lot 500 and the undeveloped ODOT buffer right-of-way. Also, the units were developed before the City adopted maximum setback requirements that require residences to be constructed within 20 feet of the Parkway right-of-way. The ground level of apartment units on the property to the north of the subject property is located far below the elevation of the Parkway. This reduces sound levels for lower level units and makes it difficult for children to access the travel lanes of the Parkway from their homes."

The Hearings Officer concurs with the applicant's analysis, and based on it finds the proposed plan amendment for Tax Lots 400 and 500 is consistent with Goal 10.

11. Goal 11, Public Facilities and Services

FINDINGS: This goal requires the city to plan and develop an orderly arrangement of public facilities and services for urban and rural development. The Hearings Officer finds the applicant's proposed plan amendment is consistent with this goal because any development on the subject property following its redesignation and zoning to CG will be served by urban infrastructure including water provided by a city water service franchisee, city sewer service, and public streets.

12. Goal 12, Transportation

FINDINGS: This goal is implemented through the Transportation Planning Rule (TPR), discussed in detail in the findings below. For the reasons set forth in those findings, incorporated by reference herein, the Hearings Officer finds the applicant's proposal is consistent with the TPR and therefore satisfies Goal 12.

13. Goal 13, Energy Conservation

FINDINGS: This goal requires the city to give priority in land use planning to the efficient utilization of energy. The Hearings Officer finds the applicant's proposal is consistent with this goal because it would allow the subject property to be developed with commercial uses within a commercial area between the Parkway and Third Street, and in particular with an expanded RV storage area that would in part serve residents of the Scandia Mobile Home Park. Thus, it would facilitate energy conservation by locating commercial development in general, and the RV storage area in particular, close to existing commercial development and the population it serves.

14. Goal 14, Urbanization

FINDINGS: This goal requires cities and counties to assure their land use planning will provide for the orderly and efficient transition from rural to urban land uses. The Hearings Officer finds this goal is not applicable because the subject property already is located within the Bend city limits and urban growth boundary.

15. Goals 15 through 19

FINDINGS: The Hearings Officer finds these goals are not applicable to this proposal because they address river, ocean, and marine resources not located on or near the subject property.

For the foregoing reasons, the Hearings Officer finds the applicant's proposed plan amendment satisfies this approval criterion.

2. Approval of the request is consistent with the relevant policies of the Comprehensive Plan that are designated by the Planning Director or designee;

FINDINGS: The applicant proposes to change the plan designation of Tax Lots 400 and 500 from RS to CG, and to change the zone from RS to CG for Tax Lot 102. The applicant and staff have identified a number of plan policies as applicable to the proposed plan amendment and zone change. However, the Hearings Officer finds it is necessary first to determine to what extent these plan policies constitute mandatory approval criteria for this quasi-judicial plan amendment and zone change applications. Whether a plan policy constitutes such a criterion depends not only on the language of the policy but also on the function the plan assigns to the policy. *Von Lubken v. Hood River County*, 104 Or App 683, 689, 803 P2d 750 (1990), *adhered to* 106 Or App 226, *rev den* 311 Or 349 (1991). *Schellenburg v. Polk County*, 21 Or LUBA 425 (1991).

The city's comprehensive plan includes the following language describing its purpose:

> **The comprehensive plan provides the foundation for the planning process by establishing long-range goals and objectives and by providing, through its various elements, an integrated view of future public and private development patterns in the community. It is not the last word, nor is it the first * * *. <u>The comprehensive plan is not the zoning plan</u> * * *. The plan <u>recommends appropriate uses</u> for various areas and attempts to provide a maximum range of choice in the urban area within the limits of community living.** (Plan, page 2; emphasis added.)
>
> **The plan must be implemented if it is to be of value to the community. <u>It requires</u> * * * <u>the administration of appropriate codes and ordinances</u> which influence development * * *. The Comprehensive Plan provides basic guidelines with which the community can chart a course for change * * *.** (Plan, page 3; emphasis added.)
>
> **The Comprehensive Plan policies are based on the established general goals and objectives described in Part III and are supported by adequate findings * * *. The Plan maps and text are intended as <u>a statement of public policy</u> encompassing development objectives of and for the urbanizing area of Sisters * * *.** (Plan, Page 56; emphasis added.)

In several previous decisions this Hearings Officer has found the above-underscored language indicates the plan and its policies were intended only to be recommendations and statements of broad public policy rather than to establish mandatory approval criteria for quasi-judicial land use applications. Nevertheless, I also have found that some plan policies are written in mandatory terms, suggesting they *were* intended to be more than mere recommendations or statements of policy. I have found that in the absence of a clear statement in the plan that its policies are *not* intended to apply to quasi-judicial plan amendment applications, I must examine each plan policy identified by the city and the applicant as applicable in order to determine its applicability. I adhere to those previous holdings here and review the following plan policies identified by the applicant and planning staff.

> <u>Future Plan Updates</u> (Page P-6)
>
> **The General Plan is a document that changes over time to reflect new information and new directions for the future. Amendments of additions to the General Plan text, exhibits, and policies go through a public hearing and review process before being adopted by the governing bodies. Changes and updates can be generated in at least six ways:**
>
> * * *
>
> - **Changes proposed by individuals or other agencies. At any time an**

individual, corporation, or public agency can propose a change to the Plan text, land use map, other exhibits, or policies. <u>A person or agency proposing the change has the burden to demonstrate a public need and benefit for the change.</u> (Emphasis added.)

FINDINGS: The applicant, as an individual, proposes to change the comprehensive plan designation of Tax Lots 400 and 500 from RS to CG and the zoning map classification of the subject property from RS to CG. The applicant also proposes a zone change from RS to CG for Tax Lot 102 to conform the property's zone and plan designation. The Hearings Officer finds the above-quoted plan provision, which is written in mandatory terms, requires the applicant to demonstrate the proposed plan amendment is justified by "a public need and benefit for the change."

The applicant's burden of proof provides the following justification for the proposed amendments:

> *"The City has required the applicant for zone change and plan amendment applications to show a public need and benefit for the change. See Decision and Recommendation of City of Bend Hearings Officer File No. 02-430 (approval of a zone change and plan amendment from RM to CH for property located at 1045 SE Third Street, adjacent to Carerra Motors) (hereinafter referred to as the "Carerra Motors Decision"),* ***Exhibit I.*** *In the Carerra Motors Decision, Hearings Officer Tim Elliot found that the applicant demonstrated a public need and benefit for the requested zone change and plan amendment to change the subject property from RM to CH because of the shortage of commercial lands within the City, even though the request removed residential lands from the City's residential lands inventory.*
>
> *The applicant can demonstrate a public need and benefit for the requested zone changes and plan amendments in this case for similar reasons. The Carerra Motors decision was made after the City amended its Comprehensive Plan and Goal 9 inventories in 1998, yet the Carerra Motors Decision highlights the then existing shortage of commercial lands compared to the rapid development of commercial properties. The City has expressed concern over the shortage of commercial properties that still exists and the need for commercial lands available to support the expansion and growth of economically viable businesses. Approving this zone change and plan amendment request provides the City with over three acres of additional commercial lands. It provides the public with land needed to support one of the last remaining RV and mobile home parks in the City. New RV parks are not likely to be sited in the City or surrounding rural lands because they must be located in the CL or CG zoning districts and be approved as conditional uses. The high cost of commercial land makes new park projects infeasible for new property owners. The need for RV storage is increasing as the size of residential City lots continues to*

decline. There is no other available commercial land or other appropriately zoned land abutting the Scandia RV Park that can be used to store RVs. The applicant needs additional storage space which is available on Tax Lots 400 and 500 – abutting Scandia RV Park. Furthermore, RV parks attract visitors to the area and the location of the park is well situated and easily accessible via the Parkway or Highway 97 (Business).

The applicant understands that the City has expressed concern over rapid residential growth and expressed a need for more residential lands including RM-zoned lands. The City has recently studied its residential lands inventory and shown that it has an adequate existing supply of RS and RM zoned lands to meet current needs but that additional land is needed to provide a twenty-year supply of land in the urban area. State law does not require the City of Bend to provide a twenty-year supply during a quasi-judicial zone change but that supply is being provided because the City has chosen to expand its urban growth boundary to provide such a supply. As the City is acting to provide a full twenty year supply at this time, the applicant has advised the City Long Range Planning staff of this application so that it can, if it desires, offset lands removed from the residential lands inventory by this application with lands located outside the current UGB.

As in the Carerra Motors case, there is a greater public benefit from approval of this zone change to rezone these properties to commercial lands." (Bold emphasis in original.)

The Hearings Officer concurs with the applicant's analysis, and finds the applicant has demonstrated there is a public need for and benefit from its proposed plan amendment and zone change for Tax Lots 400 and 500 and proposed zone change for Tax Lot 102.

2. **CHAPTER 1: PLAN MANAGEMENT AND CITIZEN INVOLVEMENT**

<u>Development within the Urban Growth Boundary</u>

a. **Policy 5. The city and county <u>will encourage</u> compact development and the integration of land uses within the Urban Growth Boundary to reduce trips, vehicle miles traveled, and facilitate non-automobile travel.** (Emphasis added.)

FINDINGS: The Hearings Officer finds the above-underscored language indicates this plan provision states city policy but does not establish a mandatory approval criterion for plan amendments or zone changes.

3. **CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH**

Commercial Development

a. **Policy 20. The existing pattern of commercial designations shown on the Plan Map along Highway 97 and Highway 20, and along arterial streets such as Newport Avenue, Galveston Avenue, SW 14th Street, 27th Street, and O.B. Riley Road shall not be extended farther along the street corridors.** (Emphasis added.)

FINDINGS: The Hearings Officer finds the above-underscored language, written in mandatory terms, indicates it was intended to apply to proposed plan amendments that could result in the extension of commercial development along the identified transportation facilities. Therefore, I find I must consider this policy in evaluating the applicant's proposed plan amendment from RS to CG for Tax Lots 400 and 500.

