

120 DAYS = 5/20/2008
DATE OF FILING: 3/10/2008
DATE MAILED: 3/12/2008



CITY OF TIGARD

Washington County, Oregon

NOTICE OF FINAL ORDER BY THE PLANNING COMMISSION NO. 2008-01 PC

Case Number:	ZONE CHANGE (ZON) 2007-00018
Case Name:	FRY PLANNED DEVELOPMENT OVERLAY ZONE CHANGE
Applicant's Name/Address:	Douglas Fry c/o Commercial Tenant Advisors 22151 SW 55 th Avenue Tualatin, Oregon 97062
Owner's Names/Addresses:	Same as Applicant
Address of Property:	12625 SW 70 th Avenue Tigard, Oregon 97224
Tax Map/Lot Nos.:	Washington Co. Tax Assessor's Map No. 2S101AB, Tax Lot 100.

A FINAL ORDER INCORPORATING THE FACTS, FINDINGS AND CONCLUSIONS **DENYING** A REQUEST FOR A ZONE CHANGE.

THE CITY OF TIGARD PLANNING COMMISSION HAS REVIEWED THE APPLICANT'S PLANS, NARRATIVE, MATERIALS, AND COMMENTS OF REVIEWING AGENCIES, THE PLANNING DIVISION'S STAFF REPORT AND RECOMMENDATIONS FOR THE APPLICATION DESCRIBED IN FURTHER DETAIL IN THE STAFF REPORT. THE PLANNING COMMISSION HELD A PUBLIC HEARING ON **MARCH 3, 2008** TO RECEIVE TESTIMONY REGARDING THIS APPLICATION. THIS DECISION HAS BEEN BASED ON THE FACTS, FINDINGS AND CONCLUSIONS CONTAINED WITHIN THIS FINAL ORDER.

Request: The applicant requested a zone change from C-G (PD) to C-G for one parcel totaling approximately 3.19 acres located on the SE corner of SW 72nd Avenue and SW Dartmouth Street. Removal of the Planned Development (PD) overlay eliminates requirements for a public hearing process and to meet current PD standards. Any future development must still meet all other applicable development standards including the Tigard Triangle design criteria. **At the March 3, 2008 public hearing, the Planning Commission denied this request primarily on the basis that the Commission finds that the PD review is valuable to address the relationship between natural resources and development on this particular site.**

Current Zoning: C-G: General Commercial District with Planned Development (PD) Overlay. Applicable Review Criteria: Community Development Code Chapters 18.380, 18.390 and 18.520; and Comprehensive Plan Policies 1, 2, 3, 4, 5, 7, 8, 9 and 12.

Action: ➤ Approval as Requested Approval with Conditions Denial

Notice: Notice was published in the newspaper and mailed to:

- Owners of Record within the Required Distance Affected Government Agencies
 Interested Parties The Applicants and Owners

Final Decision:

THIS DECISION IS FINAL ON MARCH 12, 2008 AND BECOMES EFFECTIVE ON MARCH 27, 2008 UNLESS AN APPEAL IS FILED.

Appeal:

The decision of the Review Authority is final for purposes of appeal on the date that it is mailed. Any party with standing as provided in Section 18.390.040.G.1. may appeal this decision in accordance with Section 18.390.040.G.2. of the Tigard Community Development Code which provides that a written appeal together with the required fee shall be filed with the Director within ten (10) business days of the date the notice of the decision was mailed. The appeal fee schedule and forms are available from the Planning Division of Tigard City Hall, 13125 SW Hall Boulevard, Tigard, Oregon 97223.

THE DEADLINE FOR FILING AN APPEAL IS 5:00 PM ON MARCH 26, 2008.

Questions: If you have any questions, please call the City of Tigard Planning Division at (503) 639-4171.

**NOTICE OF FINAL ORDER NO. 2008-01 PC
BY THE PLANNING COMMISSION
FOR THE CITY OF TIGARD, OREGON**



A FINAL ORDER DENYING A LAND USE APPLICATION FOR A ZONE CHANGE. THE COMMISSION HELD A PUBLIC HEARING TO RECEIVE TESTIMONY ON THIS APPLICATION ON MARCH 3, 2008. THE PLANNING COMMISSION HAS BASED THEIR DECISION ON THE FACTS, FINDINGS AND CONCLUSIONS DESCRIBED IN FURTHER DETAIL WITHIN THIS FINAL ORDER.

120 DAYS = 5/20/2008

SECTION I. APPLICATION SUMMARY

FILE NO.: Zone Change (ZON) **ZON2007-00018**
FILE NAME: FRY PLANNED DEVELOPMENT OVERLAY ZONE CHANGE

PROPOSAL: The applicant requests a zone change from C-G (PD) to C-G for one parcel totaling approximately 3.19 acres located on the SE corner of SW 72nd Avenue and SW Dartmouth Street. Removal of the Planned Development (PD) overlay eliminates requirements for a public hearing process and to meet current PD standards. Any future development must still meet all other applicable development standards including the Tigard Triangle design criteria.

**APPLICANT &
OWNER:**

Douglas Fry
c/o Commercial Tenant Advisors
Attn: Brad Pihas
22151 SW 55th Avenue
Tualatin, OR 97062

**APPLICANT'S
REP:**

T M. Rippey Consulting Engrs.
Attn: Lans Stout
7650 SW Beveland St., Suite 100
Tigard, OR 97223

LOCATION:

South of SW Dartmouth, between SW 70th and SW 72nd Avenues; 12625 SW 70th Avenue; WCTM 2S101AB, Tax Lot 100.