The applicant's burden of proof includes the following relevant discussion of this policy's application to its proposed plan amendment.

"Tax Lots 102 and 400 adjoin Reed Lane and no other road. Reed Lane is a local street. Tax Lot 500 adjoins the Bend Parkway. The applicant believes that this policy applies to US Highway 97 Business (Third Street) rather than to the Bend Parkway in the area of the subject property for the following reasons:

A. The City comprehensive plan's transportation plan map shows Third Street (US Highway 97 Business) as being Highway 97 where Highway 20, Third Street (US Highway 97 Business) and the Bend Parkway intersect at the north end of Bend.

B. The City's transportation plan map shows the Bend Parkway, for its entire length, as the Bend Parkway, not as Highway 97.

C. The text of the comprehensive plan refers to the Bend Parkway as the 'Bend Parkway.'

D. Under the State's classification system and the City's transportation plans, the Bend Parkway is designated an expressway rather than a highway.

E. The County Tax Assessor's maps show Third Street as US Highway 97 Business.

F. The Carerra Motors property that was rezoned to commercial zoning adjoins the Bend Parkway. The City Council adopted a decision approving the zone change and plan amendment, ***Exhibit I.*** *In the decision it found that this Plan policy did not apply to that* *land use application, apparently, with the belief that the Parkway is not Highway 97.*

G. *The apparent intent of this Plan policy is to prevent the extension of commercial development along Third Street because this street has been subject to strip development. Strip development involves developments on shallow lots that face and take access to the highway or arterial streets. The Parkway is a limited access highway. Strip development has not occurred along the Parkway. All access rights to the Parkway, unlike US Highway 97 Business, were acquired for the subject property by the State Highway Department so that strip development may not occur along the Parkway. It, therefore, is most logical to interpret this policy to apply to US Highway 97 Business rather than the Bend Parkway.*

The applicant also believes that the rezoning of Tax Lot 500 to commercial zoning will not cause commercial designations to extend farther along street corridors. Instead, the zone change proposed in this case will allow the City to even up the boundaries of an existing commercial area to match the boundary created by the Bend Parkway, rather than adding new commercial areas to the ends of an existing strip of commercial land. This plan policy was written to prevent further north-south growth of the commercial zoning that exists along Highway 97 Business or other growth at the ends of commercial areas. A change that allows a widening of an existing commercial area is not the intended target of this plan policy.

In this case, the State of Oregon filed a condemnation action to bisect Tax Lot 500 and to remove it from the residentially-zoned land that adjoined it on its western boundary. The State also took all access to the property making it difficult, if not impossible, for the applicant to develop the property independent of the adjoining commercial property. This left Tax Lot 500 as an isolated residential property divided from other residential lands by the Parkway right-of-way to the west and south, commercial development and zoning to the south and grandfathered commercial use on Tax Lot 400. [Footnote omitted.] *This change of circumstance makes it appropriate to change the zoning and plan designation of this property to fit its new circumstance.*

The applicant also believes that the above circumstances make it appropriate for the City's planning director to find that this policy does not apply to this application and does not need to be addressed by City staff in the staff report. This action is expressly allowed by the approval criterion. This policy does not apply to Tax Lots 102 and 400 as they are located on a local street rather than on an arterial street or one of the identified highways." (Bold emphasis in original.)

The Hearings Officer agrees with the applicant's analysis, and in particular that the city does not consider the Parkway to constitute Highway 97, and therefore this policy is not applicable to the proposed plan amendment for Tax Lot 500 which abuts the Parkway.

b. **Policy 21. No new strip commercial development or extensions of the commercial designations shall be permitted along arterial or collector streets.** (Emphasis added.)

FINDINGS: The Hearings Officer finds the above-underscored language, written in mandatory terms, indicates it was intended to apply to proposed plan amendments that could result in the extension of strip commercial development along the identified transportation facilities. Therefore, I find I must consider this policy in evaluating the applicant's proposed plan amendment. The applicant argues, and I agree, that because the subject property abuts Reed Lane, a designated local street, and the Parkway, a designated expressway, no part of the subject property adjoins an arterial or collector street, and therefore this policy is not applicable to the proposed plan amendment.

c. **Policy 22. The city shall strive to retain and enhance desirable existing commercial areas and encourage property owners' efforts to rehabilitate or redevelop older commercial areas.** (Emphasis added.)

FINDINGS: The Hearings Officer finds the above-underscored language indicates this plan provision states city policy but does not establish a mandatory approval criterion for plan amendments or zone changes.

d. **Policy 24. All commercial developments shall be subject to special development standards relating to setbacks, landscaping, physical buffers, screening, access, signs, building heights, parking areas, and design review.**

e. **Policy 27. Commercial developments that abut residential zones or residential uses shall be subject to special setback and screening provisions.** (Emphasis added.)

FINDINGS: Although these policies include mandatory language, the Hearings Officer finds they are implemented through approval criteria in the city's development code, discussed in the findings below, and therefore do not themselves establish a mandatory approval criterion.

f. **Policy 31. It is the intent of the Plan to allow commercial development adjacent to arterial streets and highways in areas designated for commercial development, provided that the developments access onto frontage roads or interior roads, and that access onto the highway or arterial will be limited. Points of access will be encouraged that provide for adequate**

and safe entrances and exits, and that favor right turns and merging over the use of traffic signals. (Emphasis added.)

FINDINGS: The Hearings Officer finds the above-underscored language indicates this plan provision states city policy but does not establish a mandatory approval criterion for plan amendments or zone changes.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated the proposed plan amendment and zone change satisfy this approval criterion to the extent plan policies establish approval criteria.

3. **The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property; and**

FINDINGS: In this Hearings Officer's previous decision in *Three Pines Ridge LLC* (PZ-06-737), I held this criterion replaced former Section 10-10.33(2)(d) of the city's land use regulations that required "the applicant for a zone change to demonstrate it would 'result in the orderly and efficient extension or provisions of public services,'" with a "concurrency" requirement. I also found this criterion requires the applicant to show that either adequate public facilities and services are in place, or they are planned to be in place concurrent with development. I adhere to these holdings here. Affected public facilities and services are addressed in the findings below.

a. Water. The subject property currently receives domestic water from Roats Water System, Inc. (Roats), a city-franchised private water company, from a 12-inch water line located in Reed Lane. The existing buildings on the subject property – three dwellings – will continue to receive Roats water, and the buildings on Tax Lots 400 and 500 will continue to be used for dwellings. The dwelling on Tax Lot 102 would be converted to office use which the Hearings Officer finds would have minimum water demand. In addition, I find the proposed RV storage area on Tax Lots 400 and 500 will have minimal if any water demand. The record includes a "will-serve" letter from Roats stating it can provide water service with a fire flow rate of over 2,000 gallons per minute (gpm) and 20 residual pounds per square inch (psi) for the subject property.[2] Therefore, I find there is and will be adequate water service for existing and proposed development on the subject property.

b. Sewer. The subject property is located in an area of existing commercial development served with city sewer facilities. The record indicates the existing dwellings on the subject property currently are served by on-site septic systems that are adequate to support the existing uses on the subject property, and likely also the proposed

[2] The record also includes "will-serve" letters from Bend Broadband (television and communications), Cascade Natural Gas, PacifiCorp (electric) and Qwest (telephone).

change of use on Tax Lot 102 from residential to office. The Hearings Officer finds that as a condition of site plan approval for the change of use of the dwelling on Tax Lot 102 the applicant will be required to obtain a septic authorization notice from the county for the change of use. The applicant argues, and I agree, that because there is city sewer service in the surrounding area, any future redevelopment of the subject property with other commercial uses will be served by adequate city sewer service.

c. Police and Fire Protection. The subject property is located within the Bend city limits and therefore is and will continue to be served by the Bend Police and Fire Departments. Included in the record as Exhibit T to the applicant's burden of proof is a copy of a letter from the fire department stating the subject property is located within the department's fire protection and ambulance response area.

d. Parks and Schools. The applicant argues, and the Hearings Officer agrees, that the need for parks and schools is directly related to residential development, and because the applicant is requesting approval to redesignate and rezone the subject property to commercial, the applicant's proposal will not add to the need for parks and schools.

e. Streets. The applicant submitted several traffic studies prepared by Ferguson & Associations, including a final traffic study dated July 17, 2008. As discussed in detail in the findings below concerning compliance with the TPR, the Hearings Officer has found the July 2008 traffic study demonstrates the proposed plan amendment and zone change will not exceed the capacity of Reed Lane or other affected streets or intersections, and that existing transportation facilities are adequate to support the existing uses and new uses proposed by the applicant for the subject property, including the change of use of the dwelling on Tax Lot 102 to office use, and the expansion of the existing RV storage area from 55 to 105 spaces.

The applicant has proposed to dedicate five feet of additional right-of-way for the abutting segment of Reed Lane and to construct property-tight sidewalks along the Reed Lane frontage on Tax Lot 102. The applicant has proposed that this sidewalk meander around existing trees in some places. The applicant has not proposed to construct sidewalks along the Reed Lane frontage on Tax Lots 400 and 500 for the reason that impacts from the proposed plan amendment and zone change on these tax lots are minimal and in any case would not generate *foot* traffic along city streets necessitating sidewalks. For the reasons set forth in the findings below concerning sidewalks, I have found no sidewalks are justified or will be required on the segment of Reed Lane abutting Tax Lots 400 and 500.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated the proposed plan amendment and zone change satisfy this approval criterion.

4. **Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property that is the subject of the application; and the provisions of Section 4.6.600; Transportation Planning Rule**

Compliance.