**CURRENT
ZONE:**

C-G: General Commercial District (PD). The C-G zoning district is designed to accommodate a full range of retail, office and civic uses with a City-wide and even regional trade area. Except where non-conforming, residential uses are limited to single-family residences which are located on the same site as a permitted use. A wide range of uses, including but not limited to adult entertainment, automotive equipment repair and storage, mini-warehouses, utilities, heliports, medical centers, major event entertainment, and gasoline stations, are permitted conditionally. Planned Development (PD) Overlay. The purposes of the planned development overlay zone are to provide a means for property development that is consistent with Tigard's Comprehensive Plan through the application of flexible standards which consider and mitigate for the potential impacts to the City; and to provide such added benefits as increased natural areas or open space in the City, alternative building designs, walkable communities, preservation of significant natural resources, aesthetic appeal, and other types of assets that contribute to the larger community in lieu of strict adherence to many of the rules of the Tigard Community Development Code; and to achieve unique neighborhoods (by varying the housing styles through architectural accents, use of open space, innovative transportation facilities) which will retain their character and city benefits, while respecting the characteristics of existing neighborhoods through appropriate buffering and lot size transitioning; and to preserve to the greatest extent possible the existing landscape features and amenities (trees, water resources, ravines, etc.) through the use of a planning

procedure (site design and analysis, presentation of alternatives, conceptual review, then detailed review) that can relate the type and design of a development to a particular site; and to consider an amount of development on a site, within the limits of density requirements, which will balance the interests of the owner, developer, neighbors, and the City; and to provide a means to better relate the built environment to the natural environment through sustainable and innovative building and public facility construction methods and materials.

**PROPOSED
ZONE:**

C-G: General Commercial District. The C-G zoning district is designed to accommodate a full range of retail, office and civic uses with a City-wide and even regional trade area. Except where non-conforming, residential uses are limited to single-family residences which are located on the same site as a permitted use. A wide range of uses, including but not limited to adult entertainment, automotive equipment repair and storage, mini-warehouses, utilities, heliports, medical centers, major event entertainment, and gasoline stations, are permitted conditionally.

**APPLICABLE
REVIEW**

CRITERIA: Community Development Code Chapters 18.380, 18.390 and 18.520; and Comprehensive Plan Policies 1, 2, 3, 4, 5, 7, 8, 9 and 12.

SECTION II. PLANNING COMMISSION DECISION

The Planning Commission finds that the PD review is valuable to address the relationship between natural resources and development on this particular site; that the natural resources on this site would be more protected using a PD review process than not; that in spite of the apparent changed character over the last 24 years, the PD overlay provides a valuable tool to the Planning Commission for analyzing the proposed uses on this site; and because of the unique nature of the site and intent of the PD provisions, Commission review is appropriate to address and apply the PD standards. Therefore, the Planning Commission finds that the proposed Zone Change would adversely affect the health, safety and welfare of the City and **DENIES** the Zone Change.

SECTION III. BACKGROUND INFORMATION

Site History & Information

Staff reviewed the zoning history of the site utilizing old zoning maps and searching City records. The subject property is shown on a 1977 Existing Land Use Map designated as “agricultural”. The site was shown on a 1981 Zoning Map and on the 1982 Preliminary Comprehensive Plan Map as being in unincorporated Washington County. Ordinance 83-24 adopted the Tigard Comprehensive Plan Maps including the Development Standard Areas Map for “Developing Areas”. This map showed the subject property and surrounding properties extending to the west comprising roughly the same area that was shown designated C-G (PD) in the subsequent 1984 Zoning Map for the City.

A search of City records showed that no land use applications to develop the site have been made beyond the site development and planned development review applications associated with the current owner, which have been withdrawn. Tax lot 100 has had several Code Enforcement Actions for noxious vegetation and a junk car.

Vicinity Information

The site is located within the Tigard Triangle, which is subject to the Tigard Triangle Design Standards to create a high quality, mixed use employment area. Site and building design requirements for this area include building placement near the street, ground floor window requirements and articulation along street frontages. Zoning in the area is a mix of C-G, C-G (PD), and MUE (Mixed Use Employment). Many of

the sites within the Triangle are being re-developed and converted from residential to commercial uses.

Properties to the south and east are zoned MUE and improved with single-family homes and office buildings. Property to the north across Dartmouth Street is zoned C-G (PD) where site development for a proposed office building is in progress. Also to the north at the intersection of SW 72nd Avenue and Dartmouth Street, the Planning Commission recently approved a zone change (ZON2007-00008) from C-G (PD) to C-G on an approximately one-acre site containing no sensitive lands.

In addition to the subject parcel, the remaining undeveloped properties in the Tigard Triangle zoned C-G (PD) include an adjacent .55-acre parcel and, to the west across SW 72nd Avenue, six contiguous parcels totaling approximately 24.72 acres.

Site Information and Proposal Description

The proposed zone change applies to one 3.19-acre parcel, Tax Lot 100. Sensitive lands including a drainage way and jurisdictional wetlands exist on the subject parcel. The subject parcel slopes moderately to the north and west and contains a number of emergent and some mature trees, and is otherwise covered with grasses and shrubs.

The applicant is requesting to remove the planned development overlay zone, changing the zone from C-G (PD) to C-G, to facilitate development of a new commercial retail/office project without the burden of the planned development standards and review.

The applicant states that other options were considered to address the PD overlay, including development under the PD criteria, modifying the PD code to address the difficulty of developing a commercial site under the current standards, or changing the entire site to MUE through a Comprehensive Plan Amendment/Zone Change.

The applicant concluded that “it may be argued that dealing with these issues can be addressed by the PD provisions themselves, [but] in the end the question remains whether the interest of the property owner and the City are well served by using these procedures to correct a historic problem rather than simply correcting the problem and applying the appropriate Code standards to a development application.”

The applicant describes the problem for commercial development under the PD overlay zone, in summary, as follows:

- ♦ The applicant contends that the planned development purposes in TDC 18.350.010.A.2 through 4 relate to residential development and are therefore not applicable to sites zoned C-G.
- ♦ The applicant suggests that, notwithstanding the legislatively applied PD designation to the subject parcel, the applicant should still be allowed the choice of implementing the PD standards or rely on the underlying zone standards as intended in TDC 18.350.020.
- ♦ The applicant suggests that permits obtained for Corps/DSL and CWS should be adequate in-lieu of addressing the concept plan approval criteria in TDC 18.350.050.A.2 and 6 relating to the preservation of natural features and development that has significant advantages over a standard development.
- ♦ The applicant contends that 40% of the subject commercial site would be required in landscaping 20% (TDC 18.350.070.4.A.h) and shared open space 20% (TDC 18.350.070.4A.m) representing a significant difficulty for a commercial site where 15% landscaping is the conventional standard.

Staff addresses each of these points in the analysis section of this report on page 12.

Summary of Issues

The applicant has identified several PD standards, above, that they believe are problematic for commercial development. The Commission voiced concern at the August 6, 2007 Planning Commission meeting that the shared open space standard (18.350.070.4A.m) may not be applicable to commercial development. The open space standards were adopted long after the original application of the PD overlay that made available or required in certain instances PD review for commercial and industrial development. Are the revised

Planned Development standards (Ord. 06-16) otherwise generally suitable and intended for both residential and commercial developments?

The Commission's prior decision (ZON 2007-00008) removing the PD overlay on property in the vicinity of the subject parcel and found that due to the subject parcel's small one-acre size, lack of natural resources, and application of the Tigard Triangle Design Standards, removing the PD standards would have no significant effect. Are the circumstances of this case substantially different to allow the Commission to deny the request?

Given that the Tigard Triangle Design Standards and the Corp/DSL/CWS permit requirements would apply to the subject parcel without the PD overlay, is there a benefit to the City to continue to apply the Planned Development standards and Planning Commission review in this case, and on the other undeveloped PD overlay zoned parcels in the vicinity?

Staff addresses these issues in the analysis section of this report on page 13.

SECTION IV. APPLICABLE REVIEW CRITERIA AND FINDINGS

Statewide Planning Goals, Metro Urban Growth Management Plan, and Metro Regional Framework Plan Policies are not applicable to this land use decision. No changes are proposed to the Comprehensive Plan and the land use action requested is not legislative.

TIGARD DEVELOPMENT CODE CHAPTER 18.380:

Section 18.380.030.A states that the Commission shall decide zone change applications which do not involve comprehensive plan map amendments.

The proposed zone change application to remove the PD overlay, changing the zoning on the subject parcel from C-G (PD) to C-G, does not involve a comprehensive plan map amendment. Therefore, the Planning Commission shall make a decision on the proposed zone change application.

Section 18.380.030.B states that 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 standards:

Section 18.380.030.B.1

Demonstration of compliance with all applicable comprehensive plan policies and map designations.

COMPREHENSIVE PLAN POLICIES

1. GENERAL POLICIES:

1.1.1a The city shall ensure that this comprehensive plan and all future legislative changes are consistent with the statewide planning goals adopted by the Land Conservation and Development Commission, the Regional Plan adopted by the Metropolitan Service District;

Implementation Strategies

1. The Comprehensive Plan Future Land Use Map and the Official Zoning District map will reflect the plan policies and apply land use categories in the following manner:

f. General Commercial - Refers to areas for auto-oriented and related commercial uses located along major traffic ways. The applicable zoning district is General Commercial (C-G).

The proposed zone change from C-G (PD) to C-G complies with the Comprehensive Map designation of "General Commercial" because the C-G zoning district implements the General Commercial Comprehensive Plan Designation. Removal of the PD overlay would not amend the comprehensive plan

and is not a legislative change. Therefore, the General Policies do not apply.

2. CITIZEN INVOLVEMENT:

2.1.1 The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

The applicant's representative sent out notices to surrounding property owners and neighborhood representatives, posted a sign on the property, and held a neighborhood meeting on December 27, 2007 in accordance with the City of Tigard's neighborhood meeting notification process. According to the minutes of the neighborhood meeting, five neighbors were in attendance. Discussion related to the timing of traffic signalization on 72nd Avenue and street improvements on Elmhurst Street, the height of the proposed Building C, construction noise, and wetland fill. No objections were given to the proposed zone change.

In addition, the City has mailed notice of the Planning Commission hearing to property owners within 500 feet of the subject site, interested citizens, and agencies, published notice of the hearing and posted the site pursuant to TDC 18.390.050 for Type III Procedures.

With these public involvement provisions and the applicant's documented participation, the proposed zone change is consistent with applicable Citizen Involvement policies.