FINDINGS:

a. Mistake. The Hearings Officer finds there was no mistake in the original residential plan designation of Tax Lots 400 and 500 and the original residential zoning of Tax Lots 102, 400 and 500.

b. Inconsistency. The Hearings Officer finds there is an inconsistency between the CG plan designation and the RS zoning of Tax Lot 102, and the applicant's proposed zone change would conform the plan designation and zoning. In addition, the applicant proposes to change both the plan designation and zoning of Tax Lots 400 and 500 to CG.

c. Change in Neighborhood or Community. The applicant's burden of proof presents the following argument concerning a change in the neighborhood or community:

> *"There has been a significant change in the neighborhood that justifies the zone change and plan amendment proposed for Tax Lots 400 and 500. The construction of the Bend Parkway in the 1990s divided these lots from a large, contiguous area of residential land that was well-suited to residential development. The majority of this residential area lies to the west of the Parkway. The construction of the Parkway also took about half of Tax Lot 500 and left a narrow triangle of land without any street access. The high volumes of traffic on the Parkway create noise on Tax Lots 400 and 500 that are incompatible with residential development. When the State of Oregon constructed the Bend Parkway they did not provide sound buffering for the subject property. The applicant's family was told that buffering was not needed because it was anticipated that the subject property would be rezoned to commercial zoning.*
>
> *The subject properties are the only privately owned properties located between the Bend Parkway, Third Street, Reed Lane and Powers Road that are not zoned commercial. All of the surrounding properties, with the exception of Tax Lot 403, Map 18-12-08AB, are developed with commercial uses. The Parkway made Tax Lot 500 a triangular-shaped parcel that is difficult to develop with apartment units or houses due to the shallow lot depth of Tax Lot 500 and the yard requirements of the RM zoning district. These factors prevent the north part of Tax Lot 500 from being used for apartments or parking areas in the RM zone.*
>
> *The disappearance of RV parks in and around the City of Bend is a change in circumstances that justifies the requested zone changes and plan amendments. Scandia RV and Mobile Home Park is one of the two remaining RV parks in the City of Bend. At the time the property was first zoned RS, RV parks and mobile home parks were much more abundant in*

and around the City. New land use laws were also adopted to prohibit RV parks that provide hookups from being located on rural lands. This strictly limits the places where parks may be located, making it almost impossible to site a new RV park in Deschutes County."

The Hearings Officer agrees with the applicant that construction of the Parkway adjacent to the subject property and without sound buffering, the bisection of former Tax Lot 500 by the Parkway, and the isolation of the subject property from most other residential development in the area (with the exception the apartment complex across Reed Lane), represent significant changes in the neighborhood and community. I find these changes have rendered the subject property in general, and Tax Lot 500 in particular, unsuitable for residential development, therefore justifying the proposed plan amendment and zone change from residential to commercial. I also find the loss of most of the city's RV parks over the last several years also represents a significant change in the community that makes it desirable to maintain the existing Scandia RV Park and to expand the RV storage area adjacent to it on Tax Lots 400 and 500.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated the proposed plan amendment and zone change satisfy this approval criterion.

TRANSPORTATION PLANNING RULE

b. Section 4.6.600 Transportation Planning Rule Compliance

When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

FINDINGS: OAR 660-012-0060, part of the TPR, provides as follows:

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

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

(b) **Change standards implementing a functional classification system; or**

(c) **As measured at the end of the planning period identified in the adopted transportation system plan:**

(A) **Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**

(B) **Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or**

(C) **Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.**

The applicant submitted several traffic studies prepared by Scott Ferguson, P.E., of Ferguson and Associates, analyzing the impacts on affected transportation facilities from the applicant's proposed plan amendment and zone change and potential commercial development. The initial traffic study was submitted in November of 2006. The city's traffic engineer, Robin Lewis, expressed concern that this traffic study did not adequately address or analyze the "reasonable worst-case scenario" for traffic generated by commercial development on each of the three tax lots constituting the subject property with the proposed CG zoning. In response, Mr. Ferguson submitted a revised traffic study in January of 2007 and further revisions in May of 2008. In his September 13, 2007 comments on the applicant's proposal, James Bryant of ODOT stated his agency found the traffic studies to be insufficient to determine potential impacts on the Parkway or to demonstrate the TPR requirements would be satisfied. In addition, Mr. Bryant recommended that the city and ODOT close the Reed Lane access to the Parkway.

Following city staff and ODOT comments, Mr. Ferguson submitted a revised traffic study dated May 2008, and another revised study dated July 17, 2008 (hereafter "final traffic study"). The final traffic study analyzed the potential impact of commercial development on the subject property on Reed Lane and Meyer Drive, as well as four nearby intersections: Third Street/Brosterhous Road, Third Street/Reed Lane, Parkway/Reed Lane, and the site access driveway with Reed Lane. The final traffic study found commercial development under the proposed zone change would increase the amount of vehicle traffic in the area. However, the traffic study concluded as follows:

"The incremental increase in trip generation from changing the existing

zoning was forecast to generate 40 primary external p.m. peak hour trips and 574 primary external daily trips.

All study intersections meet City of Bend operation standards in the year 2023 with the proposed zone change.

A northbound right-turn lane on the Parkway at Reed Lane meets ODOT criterion 1: Vehicular volume in the 2023. Criterion 2: Crash experience and criterion 3: Special cases were not evaluated.

The assessment of the TPR concluded the proposed change in zoning of the site from RS – Residential Urban Standard Density, to CG – Commercial General – would not significantly impact existing or planned transportation facilities. The proposed zone change would not be significant under TPR criteria, as transportation facilities impacted by the proposed zone change are adequate to support the potential increase in trip generation. Since the proposed change would not significantly impact existing or planned transportation facilities, it can be concluded that the requirements of OAR 660-012-0060 are met and no further action would be required."

In comments dated July 22, 2008, Julia Wellner of the city's transportation engineering department stated the applicant's final traffic study provided an adequate "worst-case scenario" analysis, met the requirements of the TPR for traffic studies, and showed compliance with the TPR without any requirement of off-site mitigation.[3]

For the foregoing reasons, and based on the applicant's final traffic study and the city's comments thereon, the Hearings Officer finds the applicant's proposed plan amendment from RS to CG for Tax Lots 400 and 500, and proposed zone change from RS to CG for Tax Lots 102, 400 and 500, will not change the functional classification of an existing or planned transportation facility or change standards implementing a functional classification system. I further find the proposed plan amendment and zone change will not allow land use and levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility. Finally, I find the level of potential commercial development on the subject property is so low that it will not worsen the performance of an existing or planned transportation facility. Therefore, I find the applicant's proposal satisfies the TPR.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated its proposed plan amendment from RS to CG for Tax Lots 400 and 500, and its proposed zone change from RS to CG for Tax Lots 102, 400 and 500 satisfy all applicable plan amendment and zone change approval criteria.

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[3] Although the record indicates a copy of the final traffic study was provided to ODOT, the record does not include any comments from ODOT on the final study.

SITE PLAN APPROVAL CRITERIA

2. **Chapter 4.2, Site Development and Design Review**

   a. **Section 4.2.200, Site Development Review Applicability and Procedure**

      A. **In all zones, except for a single family unit on one lot, <u>all new uses</u>, buildings, <u>outdoor storage</u> or sales <u>areas</u> and parking lots or alterations shall be subject to the provisions of this section.**

      Site Development Review approval may not be required where a proposed alteration of an existing building does not exceed 10% or 1000 square feet, whichever is greater, of the original structure unless the Planning Director finds the original structure or proposed alteration does not meet the requirements of this ordinance or other ordinances of the City of Bend. In the residential zones where duplexes and triplexes are allowed, such development may undergo a Type 1 review process if they meet minimum standards as set forth in subsection 3.6.200(H), Duplex and Triplex development.

      <u>Existing lawfully developed sites that do not conform to the current site development standards are only required to meet those standards on the portions of the site development affected by the proposed alteration or expansion.</u> Development of such sites shall be in accordance with Section 5.2. (Emphasis added.)

FINDINGS: The applicant has requested approval to convert the existing dwelling on Tax Lot 102 to office use, and to expand the existing RV storage area on Tax Lots 400 and 500 from 55 to 105 spaces. In light of the above-underscored code language, the Hearings Officer finds these proposals require site plan approval under the standards and criteria discussed in the findings below.

      B. **General Submission Requirements. The applicant shall submit an application in conformance with the provisions of Chapter 4.1, Procedures.**

FINDINGS: The applicant submitted an application for site plan review accompanied by a detailed burden of proof and exhibits that the Hearings Officer finds conformed to the requirements of Chapter 4.1.

C. Development Review Information. * * *

FINDINGS: This paragraph requires the applicant to submit with its site plan application detailed information including a site development plan, preliminary grading plan, landscape plan, architectural drawings if applicable, and a traffic impact study. The Hearings Officer finds the applicant's original and revised submissions include the required information.

D. Site Development Approval Criteria. Prior to issuance of building permits, the City shall approve, approve with conditions or disapprove the proposed site development plan. In approving the plan, the City shall find that all provisions of the ordinance are met. The following criteria shall be considered:

1. The proposed land use is permitted by the underlying land use district;

FINDINGS: The applicant requests site plan approval to change the use of the existing dwelling on Tax Lot 102 from residential to office, and to expand the existing RV storage area on Tax Lots 400 and 500 from 55 to 105 spaces. Chapter 2.2 of the development code establishes the commercial districts, and Section 2.2.300 establishes the uses permitted in the CG Zone as follows:

A. Permitted Uses. The land uses listed in Table 2.2.300 are allowed in the Commercial Districts as designated, subject to the provisions of this Chapter. Only land uses that are specifically listed in Table 2.2.300, and land uses that are approved as "similar" to those in Table 2.2.300, may be permitted or conditionally allowed.

Table 2.2.300 - Permitted Land Uses

Land Use	CG
Existing Residential uses	P
Offices and Clinics	P
Commercial Storage	
- not enclosed in building	P

Key to Permitted Uses
P = Permitted, subject to Chapter 4.1

Offices and clinics are uses permitted outright in the CG Zone, and therefore the Hearings Officer finds the applicant's proposed conversion of the existing dwelling on Tax Lot 102 to an office use is permitted outright in the CG Zone.

Tax Lots 400 and 500 are developed with existing dwellings as well as an RV storage area that is not enclosed in a building. The staff report states the city considers the existing RV storage area to be a use permitted outright in the CG Zone. Nevertheless, in its comments on the applicant's proposal, the city's long-range planning department questioned whether the existing or expanded RV storage area is in fact permitted in the CG Zone inasmuch as Section 2.4.300 of the establishing uses permitted in the industrial zones includes a "commercial" use described as "vehicle, equipment and boat repair, rental, storage, service."

The record includes a copy of an electronic mail message dated September 6, 2007 from former city associate planner Cheryl Dix to the applicant's attorney concerning RV storage areas and stating:

> *"Research of how the City has traditionally treated outdoor RV storage in commercial zones has revealed only enclosed RV storage in the Light Industrial (IL) zone under the 'old' code. The project was a site plan application for 39,730 sq.ft. RV storage buildings on IL zoned land abutting the south side of Reed Market Rd. and the east side of American Lane. (PZ 04-57). I have discussed the results of the research with Colin* [Stephens, the city's Current Planning Manager] *and his response is attached below:*
>
> > *'Sounds like we don't have a pattern to rely upon in making this determination. It is apparent in my read that a stand-alone vehicle storage lot would need to be in the IG or IL because vehicle storage is a listed use. That said, Trailer Park/Campground is a conditional use in the CL and CG. Commercial storage not enclosed in a building is permitted in the CL and CG, so a case could be made that storage of RVs can be allowed as an ancillary use associated with the primary commercial use as a trailer park. The storage would need to be less intensive than the primary use and take up less area. Since this is going to a hearings officer for a recommendation on the plan amendment the hearings officer will need to make a finding that the proposed 'worse case scenario' use of RV storage is in fact an allowable use. That should give us an answer.'"*

The Hearings Officer understands these comments to suggest that because "vehicle * * * storage" is specifically permitted in the IL Zone and RV storage could fall within that use, the proposed expansion of the RV storage area on Tax Lots 400 and 500 would not be allowed in the CG Zone under the more general "commercial storage * * * not enclosed in building" use. The exception would be if the RV storage area were to be considered "ancillary" to the existing Scandia RV Park which as a "trailer park" is permitted conditionally in the CG Zone, and/or were ancillary to an existing "residential" use permitted outright in the CG Zone.

The applicant addressed this issue in its memorandum submitted at the public hearing and included in the record as Hearing Exhibit B. The applicant argues RV storage areas are not prohibited in the CG Zone for the following reasons. First, when the city adopted its current development code which took effect in August of 2006, it intentionally elected to create "broad, inclusive categories of uses permitted in the commercial zones" which would eliminate the need for detailed lists of uses and remove questions about whether allowance of a specific use in one zone would prohibit that use in another zone simply for that reason. Second, provisions governing uses on industrial-zoned land were intentionally written using *narrower* language than that used in other zones because LCDC's order concerning the city's recent periodic review directed the city to limit non-industrial uses in industrial zones. Reading the industrial zone list of uses to require that RV storage areas be located *only* in industrial zones would be contrary to that directive by forcing a "commercial" use onto industrial land. Finally, the applicant argues that in any event, the industrial zone use of "vehicle, equipment and boat repair, rental, storage and service" is not more specifically worded than the "commercial storage * * * not enclosed in building" use permitted in the CG Zone and therefore would not be controlling. Rather, the applicant argues, the industrial zone use is one "that includes general vehicle storage and allows related repair, rental and service."

The Hearings Officer finds that in determining whether a use falls within a particular use category I must first look to the plain language of the ordinance. The permitted use in the CG Zone is "commercial storage * * * not enclosed in building." The term "commercial storage" is not defined in the development code. The ordinary definition of "commercial" is "of commerce or business; made or done for profit." *Webster's New World Dictionary and Thesaurus, Second Edition.* The ordinary definition of "storage" is "a place for * * * storing goods." *Id.* The ordinary definition of "goods" is "movable personal property; merchandise; wares." *Id.* Using these ordinary definitions, I find the permitted use in the CG Zone is a business providing for a fee a place for the outside storage of goods. The record indicates the applicant currently operates an outdoor RV storage area on Tax Lots 400 and 500 through which the applicant rents storage space for RVs and other vehicles to residents of the Scandia Mobile Home and RV Park and others. Therefore, I find both the existing RV storage area and the proposed expansion are uses that clearly fall within this broadly defined outright permitted use in the CG Zone.

The remaining questions are whether outdoor RV storage *also* falls within the industrial zone use of "vehicle, equipment and boat repair, rental, storage, service," and if so, whether that fact means the outside storage of RVs is not permitted in the CG Zone. The Hearings Officer finds that RVs clearly are "vehicles."[4] Although the industrial zone

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[4] Chapter 1.2 of the development code defines "recreational vehicle" as follows:

> **Recreational vehicle means a vacation trailer or other units with or without motorized power, which is designed for human occupancy, is to be used temporarily for recreation or emergency purposes, and has the gross floor space of less than 400 square feet. The unit shall be identified as a recreational vehicle by the manufacturer and so licensed.**

use includes vehicle "repair," "rental" and "service," I find there is nothing in the description of that use that reasonably could be read to require that *all* such activities occur with respect to any given "vehicle." Consequently, I find RV storage also could be permitted in the industrial zones under the "vehicle * * * storage" use. Nevertheless, I concur with the applicant's analysis and find there is nothing in the development code that reasonably could be read to *prohibit* RV storage in the commercial zones simply because it also is a permitted use in the industrial zones. Therefore, I find the proposed expansion of the existing RV storage area on Tax Lots 400 and 500 is a use permitted outright in the CG Zone, and for that reason the applicant's proposal satisfies this criterion.

2. The land use, building/yard setback, lot area, lot dimension, density, lot coverage, building height and other applicable standards of the underlying land use district are met;

FINDINGS: The applicant seeks site plan approval for a change of use for the existing dwelling on Tax Lot 102. However, based on the above-underscored language in Section 4.2.200(A), the Hearings Officer finds the change of use is not subject to the setback, dimensional and other standards applicable to new structures in the CG Zone because it is an existing structure. The proposed expansion of the RV storage area from 55 to 105 spaces is an alteration to an existing use subject to site plan approval, and therefore I find it is subject to the standards listed in this paragraph to the extent they are applicable to this particular use. Compliance with these standards is discussed in the findings below.

3. The minimum standards in Section 3.2.200; Landscape Conservation, Section 3.2.300; New Landscaping, 3.2.500; Fences and Walls and Chapter, 3.3; Vehicle and Bicycle Parking are met;

FINDINGS: The Hearings Officer finds the proposed change of use for the dwelling on Tax Lot 102 and the proposed expansion of the RV storage area on Tax Lots 400 and 500 are subject to the standards listed in this paragraph to the extent they are applicable. Compliance with these standards is addressed in the findings below.

4. All applicable building and fire code standards are met.

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of site plan approval to obtain a "change of occupancy" building permit from the city's building department prior to commencing office use of the existing dwelling on Tax Lot 102. I further find compliance with all applicable building safety and fire code provisions will be assured through the building permit and inspection process. The staff report states, and I agree, that because no buildings are proposed in conjunction with the expanded RV storage area on Tax Lots 400 and 500, no building permits are required for these uses. However, because RVs and other vehicles stored on the subject property are potentially flammable, I find the applicant will be required as a condition of site plan approval to comply with the applicable fire code provisions including an adequate fire apparatus access road.

5. All required public facilities have adequate capacity as determined by the City, to serve the proposed use.

FINDINGS: As discussed in the findings above concerning the proposed plan amendment and zone change, incorporated by reference herein, the Hearings Officer has found the subject property currently is served by adequate public facilities and services, and that these facilities and services will have adequate capacity to serve the proposed uses – i.e., office use of the existing dwelling on Tax Lot 102, and expansion of the RV storage area on Tax Lots 400 and 500.

In accordance with Chapter 4.1, the land use approval shall lapse, and a new application shall be required, if a building permit has not bee issued within one year of Development Review approval, or if development of the site is in violation of the approved plan or other applicable codes.

FINDINGS: The Hearings Officer finds the approvals granted by this decision are subject to the limitations in this paragraph.

(2) Section 2.2.400 Building Standards

(3) Section 2.2.500 Building Setbacks

FINDINGS: Because the dwelling on Tax Lot 102 for which the applicant seeks site plan approval for a change of use is an existing structure, the Hearings Officer finds it is not subject to the building and setback standards applicable to new structures in the CG Zone requiring site plan approval. And as discussed above, no buildings are proposed in conjunction with the expanded RV storage area.

(4) Section 2.2.600 Block Layout and Building Orientation

B. Block Layout Standard.

1. New land divisions and developments shall have a block length consistent with the block length standards established in Chapter 3.1.200; Lot and Block Design.

FINDINGS: The Hearings Officer finds this standard applies to the applicant's proposed change of use to the dwelling on Tax Lot 102 and to the proposed RV storage area expansion on Tax Lots 400 and 500 because they both are "new * * * developments" subject to site plan review. The applicant does not propose any change to the existing blocks within which the subject property is located. As discussed in the findings below, the existing block length exceeds the city's maximum length standards. For that reason, the applicant has requested approval of an exception to the maximum block length and perimeter standards, and the city required the applicant to submit a variance application in order to evaluate its request for an exception. The applicant argues no variance is required because I have authority to grant an exception to the block length requirement without a variance application. These issues are addressed in the findings below under Section 3.1.200.