3. NATURAL FEATURES AND OPEN SPACE:

3.1.1 The city shall not allow development in areas having the following development limitations except where the developer demonstrates that generally accepted engineering techniques related to a specific site plan will make the area suitable for the proposed development. (note: this policy does not apply to lands designated as significant wetlands on the floodplain and wetlands map.): A. Areas meeting the definition of wetlands under chapter 18.26 of the community development code;

According to the applicant, the site does include jurisdictional wetlands and does not include any significant wetlands as identified on the City of Tigard's "Wetland and Streams Corridor Map". These wetlands are subject to Corps/DSL and Clean Water Services standards and will be addressed at the time of Development Review.

3.4.2 The city shall:

- A. Protect fish and wildlife habitat along stream corridors by managing the riparian habitat and controlling erosion, and by requiring that areas of standing trees and natural vegetation along natural drainage courses and waterways be maintained to the maximum extent possible;**
- B. Require that development proposals in designated timbered or tree areas be reviewed through the planned development process to minimize the number of trees removed; and**
- C. Require cluster type development in areas having important wildlife habitat value as delineated on the "Fish and Wildlife Habitat Map" on file at the city.**

As the applicant states, there is no floodplain or steep slopes on the subject parcel. Any geotechnical issues may be addressed during Site Development Review. There is a drainageway, a tributary to Red Rock Creek that traverses the property from east to west. The drainageway would be better characterized as a ditch, rather than a natural drainage course. The creek has been significantly altered by the construction of SW Dartmouth Street. The stream corridor across the property no longer includes areas of standing trees and the natural vegetation has been significantly degraded. The "Fish and Wildlife Habitat Map" has been replaced (Ord.06-20) by the "Significant Habitat Areas Map" which shows both lower and moderate value habitat areas on the site. CWS standards will apply to the moderate value vegetated corridor on the site. The Significant Habitat Areas Map is implemented through non-regulatory measures such as cluster-type

development usually associated with residential development.

The natural resource chapter includes implementation strategies that encourage, through the Planned Development Process, the retention of large, varied habitat areas on private and public lands including inventoried plant and animal communities; and, where there exist large or unique stands of trees or major vegetation areas within the planning area on undeveloped land, the City shall ensure that development proposals do not substantially alter the character of the vegetation areas through the Planned Development Process and the "Tree Cutting" section of the Community Development Code.

The existing property, zoned C-G (PD), is bordered by a collector, an arterial, and intense commercial development. The approximately 3-acre property does not include large varied habitat areas of inventoried plant and animal communities or large or unique stands of trees. Therefore, the purpose for which a planned development overlay was originally established under these implementation strategies may not continue to exist. The PD designations in the Triangle preceded the environmental regulations and appear to have been placed to cause review partly because of the proximity of residential neighborhoods whose residential designations no longer exist in the Triangle. However, there remains a drainageway and jurisdictional wetlands on the subject property that will be protected at minimum under Corp/DSL/CWS permits.

The proposed zone change does not involve development. The applicable Natural Features and Open Space Policies have been adequately addressed with respect to planned development review.

4. AIR, WATER AND LAND RESOURCES QUALITY:

4.2.1 All development within the Tigard urban planning area shall comply with applicable federal, state and regional water quality standards, including those contained in the Clean Water Services' Design and Construction Manual. (rev. Ord. 02-15)

4.3.1 The city shall:

- A. Require development proposals located in a noise congested area or a use which creates noise in excess of the applicable standards to incorporate the following into the site plan:
 - 1. Building placement on the site in an area where the noise levels will have a minimal impact; or**
 - 2. Landscaping and other techniques to lessen noise impacts to levels compatible with the surrounding land uses.****
- B. Coordinate with DEQ in its noise regulation program and apply the Vol. Ii, policy 4-4 DEQ land use compatibility program.**
- C. Where applicable require a statement from the appropriate agency (prior to the approval of a land use proposal) that all applicable standards can be met.**

Removal of the PD overlay will not change the standards related to water quality or noise standards. All new developments within the City of Tigard are required to collect and treat storm water run-off for the site utilizing Clean Water Services design standards. Noise level allowances are regulated by the Tigard Municipal Code 7.40.130 through 7.40.210. During pre-application meetings held for future site development, the applicant has proposed retail and office uses. These are not uses which create excessive noise. They are also the same type of uses already existing on many surrounding properties as the neighborhood continues to change from residential to commercial. Buffering will be required where future commercial development occurs adjacent to a residential use.

The proposed zone change does not involve development. The applicable Air, Water and Land Resources Quality Policies will be addressed at the time of Development Review.

5. ECONOMY:

5.1 The City shall promote activities aimed at the diversification of the economic opportunities available to Tigard residents with particular emphasis placed on the growth of the local job

market.

Because the underlying zone remains General Commercial, all the allowed uses will be the same. The PD overlay does not provide more growth opportunities for the local job market. Due to the constraints outlined within the PD code, the applicant states that removal of the PD will allow the site to develop in a manner that will increase economic activity. The question is whether application of the PD process is seen as inhibiting economic opportunities. This must be weighed in relation to the benefits of the PD review. Other than the fact that most applicants prefer a Type II process in terms of speed and certainty of the standards, there have been no arguments made in this application that conclusively indicate that the economy is not served by use of the PD review process.

5.4 The City shall ensure that new commercial and industrial development shall not encroach into residential areas that have not been designated for commercial or industrial uses.

There are residential uses south of the site. The area is currently zoned for commercial development and many sites in the area have been re-developed with commercial uses. Any proposed commercial development on the site will not be encroaching into residential zones. Buffering and screening will be required next to these existing residences if the site is developed with a commercial use. This policy is typical of the existing Comprehensive Plan's emphasis on protecting existing single-family neighborhoods, which in this case no longer exist because of zone changes from residential to commercial and recent development activity.

The proposed zone change is consistent with the applicable Economic policies.

7. PUBLIC FACILITIES AND SERVICES:

7.1.2 The City shall require as a pre-condition to development approval that;

- a. **Development coincide with the availability of adequate service capacity including:**
 - 1. **Public water;**
 - 2. **Public sewer shall be required for new development within the city unless the property involved in over 300 feet from a sewer line and Washington County Health Department approval for a private disposal system is obtained; and**
 - 3. **Storm drainage.**
- b. **The facilities are:**
 - 1. **Capable of adequately serving all intervening properties and the proposed development; and**
 - 2. **Designed to city standards.**
- c. **All new development utilities to be placed underground.**

According to City maps, storm, sanitary sewer, and water are all available at the corner of 72nd and Dartmouth. The proposed use of the site will undergo development review to ensure that public facilities and services are adequate, capable of serving the properties, and designed to city standards.

The proposed zone change does not involve any development. City's applicable Public Facilities and Services Polices will be addressed at the time of actual development review.

8. TRANSPORTATION:

Transportation System

8.1.1 Plan, design and construct transportation facilities in a manner which enhances the livability of Tigard by:

- a. **Proper location and design of transportation facilities.**
- b. **Encouraging pedestrian accessibility by providing safe, secure and desirable pedestrian routes.**
- c. **Addressing issues of excessive speeding and through traffic on local residential streets through a neighborhood traffic program. The program should address corrective**

measures for existing problems and assure that development incorporates traffic calming.

- 8.1.2 Provide a balanced transportation system, incorporating all modes of transportation (including motor vehicle, bicycle, pedestrian, transit and other modes) by:
- a. The development of and implementation of public street standards that recognize the multi-purpose nature of the street right-of-way for utility, pedestrian, bicycle, transit, truck and auto use.
 - b. Coordination with Tri-met, and/or any other transit providers serving Tigard, to improve transit service to Tigard. Fixed route transit will primarily use arterial and collector streets in Tigard. Development adjacent to transit routes will provide direct pedestrian accessibility.
 - c. Construction of bicycle lanes on all arterials and collectors within Tigard consistent with the bicycle master. All schools, parks, public facilities and retail areas shall strive to have direct access to a bikeway.
 - d. Construction of sidewalks on all streets within Tigard. All schools, parks, public facilities and retail areas shall strive to have direct access to a sidewalk.
 - e. Development of bicycle and pedestrian plans which link to recreational trails.
 - f. Design local streets to encourage a reduction in trip length by providing connectivity and limiting out-of-direction travel and provide connectivity to activity centers and destinations with a priority for bicycle and pedestrian connections.
 - g. Tigard will participate in vehicle trip reduction strategies developed regionally targeted to achieve non-single occupant vehicle levels outlined in Table 1.3 of the Regional Transportation Plan.
 - h. Tigard will support the development of a commuter rail system as part of the regional transit network.

- 8.1.4 Set and maintain transportation performance measures that:
- a. Set a minimum intersection level of service standard for the City of Tigard and requires all public facilities to be designed to meet this standard.
 - b. Set parking ratios to provide adequate parking, while providing an incentive to limit the use of the single occupant vehicle.
 - c. Encourage working with other transportation providers in Washington County, including Tri-Met, Metro and ODOT to develop, operate and maintain intelligent transportation systems, including coordination of traffic.

8.2 Trafficways

- 8.2.1 The city shall plan for a safe and efficient street and roadway system that meets current needs and anticipated future growth and development.
- 8.2.2 The city shall provide for efficient management of the transportation planning process within the city and the metropolitan area through cooperation with other federal, state, regional and local jurisdictions.
- 8.2.3 The city shall require as a precondition to development approval that:
- A. Development abut a publicly dedicated street or have adequate access approved by the appropriate approval authority;
 - B. Street right-of-way be dedicated where the street is substandard in width;
 - C. The developer commit to the construction of the streets, curbs and sidewalks to city standards within the development;
 - D. Individual developers participate in the improvement of existing streets, curbs and sidewalks to the extent of the development's impacts;
 - E. Street improvements be made and street signs or signals be provided when the development is found to create or intensify a traffic hazard;
 - F. Transit stops, bus turnout lanes and shelters be provided when the proposed use of a type which generates transit ridership;

- G. Parking spaces be set aside and marked for cars operated by disabled persons and that the spaces be located as close as possible to the entrance designed for disabled persons; and**
- H. Land be dedicated to implement the bicycle/pedestrian corridor in accordance with the adopted plan.**

The Transportation Goal policies and implementation strategies are largely directed at the City and include objectives that create the framework for ensuring that the transportation system is adequate for all modes of travel at the time development occurs. These objectives are implemented by the Development Code standards that apply during development review. None of the minimum requirements for streets, access or parking would be different if the site were developed as a Planned Development.