2. **Pedestrian walkways shall be provided from the street right-of-way to buildings, as necessary, to ensure reasonably safe, direct, and convenient access to building entrances and off-street parking in conformance with Chapter 3.1; Access, Circulation and Lot Design.**

FINDINGS: The record indicates there is an existing pedestrian walkway from Reed Lane to the front and back entrances to the existing dwelling on Tax Lot 102, and that this walkway will provide a safe, direct and convenient access to the building entrances and off-street parking area. The applicant's proposed site plan for Tax Lot 102 shows the walkway will be improved to isolate it from the access driveway and parking area. The staff report states, and the Hearings Officer concurs, that because the existing dwellings on Tax Lots 400 and 500 are not subject to site plan approval, no pedestrian walkways are required for them.

3. <u>Provide usable pedestrian space</u>. **Usable pedestrian space means a plaza or extra-wide pathway/sidewalk near one or more building entrances. Each development shall provide street trees or planters, space for outdoor seating, canopies or awnings, and on-street parking (in selected areas) to improve the pedestrian environment along internal streets or drives.**

FINDINGS: The record indicates the front entrance of the existing dwelling on Tax Lot 102 abuts an open lawn area, and the rear entrance is adjacent to a patio area that can provide outdoor seating. The applicant's burden of proof states the initial office use for this dwelling would be for a church organization that would have a small number of employees and would not generate more than a minimal amount of pedestrian traffic. The record indicates on-street parking is not allowed on Reed Lane. For these reasons, the applicant argues, and the Hearings Officer concurs, that the existing walkway and open spaces abutting the building entrances are adequate to provide usable pedestrian space.

The applicant argues the requirement of usable pedestrian space does not apply to the proposed RV storage area expansion on Tax Lots 400 and 500 because that use does not attract pedestrians. Rather, the applicant argues the RV storage area would be a "self-service" facility where RVs either would be towed onto the site by another vehicle, or would be driven to the site and another vehicle would take the owner off the site. The applicant's burden of proof states entry to the RV storage area would be provided through a locked gate for which RV owners would have a gate code. In either case, customers would not typically come to or leave the site on foot. For these reasons, the applicant argues, and the Hearings Officer concurs, that there is not a sufficient nexus between the proposed expansion of the RV storage area and pedestrian traffic to justify the imposition of exaction requiring the construction of usable pedestrian space under the constitutional "takings" analysis in *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed2d 304 (1994). Therefore, I find no usable pedestrian space will be required for the proposed RV storage area expansion.

b. **Section 4.2.300, Design Review Applicability and Procedures**

A. This section shall apply within all commercial zoning districts including (ME) Mixed Employment, (PO) Professional Office and non-industrial uses within the (IL) Light Industrial and (IG) General Industrial Zones and shall apply to the following building types:

1. Multi-family housing;

2. Public and institutional buildings, except buildings which are not subject to site development review; and

3. Commercial and mixed-use buildings subject to site development review as follows:

a. All new building construction
b. Any exterior modification to existing buildings
c. All new parking lots
d. All storage and display areas
e. All new signage
f. All building expansion greater than 5,000 square feet.

B. Exceptions. The following activities are not subject to Section 4.2.300, Design Review Applicability and Procedures:

1. Maintenance of the exterior of an existing structure * * *.

2. Interior remodeling or new tenant improvements.

3. **Reconstruction of buildings * * *.**

4. **Building expansions not exceeding 25% of the gross square footage of the original building and where the expansion does not exceed 5000 square feet in area.**

5. **Parking lot expansions not exceeding 25% of the gross square footage of the original lot and where the total amount of parking does not exceed the parking allowed by the Zoning Ordinance by 50%.**

6. **Buildings that are listed in the Inventory of Historic Sites * * *.**

FINDINGS: In its supplemental burden of proof, the applicant argues, and the Hearings Officer agrees, that the provisions of Section 4.2.300 do not apply to its proposed expansion of the RV storage area on Tax Lots 400 and 500 because it does not include any buildings as part of the expanded use. The existing dwelling on Tax Lot 102 the applicant proposes to convert to office use does constitute a "commercial building." However, the applicant does not propose to expand the building, modify its exterior or create a new parking lot. For these reasons, I find the applicant's proposed commercial conversion of the dwelling on Tax Lot 102 also is not subject to the provisions of Section 4.2.300.

3. **Chapter 3.1, Access, Circulation and Lot Design**

a. **Section 3.1.200, Lot and Block Design**

Orderly development of neighborhoods requires thoughtful lot layout. The size, width, topography and orientation of lots or parcels shall be appropriate for the location of the land division and for the type of development and use contemplated. New lot development shall be consistent with the lot development provisions herein.

* * *

B. **Street Connectivity and Formation of Blocks Required. In order to promote efficient vehicular and pedestrian circulation along parallel and connecting streets throughout the City, land divisions and site developments shall produce complete blocks bounded by a connecting network of public and/or private streets, in accordance with the following standards:**

1. **<u>Block Length and Perimeter.</u> The block lengths and perimeters shall not exceed the following standards as measured from centerline to centerline of through intersecting streets.**

* * *

c. **660 feet block length and 2640 feet block perimeter for all other Commercial, Industrial and Mixed Employment Districts;**

FINDINGS: The record indicates Reed Lane is approximately 1,000 feet long and includes two contiguous sections. The eastern section connecting to Meyer Drive is oriented roughly north-south and is approximately 300 feet long. The westerly section connecting to the Parkway is oriented roughly east-west and is approximately 700 feet long. The record indicates the block perimeter created by the Parkway, Powers Road, Highway 97 Business (Third Street), Meyer Drive and Reed Lane is 4,368 feet. Therefore, the existing block within which the subject property is located does not conform with these maximum block length and perimeter standards.[5]

d. **Exceptions. <u>An exception may be granted to the maximum block length in conformance with the Class C Variance criteria in Chapter 5.1.400 for Transportation Improvement Requirements.</u> The applicant must demonstrate that the block length cannot be satisfied due to topography, natural features, existing development or other barriers. When a variance is granted, the land division or site plan shall provide blocks divided by one or more walkways or access ways, in conformance with the provisions of Section 3.1.300; Pedestrian Access and Circulation, below. Walkways shall be located to minimize out-of-direction travel by pedestrians and shall be universally designed to accommodate full access to bicyclists and pedestrians alike, regardless of disability.** (Emphasis added.)

FINDINGS: The applicant has requested an exception to the maximum block length and

[5] The record indicates there are several private internal driveways within this block that connect to Third Street, including private access drives within the Scandia Manufactured Home and RV Park. However, none of these driveways constitutes a public street that would break up the block length or perimeter.

perimeter standards. As discussed above, the city required the applicant to submit a variance application in order to evaluate the exception request. The applicant argues no variance application was required, based on findings this Hearings Officer made in my previous decision in *Milan Villas* (PZ-06-862, PZ-06-863). There, the applicant requested an exception to the access spacing standards, pursuant to Section 3.1.400(G)(4), which provides:

> **Access Spacing Exceptions. An exception for access spacing and directional restrictions on City streets may be granted by the City in conformance with Chapter 5.1, Variances.**

In *Milan Villas* I made the following relevant findings:

> "* * * *the Hearings Officer finds the language in this section* [3.1.400(G)(4)] *is not entirely clear with respect to whether the applicant for an access spacing exception is required to submit a separate variance* ***application****. The applicant's modified burden of proof states he was advised by city planning staff that no variance application was required. I find that in the absence of express language requiring the filing of a separate application this is a reasonable interpretation of this section. I find the code language requires the applicant to justify the proposed exception under the variance* ***criteria*** *in Chapter 5.1.*" (Bold emphasis italicized in original.)

The Hearings Officer finds the exception language at issue in this application – Section 3.1.200(B)(1)(d) – has wording similar to the language at issue in Section 3.1.400(G)(4), and therefore is similarly unclear with respect to whether a variance application is required. Therefore, I find it is reasonable to interpret the language in Section 3.1.200 (B)(1)(d) in the same way I interpreted the language in Section 3.1.400(G)(4) – i.e., as not requiring a separate variance application in order to evaluate a requested exception. The requested exception's compliance with the applicable variance *criteria* is addressed in the findings below.

1. Qualification for Exception. Section 5.1.400 establishes the standards for Class C variances as follows:

> **B. Class C Variance Criteria. The Class C variance requests are best determined using the specific criteria listed below.**
>
> * * *
>
> **5. Variances to Transportation Improvement Requirements. The City may approve, approve with conditions, or deny a variance to the transportation improvement standards of Chapter 3.4; Public Improvement Standards, based on the criteria for granting variances provided in Subsection 3.4.200 (B);**

Transportation Improvement Standards.

Section 3.4.200(B) provides:

> **Variances to the transportation design guidelines in this Section may be granted by means of a Class C Variance, as governed by Chapter 5.1.400(5), Variance to Transportation Improvement Requirements. A variance may be granted under this provision only if a required improvement is not feasible due to topographic constraints or constraints posed by sensitive lands or the project does not meet the exception standards listed herein.** (Emphasis added.)