As stated in the applicant's narrative, the proposed subsequent development will require a traffic study. At a minimum this study must address site distance for access points, peak period vehicle trips and the development's affect on nearby entry/exit ramps for Interstate 5.

At the time of Site Development or Planned Development Review, the City will require additional dedication of land and street improvements to meet current standards along Clinton Street, Dartmouth Street and 72nd Avenue. In addition funds will be collected that will contribute to the signalization of the Dartmouth/68th intersection and Dartmouth/72nd intersection.

The future commercial project is likely to generate increased transit ridership. Tri-Met bus route 78 serves the subject site with a bus stop located at the intersection of 68th Parkway and Dartmouth Street. Any future development must include pedestrian connections such as a sidewalk or plaza. Sidewalks are currently not constructed to connect this site with the bus line along 68th Parkway, but will happen with future development.

All on-site parking and circulation for any proposed development will be done to City specifications as required by the Tigard Development Code. Maximum parking regulations will limit the amount of parking provided to encourage use of alternative modes of transportation.

As shown in the foregoing analysis, the City's applicable Transportation Policies will be addressed at the time of Site Development or Planned Development Review.

9. ENERGY:

9.1.3 The City shall encourage land use development which emphasizes sound energy conservation, design and construction.

Applicable implementation strategies to support this goal include: 3) The City shall locate higher densities and intensities of land use in proximity to existing and potential transit routes specifically with convenient access to federal and state highways, arterials and major collector streets, and 8) The City shall coordinate with and support public and private planning efforts that advocate alternative forms of transportation such as mass transit, carpooling, ride share, bicycling and walking for commuter purposes.

The site is located at the corner of 72nd Avenue and Dartmouth Street which is within ¼ mile of an I-5 interchange. State Highway 99 is less than ½ mile to the north. Another collector (68th Parkway) is within two blocks of the site. The proposed removal of the PD overlay would not change the allowed uses on the site. Tigard Development Code standards such as maximum parking and required bicycle parking will encourage the use of alternative forms of transportation. These criteria are reviewed during the Site Development or Planned Development Review process.

The proposed zone change will have no effect on the efficient use of the transportation system to conserve energy and will remain consistent with the applicable Energy Policies.

12. LOCATIONAL CRITERIA:

12.2 COMMERCIAL

12.2.1 The City shall:

- a. Provide for commercial development based on the type of use, its size and required trade area.
- b. Apply all applicable plan policies.
- c. Apply the appropriate locational criteria applicable to the scale of the project.

2. General Commercial

General Commercial areas are intended to provide for major retail goods and services. The uses classified as general commercial may involve drive-in services, large space users, a combination of retail, service, wholesale and repair services or provide services to the traveling public. The uses range from automobile repair and services, supply and equipment stores, vehicle sales, drive-in restaurants to laundry establishments. It is intended that these uses be adjacent to an arterial or major collector street.

A. Scale

- (1) Trade Area. Varies.
- (2) Site Size. Depends on development.
- (3) Gross Leasable Area. Varies.

B. Locational Criteria

- (1) Spacing and Location
 - (a) The commercial area is not surrounded by residential districts on more than two sides.
- (2) Access
 - (a) The proposed area or expansion of an existing area shall not create traffic congestion or a traffic safety problem. Such a determination shall be based on street capacity, existing and projected traffic volumes, the speed limit, number of turning movements and the traffic generating characteristics of the various types of uses.
 - (b) The site shall have direct access from a major collector or arterial street.
 - (c) Public transportation shall be available to the site or general area.
- (3) Site Characteristics
 - (a) The site shall be of a size which can accommodate present and projected uses.
 - (b) The site shall have high visibility.
- (4) Impact Assessment
 - (a) The scale of the project shall be compatible with the surrounding uses.
 - (b) The site configuration and characteristics shall be such that the privacy of adjacent non-commercial uses can be maintained.
 - (c) It shall be possible to incorporate the unique site features into the site design and development plan.
 - (d) The associated lights, noise and activities shall not interfere with adjoining non-residential uses.

The proposed removal of the planned development overlay does not change the underlying General Commercial zone. Therefore, the Locational Policies do not apply.

FINDING: Both C-G (PD) and C-G zoning are treated as General Commercial under the Tigard Comprehensive Plan Designations. The removal of the overlay zone would not change the Comprehensive Plan Map Designation. The Comprehensive Plan Policies for Natural Features and Open Space (3.4.2), provided a basis for the use of the planned development process, and its use on the subject property and properties in the vicinity, to protect the character of the vegetation areas where there exist large or unique stands of trees or major vegetation areas within the planning area on undeveloped land. Based on the analysis above, the applicable Comprehensive Plan policies have been adequately addressed. The proposed zone change to remove the PD overlay may not be consistent with Natural Features and Open Space policies (3.4.2), depending on whether changes to the area have resulted in substantial degradation of the resource where the PD standards would no longer be applicable.

18.380.030.B.2

Demonstration of compliance with all applicable standards of any provision of this code or other applicable implementing ordinance; and

FINDING: The proposed zone change does not include a specific development proposal. However, during Site Development or Planned Development Review, any proposed development will be required to meet all of the current applicable Tigard Development Code standards.

18.380.030.B.3

Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application.