The applicant's burden of proof includes the following argument in support of an exception to the block length and perimeter standards:

> *"The applicant's site plan proposes to retain and expand an existing use on Tax Lots 400 and 500. Based upon the City's previous site plan approvals, the applicant does not believe that this section applies to Tax Lots 400 or 500 because this application provides no opportunity for block development, particularly because Tax Lot 500 adjoins the Bend Parkway. The applicant cannot achieve compliance with the block perimeter requirement because it does not own all the land required to build a new north-south oriented street through the middle of the block. A new east-west oriented street across Tax Lot 500 cannot be constructed because access to the Parkway from Tax Lot 500 is prohibited by the law of the State of Oregon and is inconsistent with the City's TSP. A new north-south street would, if extended through the block by future development, create unsafe connections to existing streets that would violate the City's street spacing standards (900' between accesses for arterial or collector streets without access control.).A grid street connection of a properly aligned street (east-west or north-south) to Highway 97 Business would occur at less than a 90 degree angle due to the fact that Highway 97 Business runs from east to west as it heads south in this part of town. A new access to Highway 97 Business would also be located very close to other highway accesses. If a new north-south oriented street is installed and connected to Powers Road (the street would need to be built at an angle rather than with a true north-south orientation), the street would enter Powers Road extremely close to the entrance point to the Bend Parkway northbound and to the intersection of Powers Road and Highway 97 Business. This is a bad location to attempt to make a left turn onto Powers Road to head eastbound.*
>
> ** * * existing development or other barriers to the block length cannot be satisfied. In this case, existing development prevents the proposal from satisfying the block length standard in the CG zone. The existing development factors that prevent compliance with the block length and*

perimeter standard are:

1. *One side of the block is the Bend Parkway. As a legal matter, no additional street connections are permitted to the Parkway.*

2. *The property to the south and east of the subject property is developed as an RV and Manufactured home park. It contains private streets and is a self-contained development.*

3. *The existing block is not designed in compliance with the City's grid policy. The north-south streets that frame the block run on the diagonal. This requires a new north-street to either violate the grid policy's street orientation requirements or to create blocks that more closely resemble triangles than rectangles.*

4. *The City's street access spacing requirements for Highway 97 Business and Powers Road (major collector street) would be violated if a new street connection were provided on either road (900 feet spacing required for arterial and collector roads without medians; 300 feet between roads and driveways).*

5. *The frontage of lots on Reed Lane is just slightly longer than 660 feet. The frontage of the subject property on Reed Lane is only 639 feet. Tax Lot 102 has 195 feet of frontage, Tax Lot 400 has 440 feet of frontage and Tax Lot 500 has 4 feet of frontage.*

6. *The requirement of a new point of access on Reed Lane close to the Bend Parkway would be unsafe and would interfere with access to and from the Parkway.*

7. *Almost all other property in the area has been or is being developed pursuant to prior land use approvals in reliance on the existing street pattern making it infeasible to ever complete a new block in this location of the community.*

8. *The subject property is located in a platted subdivision and the surrounding street system was established with the previous development."*

The Hearings Officer agrees with the applicant's analysis and finds an exception/variance to the block length and perimeter standards in Section 3.1.200(B)(1)(c) is warranted and granted.

2. Compliance with Section 3.1.300. As set forth above, Section 3.1.300(B)(1)(d) states in pertinent part:

When a variance is granted, the land division or <u>site plan shall provide blocks divided by one or more walkways or access ways, in conformance with the provisions of Section 3.1.300; Pedestrian Access and Circulation, below.</u> Walkways shall be located to minimize out-of-direction travel by pedestrians and shall be universally designed to accommodate full access to bicyclists and pedestrians alike, regardless of disability. (Emphasis added.)

Section 3.1.300, Pedestrian Access and Circulation, provides in pertinent part as follows:

B. On-Site Pedestrian Facility Development. For all developments except single family residences, the applicant shall demonstrate how full pedestrian access and circulation is being achieved based on the following development criteria. Accessible pedestrian ways shall:

* * *

2. Connect all parking areas, storage areas, recreational facilities, common areas (as applicable), and adjacent development to the building's entrances and exits.

* * *

4. Connect or stub to adjacent streets and private property, in accordance with the provisions of Section 3.1.400(F); New Lot Development and Section 3.4.200 Transportation Improvements.

FINDINGS: In order to satisfy these criteria the applicant has proposed to provide a reciprocal cross-access easement connecting the subject property with the abutting property to the south which is owned by the applicant and managed as the Scandia Manufactured Home and RV Park. The staff report recommends the location of this easement be a connection from the existing driveway on Reed Lane for Tax Lot 400 straight south to the subject property's southern boundary. At the public hearing, the applicant's attorney expressed a desire to have some flexibility in the location of the easement in order to assure its optimum function.

The Hearings Officer finds the applicant will be required as a condition of site plan approval to execute and record a reciprocal cross-access easement between the subject property and the abutting property to the south – Tax Lot 301 on Assessor's Map 18-12-08AC. At my request, the applicant included the following proposed language for the condition of approval in its November 4, 2008 final argument:

"The applicant shall record a reciprocal cross-access easement agreement that provides for vehicular access across Tax Lot 400,

Assessor's Map 18-12-08AC (Tax Lot 400) for the benefit of Tax Lot 301, Assessor's Map 18-12-08AC (Tax Lot 301) from Reed Lane to Tax Lot 301. The purpose of the easement is to allow vehicle trips associated with the future development of Tax Lot 301 to reach Reed Lane by crossing Tax Lot 400. The recommended location of the easement would be a connection from the existing driveway on Reed Lane for Tax Lot 400 straight south to the south property line.

The easement shall be substantially similar to the Access Easement recorded at 2008-10823 of the official records of the Deschutes County Clerk and will contain the following provisions:

A. The easement will be written to be effective when Tax Lots 400 and 301 are held in separate ownership. The easement may contain a condition that it will be extinguished if Tax Lots 400 and 301 are redeveloped together by a single owner pursuant to a City land use approval.

B. The easement shall include a provision that requires the owner of Tax Lot 301 to provide reciprocal vehicle access rights to Tax Lots 400 and 500, Assessor's Map 18-12-08AC as a condition of using the cross-access easement over Tax Lot 400.

C. The easement over Tax Lot 400 may be relocated by the owner of Tax Lot 400 provided that the new easement location allows access to Reed Lane in a City of Bend-approved location.

D. Prior to use of a driveway in the cross-access easement, the applicant shall be allowed use for the development as proposed on the approved site plan."

The Hearings Officer finds this proposed language is appropriate and will assure both adequate cross access and the location flexibility the applicant requested. Therefore, I find the applicant will be subject to this condition of approval.

C. Pedestrian Facility Development Standards. On-site pedestrian facilities shall conform to the following standards:

1. On-site pedestrian walkways shall have a minimum width of 5-feet.

2. Pedestrian walkways shall be lighted in conformance with Section 3.5.200, Outdoor Lighting Standards.

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of site plan approval to improve all on-site pedestrian walkways on Tax Lot 102 to a minimum width of five feet wide and be lighted in conformance with the standards in Section 3.5.200. The staff report recommends the existing pedestrian walkways to the front and rear entrances of the existing building on Tax Lot 102 be improved as necessary to comply with handicap access standards established by the city and the Americans with Disabilities Act (ADA). I find compliance with these handicap access standards will be assured through the process for obtaining a change-of-use building permit for the dwelling on Tax Lot 102.

E. Other Design and Construction Considerations. Public pedestrian facilities shall conform to all of the standards in Subsections 1-4 listed below:

* * *

3. Walkway Surface. Walkway surfaces shall be concrete, asphalt, brick/masonry pavers, or other durable surface that makes a smooth surface texture, and shall conform to ADA requirements. Multi-use paths (i.e., for bicycles and pedestrians) shall be the same materials. (See also, Section 3.4.200 Transportation Improvements for public, multi-use walkway standard.)

FINDINGS: The record indicates the existing pedestrian walkways on Tax Lot 102 are surfaced with asphalt or another durable surface, therefore satisfying this criterion. In addition, as discussed in the findings above, the applicant proposes to construct a concrete, property-tight sidewalk along the south side of the segment of Reed Lane abutting Tax Lot 102 that would meander as necessary to avoid existing mature trees.

b. Section 3.1.400, Vehicular Access Management

* * *

A. Applicability. This section shall apply to all public and private streets within the City and to all properties that abut these streets.

FINDINGS: The Hearings Officer finds this section is applicable to the applicant's proposal because the subject property abuts two public streets – Reed Lane and the Parkway.

C. Traffic Study Requirements. The City or other agency with access jurisdiction shall require a transportation impact analysis as required in Chapter 4.7, Transportation Analysis.

FINDINGS: As discussed in the findings above, the applicant submitted several traffic studies to comply with these provisions.

D. Conditions of Approval. The City or other agency with access permit jurisdiction may require the closing, consolidation, or relocation of existing curb cuts or other vehicle access points, recording of reciprocal access easements (i.e., for shared driveways and cross access routes), development of a frontage or backage street, installation of traffic control devices, and/or other mitigation measures that comply with the Bend Urban Area Transportation System Plan, the City of Bend Development Code, and are approved by the City Engineer as a condition of granting an access permit or access approval, to ensure the safe and efficient operation of the street and highway system.

FINDINGS: As discussed above, the Hearings Officer has found the applicant will be required as a condition of approval to execute and record a reciprocal cross-access easement with the abutting property to the south.

L. Fire Access and Parking Area Turnaround. A fire equipment access drive shall be provided for any portion of an exterior wall of the first story of a building that is located more than 150 feet from an existing public street or approved fire equipment access drive as measured around the building. Parking areas shall provide adequate aisles or turnaround areas for service and deliver vehicles so that all vehicles may enter the street in a forward manner (except for single-family dwellings and alleys that provide adequate backing width).

FINDINGS: The applicant's revised site plan, dated July 23, 2008, shows the existing dwellings on Tax Lots 102 and 400 are located within 150 feet of Reed Lane, a public street, The site plan shows the existing dwelling on Tax Lot 500 is located slightly more than 150 feet from Reed Lane. However, the site plan shows on Tax Lot 500 a paved fire access road with a hammerhead turnaround adjacent to the dwelling. The Hearings Officer finds the applicant will be required as a condition of approval to construct this fire apparatus access drive and turnaround as depicted on the July 23, 2008 site plan. I find that with imposition of this condition of approval the applicant's proposal will satisfy this criterion.

O. Construction. The following development and maintenance standards shall apply to all driveways and private streets. The City of Bend Standards and Specifications document shall prevail in the case of conflicting rules related to the design and construction

of infrastructure.

1. **Surface Options. Driveways, parking areas, aisles, and turn-arounds may be paved with asphalt, concrete or comparable surfacing or a durable non-paving material (e.g. grass-crete, eco-stone) may be used to reduce surface water runoff, protect water quality, and protect air quality. Gravel shall not be allowed. Paving surfaces shall be subject to review and approval by the City Engineer.**

FINDINGS: The record indicates the existing driveways to the dwellings on Tax Lots 102 and 400 are paved with asphalt, therefore satisfying these standards. The existing surface for the RV storage area is gravel, and the applicant has proposed to continue using gravel surfacing for the existing and expanded RV storage area on Tax Lots 400 and 500. The applicant argues a non-paved surface is justified because unlike regular vehicle parking areas that experience regular daily vehicle traffic, the proposed RV storage area is for long-term storage of vehicles with minimal vehicle traffic. The Hearings Officer concurs with the applicant's argument and finds neither the existing nor expanded RV storage areas will require a paved surface.

4. **Chapter 3.2, Landscaping, Street Trees, Fencing and Walls**

a. **Section 3.2.300 New Landscaping**

This section sets standards for and requires landscaping of all development sites that require Site Development Review. This section also requires landscape buffering for parking and maneuvering areas, and buffering between different land use districts. <u>Note</u>: Other landscaping standards are provided within the individual land use districts and in Chapter 3.6; Special Standards for Certain Uses, for specific types of development.

A. <u>Applicability.</u> This section shall apply to all new development in all zones requiring Site Development Review.

B. <u>Landscape Plan Required.</u> A landscape plan is required. All landscape plans shall conform to the requirements in Section 4.2.200(7), Landscape Plan.

FINDINGS: The applicant submitted a "tentative landscape plan" with its burden of proof indicating the general areas in which introduced landscaping would be planted. The applicant has requested that site plan approval be conditioned on its submission of a more detailed landscape plan showing the required landscaping and identifying the plant materials to be used as well as their locations. Staff supports this request. Therefore, the Hearings Officer finds the applicant will be required as a condition of approval, and prior to obtaining a change-of-use building permit for conversion of the existing dwelling on Tax Lot 102, to submit a detailed landscape plan to the Planning Division. I find that with imposition of this condition the applicant's proposal will satisfy this criterion.

E. **Landscape Design Standards. All yards, parking lots and required street tree planter strips shall be landscaped at the time of site development.**

* * *

2. Parking areas. **A minimum of 10 percent of the total paved area of all parking lot(s), as measured around the perimeter of all parking spaces and maneuvering areas, shall be landscaped. Such landscaping shall consist of an evenly distributed mix of broad-canopied deciduous shade trees with shrubs and/or ground cover plants. "Evenly distributed" means that the trees and other plants are distributed around the parking lot perimeter and between parking bays to provide a partial canopy. At a minimum, one tree per eight (8) parking spaces total shall be planted to create a partial tree canopy over and around the parking area. All parking areas with more than 50 spaces shall include landscape islands with trees to break up the parking area into rows.**

FINDINGS: The Hearings Officer finds the proposed change of use of the dwelling on Tax Lot 102 from residential to office is the only aspect of the applicant's proposal that requires a parking lot. As discussed in the findings above, the existing dwellings on Tax Lots 400 and 500 will continue to be used as residences and have the two required off-street parking spaces for single-family dwellings.

As discussed in the findings below concerning parking, the office use in the existing dwelling on Tax Lot 102 requires a total of six off-street parking spaces. The record indicates that three of these required spaces are located in covered areas. In addition, there is an existing 12 inches dbh (diameter at breast height) ponderosa pine tree adjacent to the existing parking area as well as a group of mature trees on the northeast corner of the property, some of which are as large as 40 inches dbh. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

3. Landscape Buffering and Screening Required. **Landscape buffering and screening area required under the following conditions:**

* * *

b. <u>Parking/Maneuvering Area Adjacent to Building.</u> **Where a parking or maneuvering area, or driveway, is adjacent to a building, the area shall be separated from the building by a raised walkway, plaza, or landscaped buffer no less than two feet in width. Raised curbs, bollards, wheel stops, or other design features shall be used to protect buildings from being damaged by vehicles. The use of sidewalks adjacent to a building shall comply with ADA standards.**

FINDINGS: The applicant has proposed, and will be required as a condition of approval, to provide a series of wheel stops for the six parking spaces associated with the new office use in the existing dwelling on Tax Lot 102.

c. **Screening of Mechanical Equipment, Outdoor Storage, Service and Delivery Areas, and Automobile-Oriented Uses. All mechanical equipment, outdoor storage, manufacturing, and service and delivery areas shall be screened to the greatest extent practical from all public streets, residential districts, and housing units on the same site. Screening shall be provided by one or more the following: decorative wall (i.e., masonry or similar quality material as the building), evergreen hedge, non-see through fence, or a similar feature that provides a non-see-through barrier. Walls, fences, and hedges shall comply with the vision clearance requirements and provide for pedestrian circulation, in accordance with Chapter 3.1 – Access, Circulation and Lot Design. (See Section 3.2.500 for other standards related to fences and walls.)**

FINDINGS: The record indicates the existing outdoor RV storage area on Tax Lot 400 is enclosed by a continuous chain-link fence. The applicant has proposed, and will be required as a condition of approval, to provide the screening required by this paragraph by providing a non-see-through barrier such as the addition of vinyl slats to the existing fence. The applicant also proposes, and will be required as a condition of approval, to provide the additional screening for the RV storage area on Tax Lot 500 as depicted on the July 23, 2008 site plan. The Hearings Officer finds that with imposition of these conditions of approval the applicant's proposal will satisfy this criterion.

b. **Section 3.2.400 Street Trees**

This section sets standards and requirements for planting trees along all streets for shading, comfort, safety and aesthetic purposes. Street trees shall be planted for all developments that are subject to Site Development Review. Requirements for street tree planting and tree wells are provided herein. Planting along unimproved streets shall be deferred until the construction of curbs and sidewalks. Such deferrals shall be secured with a bond or cash deposit acceptable to the City. Street trees shall conform to the following standards and guidelines:

A. **City of Bend Approved Tree List. The City has developed a list of desirable trees for planting along streets in three size classes: low, medium and tall choices of trees shall be limited to the following list. Exceptions may be granted by the Planning Director:**

FINDINGS: As discussed in the findings above, the applicant proposes to preserve existing trees adjacent to Reed Lane by meandering the sidewalk abutting the south side of the street along the frontage of Tax Lot 102. In addition, the July 23, 2008 site plan shows a number of additional street trees in approved species to be planted along Reed Lane. The Hearings Officer finds the applicant will be required as a condition of approval to retain and plant street trees as depicted on the July 23, 2008 site plan.

c. **Section 3.2.500, Fences and Walls**

* * *

A. **General Requirements. All fences and walls shall comply with the standards in this Section. The City may require the installation of walls and/or fences as a condition of development approval. Walls built as required landscape buffers shall comply with Section 3.2.300, New Landscaping.**

B. **Dimensions.**

1. **The maximum allowable height of fences and walls is 6 feet, as measured from the lowest grade at the base of the wall or fence, with the following exceptions: * * ***

FINDINGS: No walls are included in the applicant's proposal. As discussed above, there is an existing chain link fence around the RV storage area the applicant proposes to convert to a sight-obscuring fence through measures such as insertion of vinyl slats. The record indicates this fence is and will be no taller than six feet. In addition, with the dedication of additional right-of-way for the southern half of Reed Lane, the applicant will relocate the existing section of fence along the street to the new location shown on the July 23, 2008 site plan that will comply with the clear vision standards. In addition, the RV storage area The Hearings Officer finds the applicant will be required as a condition of approval to install any new fencing in conformance with this section.

5. Chapter 3.3, Vehicle Parking, Loading and Bicycle Parking

a. Section 3.3.300 Vehicle Parking Standards for On-Site Requirements

The minimum number of required off-street vehicle parking spaces (i.e., parking that is located in parking lots and garages and not in the street right-of-way) shall be determined based on the standards in this Vehicle Parking Standards section.

A. Off-Street Parking Requirements. The number of required off-street vehicle parking spaces shall be determined in accordance with the following standards.

Table 3.3.300

Required Off-Street Vehicle Parking Spaces

Use	Minimum Requirement
Residential	
Single-family, attached or detached housing, including manufactured home on individual lot.	2 parking space per dwelling unit.
Commercial	
Office Use (*including medical and dental offices, clinic and laboratories, alternative health care)*	1 space per 350 square feet of gross floor area

FINDINGS: The applicant proposes to continue the existing single-family residential uses for the existing dwellings on Tax Lots 400 and 500, and to retain at least two off-street parking spaces for each of these dwellings. As discussed in the findings above, the existing dwelling on Tax Lot 500 is located at the end of an existing driveway and a sufficient distance from Reed Lane that it can accommodate the two required off-street parking spaces outside of the dwelling's front yard setback. The Hearings Officer finds no off-street parking spaces are required for the RV storage area.

The record indicates the existing dwelling on Tax Lot 102 that the applicant proposes to convert to office space is 1,222 square feet in size, therefore requiring a minimum of four off-street parking spaces. The July 23, 2008 site plan shows a total of six paved, striped off-street parking spaces on the east side of the structure, including two handicap accessible spaces. Therefore, the Hearings Officer finds the applicant's proposal satisfies this criterion.

b. **Section 3.3.600, Bicycle Parking Standards**

All uses that are subject to Site Development Review shall provide bicycle parking, in conformance with the following standards, which are evaluated during Site Development Review. <u>This Section does not apply to</u> single-family, two-family, and three-family housing (attached, detached or manufactured housing), home occupations or other <u>developments with fewer than 10 vehicle parking spaces.</u> (Emphasis added.)