Staff reviewed the zoning history of the site utilizing old zoning maps and searching City records. The subject property is shown on a 1977 Existing Land Use Map designated as “agricultural”. The site was shown on a 1981 Zoning Map and on the 1982 Preliminary Comprehensive Plan Map as being in unincorporated Washington County. Ordinance 83-24 adopted the Tigard Comprehensive Plan Maps including the Development Standard Areas Map for “Developing Areas”. This map showed the subject property and surrounding properties extending to the west comprised roughly the same area that was designated C-G (PD) in the subsequent 1984 Zoning Map for the City. The Comprehensive Plan policies for Natural Features and Open Space (3.4.2), provide a basis for the use of the planned development process, and explain its use in this case, to protect the character of the vegetation areas where there exist large or unique stands of trees or major vegetation areas within the planning area on undeveloped land.

In 1999, the City adopted the Tigard Triangle Design Standards for the area lying between Highway 99, Interstate 5 and Highway 217. These standards adopted guiding principles to create a high-quality mixed use employment area, provide a convenient pedestrian and bikeway system, and utilize streetscapes for a quality image.

In 2006, the Planning Commission adopted the revised PD standards to emphasize the balancing of flexible standards with environmental and community benefits (Ord. 06-16). The revisions included, among others, new open space requirements and affirmed a two-step review process for conceptual and detailed development proposals. There is some question whether consideration of the open space requirement was intended for use on commercial and industrial properties. The Natural Features and Open Space Comprehensive Plan policies provide some basis for the use of PD review.

Prior to adoption of the Triangle standards and the revised PD standards, three commercial sites were approved through the PD process including WinCo, Costco and Toys-R-Us. These were all large sites of at least 6 or more acres and included or were adjacent to sensitive lands. Over the years, the Triangle area has been redeveloping into an area with larger retail uses along with large and small scale office buildings, consistent with development allowed in the C-G (PD) and MUE zones.

FINDING: The foregoing suggests that development in the neighborhood, known as the Tigard Triangle, has occurred consistent with the underlying zones and the planned development overlay. There is no apparent evidence of a mistake or inconsistency in the comprehensive plan or zoning map. However, changes to the original zoning and the development code standards that apply to the neighborhood have precipitated the proposed zone change.

SECTION V. ADDITIONAL CITY STAFF AND OUTSIDE AGENCY COMMENTS

The City of Tigard’s Long Range Planning Department was notified of the proposal and did not provide comment.

No outside agencies were notified of the proposal because no development or other applicable action is proposed for their review.

SECTION VI. STAFF ANALYSIS

ANALYSIS:

Based on the information above, the proposed zone change may or may not be consistent with Natural Features and Open Space policies (3.4.2), depending on whether changes to the area have resulted in substantial degradation of the resource where the PD standards would no longer be applicable; any new development will be required to meet all of the current Tigard Development Code standards during Site Development Review. Changes have occurred in the primary zone designations as well as development code standards applicable to Triangle properties.

The applicant describes the problem for commercial development under the revised PD standards, in summary, as follows:

1) The applicant contends that the planned development purposes in TDC 18.350.010.A.2 through 4 relate to residential development and are therefore not applicable to sites zoned C-G.

Staff Response: Of the PD Chapter's six purpose statements, Nos. 3 and 4 relate to residential development, referring to "housing styles" and "density requirements" respectively. Purposes 1, 2, 4, and 6 relate generally to both commercial and residential development. The purpose statements have always applied as appropriate to either commercial or residential development.

2) The applicant suggests that, notwithstanding the legislatively applied PD designation to the subject parcel, the applicant should still be allowed the choice of implementing the PD standards and relies on the underlying zone standards as otherwise intended in TDC 18.350.020.

Staff Response: The PD standards explicitly address applicability to commercial development: "The planned development designation is an overlay zone applicable to all zones. An applicant may elect to develop the project as a planned development, in compliance with the requirements of this chapter, or in the case of a commercial or industrial project, an approval authority may apply the provisions of this chapter as a condition of approving any application for the development" (18.350.020). In 1983 the City legislatively applied the PD overlay to specific properties in the Triangle, including the subject parcel. Other than reformatting, the revised PD standards did not change the substance of TDC 18.350.020 or affect its previous application by the City to the Triangle. The code now and has always indicated that the PD process can apply to commercial and industrial development as well as residential. The question is whether there are substantial reasons to apply the PD to this property.

3) The applicant suggests that permits obtained for Corps/DSL and CWS should be adequate in-lieu of addressing the concept plan approval criteria in TDC 18.350.050.A.2 and 6 relating to the "preservation of natural features" and "development that has significant advantages over a standard development".

Staff Response: The applicant's preliminary plans demonstrated that Corps/DSL and CWS permits would result in preservation of wetlands to some extent. However, under the PD standards these approval criteria are the means by which the distinctive quality of a development may be assured either by further protecting natural features, integrating them into the development, or by providing other amenities.

4) The applicant contends that a total of 40% of the subject commercial site would be affected, with 20% in required landscaping (TDC 18.350.070.4.A.h) and 20% in shared open space (TDC 18.350.070.4.A.m), representing a significant difficulty for a commercial site where 15% landscaping is the conventional standard.

Staff Response: Section 18.350.070.A.3.d of the revised PD standards require 20% of the net site area be landscaped (18.350.070.4.A.h refers explicitly to residential development); section 18.350.070.A.4.m requires 20% of the gross site area be designated as a shared open space facility. The standards do not state that these provision must be additive, nor prohibits landscaped areas to be used for the shared open space

requirement. However, the definitions adopted with the revised PD standards (18.120.102) do imply some “passive use facilities” be reserved for medium-impact recreation and education uses related to the functions and values of the natural area. The PD standards further set maximum site coverage of 80% (18.350.060.C.2). By comparison, commercial development in the CBD and IP zones are subject to maximum site coverage's of 80% and 75%, respectively. The actual amount of open space required for any given development is dependant on a number of factors that makes the open space standard hard to quantify without a specific development proposal. The resulting uncertainty is problematic for developers.