FINDINGS: The Hearings Officer finds this section does not apply to the applicant's proposal because no vehicle parking spaces are required for the proposed RV storage area expansion, and as discussed in findings above, only four off-street parking spaces are required for the existing dwelling on Tax Lot 102 when it is converted to office use.

6. **Chapter 3.4, Public Improvement Standards**

a. **Section 3.4.200 Transportation Improvement Standards**

A. **Development Requirements. No development shall occur unless the development has frontage or approved access to a public or private street, in conformance with the provisions of Chapter 3.1, Access, Circulation and Lot Design, and the following standards are met:**

1. **Streets within or adjacent to a development shall be improved in accordance with the Bend Urban Area Transportation System Plan(TSP), provisions of this Chapter and other pertinent sections of this Code.**

FINDINGS: The applicant has proposed to dedicate an additional five feet of right-of-way along the abutting segment of Reed Lane to create a total of 30 feet of right-of-way from the centerline. The record indicates Reed Lane currently is improved with approximately 24 feet of pavement. As discussed in the findings above, the applicant's final traffic study concluded no off-site street improvements are required as a result of traffic anticipated to be generated by commercial development on the subject property following approval of the proposed plan amendment and zone change. The record also indicates that when the Eagle's Landing apartment complex located across Reed Lane to the north was approved, the developer was required to install sidewalks and a planter strip on the north side of Reed Lane abutting the development. The applicant has proposed to construct a sidewalk and planter strip along the Reed Lane frontage on Tax Lot 102.

The applicant argues it should not be required to install a sidewalk and planter strip along the segment of Reed Lane abutting Tax Lots 400 and 500 because these improvements are required to serve pedestrians, and neither the existing RV storage area nor the proposed expansion will generate foot traffic. As discussed in the findings above concerning the requirement of usable pedestrian space under Section 2.2.600, the record indicates the RV storage area operates and will continue to operate as a "self-service" facility. Customers would either towed their RVs onto the site by another vehicle, or would drive their RVs to the site, and another vehicle would take the owner off the site. Customers typically would not come to or leave the site on foot. For these reasons, the Hearings Officer found there is not a sufficient nexus between the proposed expansion of the RV storage area and pedestrian traffic to justify the imposition of exaction requiring the construction of usable pedestrian space under the constitutional "takings" analysis in *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed2d 304 (1994). I also find there is not a sufficient nexus between pedestrian traffic and the proposed RV storage expansion to justify an exaction requiring the applicant to install a sidewalk and planter strip along the segment of Reed Lane abutting Tax Lots 400 and 500.

The staff report argues the sidewalk and planter strip exaction along the entire segment of Reed Lane abutting the subject property also is justified because of the additional pedestrian traffic that would be generated by conversion of the existing dwelling on Tax Lot 102 to an office use. The Hearings Officer disagrees. I find there is no basis to conclude that pedestrians traveling to and from the office on Tax Lot 102 would be walking on the segment of Reed Lane abutting Tax Lots 400 and 500 inasmuch as the record indicates the office will be occupied by a business that is separate from, and has no connection with, the RV storage business on Tax Lots 400 and 500.

In its final argument, the applicant requested clarification as to whether the required sidewalk and planter strip along Reed Lane are the only street improvements that would be required for the proposed development, or whether the applicant also is expected to install a curb. The Hearings Officer finds the city's recommended condition of approval does not include installation of a curb, and therefore no curb will be required.

M. **Existing Rights-of-Way. Whenever existing rights-of-way adjacent to or within a tract are of less than standard width, additional rights-of-way shall be provided at the time of subdivision or site development, in conformance with Tables A through E in Section 3.4.200, Transportation Improvement Standards, above.**

FINDINGS: As discussed above, the applicant has proposed to dedicate an additional five feet of right-of-way for Reed Lane along the subject property's entire northern boundary, for a total of 30 feet of right-of-way from the centerline. The Hearings Officer finds this dedication complies with the city's standards and specifications for local street rights-of-way.

7. Chapter 4.7, Transportation Analysis

a. Section 4.7.400 Approval Criteria

* * *

Zone changes and Bend Urban Area General Plan map amendments cannot be granted if the Transportation Impact Study shows that the proposed development would overburden the City's existing or planned transportation facilities now or in the future. The Transportation Impact Study must demonstrate that compliance with the TPR and the operations standards of the City of Bend Development Code can be achieved within the adopted Bend Urban Area Transportation System Plan.

Similarly, major roadway infrastructure projects should not be approved if the Transportation Impact Study shows that the proposed infrastructure projects would overburden the City's existing or planned transportation facilities now or in the future. The Transportation Impact Study must demonstrate that compliance with the TPR and the operations standards of the City of Bend Development Code can be achieved within the adopted Bend Urban Area Transportation System Plan.

FINDINGS: As discussed in the findings above concerning compliance with the TPR, the Hearings Officer has found the applicant's final traffic study demonstrates the applicant's proposal will not generate traffic that would overburden existing or planned transportation facilities. Therefore, the Hearings Officer finds the applicant's proposal satisfies this criterion.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **RECOMMENDS APPROVAL** of the applicant's proposed plan amendment and zone change to change the plan designation of Tax Lots 400 and 500 from RS to CG and to rezone Tax Lots 102, 400 and 500 from RS to CG, **SUBJECT TO THE FOLLOWING CONDITION OF APPROVAL:**

1. The applicant/owner shall submit to the Planning Division a metes-and-bounds

description of the property subject to the approved plan amendment and zone change.

The Hearings Officer also **APPROVES** the applicant's proposed site plan for a change of use of the dwelling on Tax Lot 102 from residential to office, and for expansion of the existing RV storage area on Tax Lots 400 and 500, **SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**

2. This approval is based on the applicant's submitted applications and exhibits, site plan dated July 23, 2008, final traffic study dated July 17, 2008, supplemental materials, and written and oral testimony. Any substantial change to the approved plan and development will require a new land use application and approval.

PRIOR TO OBTAINING A BUILDING PERMIT FOR THE CHANGE OF USE OF THE DWELLING ON TAX LOT 102:

3. The applicant/owner shall develop the subject property – Tax Lots 102, 400 and 500 on Deschutes County Assessor's Map 18-12-08AC – as depicted on the July 23, 2008 site plan, except as otherwise specified in this decision and the conditions of approval.

4. The applicant/owner shall submit to the Planning Division a detailed landscape plan complying with Section 3.2.300 of the development code.

5. The applicant/owner shall install a sidewalk and planter strip on the south side of Reed Lane along its frontage with Tax Lot 102 and in conformance with the city's applicable standards and specifications. The sidewalk and planter strip may meander to avoid the need to remove existing trees and/or utilities. The applicant/owner shall retain and plant street trees as depicted on the July 23, 2008 site plan.

6. The applicant/owner shall install and/or improve on-site pedestrian walkways on Tax Lot 102 to a minimum width of five (5) feet and provide lighting in compliance with Section 3.5.200 of the development code. The applicant/owner shall improve the existing pedestrian walkways to the front and rear entrances to the structure on Tax Lot 102 in compliance with city and ADA standards.

7. The applicant/owner shall provide wheel stops for the six parking spaces to be provided for the office use in the existing dwelling on Tax Lot 102.

8. The applicant/owner shall provide a sight-obscuring fence surrounding the RV storage area on Tax Lots 400 and 500.

9. The applicant/owner shall install any new fencing in conformance with Section 3.2.300 of the development code.

10. The applicant/owner shall record with the Deschutes County Clerk a reciprocal cross-access easement agreement that provides for vehicular access across Tax Lot 400, Assessor's Map 18-12-08AC (Tax Lot 400) for the benefit of Tax Lot 301, Assessor's Map 18-12-08AC (Tax Lot 301) from Reed Lane to Tax Lot 301. The purpose of the easement is to allow vehicle trips associated with the future development of Tax Lot 301 to reach Reed Lane by crossing Tax Lot 400. The recommended location of the easement would be a connection from the existing driveway on Reed Lane for Tax Lot 400 straight south to the south property line.

    The easement shall be substantially similar to the Access Easement recorded at 2008-10823 of the official records of the Deschutes County Clerk and will contain the following provisions:

    A. The easement will be written to be effective when Tax Lots 400 and 301 are held in separate ownership. The easement may contain a condition that it will be extinguished if Tax Lots 400 and 301 are redeveloped together by a single owner pursuant to a City land use approval.

    B. The easement shall include a provision that requires the owner of Tax Lot 301 to provide reciprocal vehicle access rights to Tax Lots 400 and 500, Assessor's Map 18-12-08AC as a condition of using the cross-access easement over Tax Lot 400.

    C. The easement over Tax Lot 400 may be relocated by the owner of Tax Lot 400 provided that the new easement location allows access to Reed Lane in a City of Bend-approved location.

    D. Prior to use of a driveway in the cross-access easement, the applicant shall be allowed use for the development as proposed on the approved site plan.

11. The applicant/owner shall remove all irrigation water rights from Tax Lots 102, 400 and 500 in accordance with the regulations of the Arnold Irrigation District.

PRIOR TO CHANGING THE USE OF THE BUILDING ON TAX LOT 102:

12. The applicant/owner shall apply for and obtain a permit from the City of Bend Building Division for the change of use from residential to commercial for the building on Tax Lot 102.

13. The applicant/owner shall comply with all requirements of the Bend Fire Department as set forth in its comments dated August 26, 2008.

PRIOR TO EXPANDINGTHE RV STORAGE AREA ON TAX LOTS 400 AND 500:

14. The applicant/owner shall conduct all grading and clearing activities on Tax Lots

400 and 500 in conformance with the city's grading and clearing ordinance, Ordinance No. NS-1879.

Dated this 16th day of December, 2008.

Mailed this 16TH day of December, 2008.

Karen H. Green

Karen H. Green, City of Bend Hearings Officer

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Dep of Land Conservation & Dev
635 Capitol St NE Ste 150
Salem OR 97301-2540