In summary, the PD process requires at least 5% more landscaping than the Site Development Review process.

ISSUES:

A) The applicant has identified several PD standards, above, that they believe are problematic for commercial development. The Commission voiced concern at the August 6, 2007 Planning Commission meeting that the shared open space standard (18.350.070.4A.m) may not be applicable to commercial development. The opens space standards were adopted long after the original application of the PD overlay that made available or required in certain instances PD review for commercial and industrial development. Are the revised Planned Development standards (Ord. 06-16) otherwise generally suitable and intended for both residential and commercial developments?

As reflected in staff's responses above, the applicant's broadly drawn statements on the applicability of the revised PD standards to commercial development are not completely conclusive nor supported by code. Staff believes that applying the requirement for shared open space facilities (18.350.070.A.4.m) to commercial and industrial development may have been an oversight because the Planning Commission and Planned Development Committee focus was on residential development; open space requirements for commercial and industrial development were not discussed during the code revision. However, the above analysis suggests that the standard may not be as onerous as thought depending on the open space/landscape calculation for a specific development proposal. Because of the difficulty in determining the actual amount of opens space required, the Commission may want to qualify the applicability of the standard for residential development only, or otherwise clarify the standard to address the uncertainty that is problematic for developers. Alternatively, is there public benefit to retaining the standard in the likelihood that commercial development could better relate to natural resources on the site and improve the quality of the development?

B) The Commission's prior decision (ZON 2007-00008) removing the PD overlay on property in the vicinity the subject parcel found that due to the subject parcel's small one-acre size, lack of natural resources, and application of the Tigard Triangle Design Standards, removing the PD standards would have no significant effect. Are the circumstances of this case substantially different to allow the Commission to deny the request?

The subject site is different in three important respects to the property previously addressed in ZON2007-00008 including: 1) the size of the subject property is 3.19 acres versus approximately 1 acre, 2) the presence of jurisdictional wetlands and drainageways on the subject property versus the absence of natural resources, and 3) the PD Concept Plan Approval standards (18.350.050.A.1, 2, and 6) that relate to the natural resources on the subject property are not otherwise covered under the Tigard Triangle Design Standards. These differences in the site and the applicable PD standards that pertain to natural resources allow the Commission to find that the facts of this case could support denial of the request to remove the Planned Development overlay.

C) Given that the Tigard Triangle Design Standards and the Corp/DSL/CWS permit requirements would apply to the subject parcel without the PD overlay, is there a benefit to the City to continue to apply the Planned Development standards and Planning Commission review in this case, and on the other undeveloped PD overlay zoned parcels in the vicinity?


Although the Tigard Triangle Design standards ensure high quality development, principally with regards to building placement and articulation, they do not relate to the relationship of the development to the natural resources on the site. Similarly, Corp/DSL/CWS permits address natural resources on site without concern for the relationship of the proposed development other than providing for exclusion and rehabilitation of resource values. The primary focus of the revised PD standards, as conveyed in the purpose statements and Concept Plan Approval Criteria, is the relationship of the development to the resource that results in development that has significant advantages over standard development. This is the promise of the PD overlay legislatively applied to the subject property and on the approximately 25 remaining undeveloped acres in the Triangle also zoned C-G (PD).

SECTION VII. CONCLUSION

The City of Tigard Planning Commission has **DENIED** Zone Change (ZON2007-00018) - FRY PLANNED DEVELOPMENT OVERLAY ZONE CHANGE, based on the following findings: that the PD review is valuable to address the relationship between natural resources and development on this particular site; that the natural resources on this site would be more protected using a PD review process than not; that in spite of the apparent changed character over the last 24 years, the PD overlay provides a valuable tool to the Planning Commission for analyzing the proposed uses on this site; and because of the unique nature of the site and intent of the PD provisions, Commission review is appropriate to address and apply the PD standards to this particular site.

IT IS FURTHER ORDERED THAT THE APPLICANT AND ALL PARTIES TO THESE PROCEEDINGS BE NOTIFIED OF THE ENTRY OF THIS ORDER.

DENIED: THE 3rd DAY OF MARCH, 2008 BY THE CITY OF TIGARD PLANNING COMMISSION.



Jodi Inman, Planning Commission President


Dated this 10th day of March, 2008.

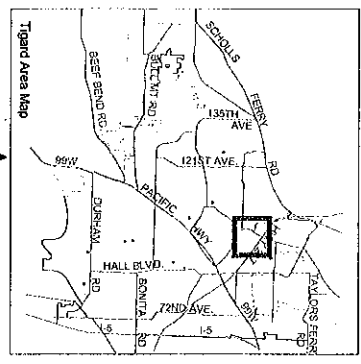
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VICINITY MAP

ZON2007-00018 FRY ZONE CHANGE

LEGEND:

 SUBJECT SITE



Information on this map is for general location only and should be verified with the Development Services Division, 13125 SW Hall Blvd, Tigard, OR 97223 (503) 639-4171

http://www.ci.tigard.or.us

