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BY ENGAGING COMMUNITY MEMBERS TO DEVELOP AN ENRICHED QUALITY OF LIFE.**



PLANNING COMMISSION MEETING AGENDA

CITY OF ONTARIO OREGON

MONDAY, JUNE 12, 2023, 6:00 PM, MT

[Zoom Link](#)

1) CALL TO ORDER

Commissioner Blu Fortner _____ Commissioner Mike Allen _____ Commissioner James Grissett _____
Commissioner Antonio Sunseri _____ Commissioner John Briedenbach _____ Commissioner Max Twombly _____
Chairman Ralph Poole _____

City Council Ex-Officio _____ City Manager _____
Economic Development Director _____ Planning & Zoning Technician _____

2) PLEDGE OF ALLEGIANCE

3) MOTION TO ADOPT THE AGENDA

This Agenda was posted on . Copies of the Agenda are available at the Community Development Center and on the city's website at www.ontariooregon.org.

- 4) PUBLIC COMMENTS** Citizens may address the Planning Commission; however, the Planning Commission may not be able to provide an immediate answer or response. Out of respect to the Commissioners and others in attendance, please limit your comment to three minutes. Please state your name and city of residence for the record.

5) APPROVAL OF MINUTES

- A) PC Minutes 7/11/22
PC Minutes 8/8/22
PC Minutes 10/26/22
PC Minutes 3/28/23

6) PUBLIC HEARING

- A) Action 2023-04-04AZ: a request by Becky Yzaquirre representing the Strey Family Trust, for an Annexation and Rezone of 38.548 Acres of property from UGA Commercial (C-2) to City C-2 General Commercial (C-2), UGA Residential to City High Density Residential (RM-10)

7) COMMENTS FROM COMMISSIONERS

8) ADJOURN



PLANNING COMMISSION MEETING MINUTES

Monday, July 11, 2022

The Ontario Planning Commission was called to order at 6:00pm in the Council Chambers of City Hall. Commission members present were Chairman Ralph Poole, Mike Allen, John Hall, and John Breidenbach. Max Twombly, James Grissett and Blu Fortner were absent.

City Staff present: Dan Cummings, Community Development Director and City Manager; Tori Barnett, City Recorder; and Ex-Officio Ken Hart.

The meeting was recorded and was on file at the City Community Development Center. The agenda for the meeting was emailed on or before July 4, 2022. Copies of the Agenda were available at the City Community Development Center.

Commissioner Allen led everyone in the Pledge of Allegiance.

ADOPTION OF AGENDA

John Hall moved, seconded by Mike Allen, to adopt the Agenda as presented. Roll call vote: Fortner-out; Allen-yes; Grissett-out; Hall-yes; Breidenbach-yes; Twombly-out; Poole-yes. Motion carried 4/0/3.

There were no unscheduled public appearances.

ADOPTION OF MINUTES

The minutes will be presented and adopted at the next Planning Commission Meeting.

PUBLIC HEARING ACTION 2022-05-22AZ: A REQUEST BY #745 PIONEER EXCHANGE AND SUNSET ASSOCIATES LP FOR AN ANNEXATION AND REZONE OF PROPERTY FROM UGA RESIDENTIAL RS-50 (UGA-RS-50) TO CITY SINGLE FAMILY RESIDENTIAL (RS-50)

Chairman Poole opened the Public Hearing. There were no disclosures of ex-parte contact, no abstentions, and no objections to the Planning Commission's jurisdiction.

Dan Cummings, Community Development Director, presented a staff report on the project.

SUMMARY:

The applicant/owner owns a parcel, known as Tax Map 18S4705, tax lot 3401. The tax lot is currently zoned UGA Residential(UGA-RS-50) and is requesting the property be zoned city Single Family Residential (RS-50).

BACKGROUND:

The applicant has submitted an application for the annexation and rezone of a parcel of land known as Tax Lot 3401 on assessor's map 18SR05, which was found to be complete on May 23, 2022 and provided enough information to schedule a public hearing on the matter.

This request for rezone needs a recommendation for approval or rejection from the Planning Commission to the City Council, who will be the decision maker for this request. This action specifically seeks approval for rezone from UGA Residential (UGA-RS-50) to City Single Family Residential (R-50) within the City Limits of the City of Ontario.

There are no recent city planning actions on the property. The property was part of a property line adjustment while in the county in 2006.

CURRENT SITUATION:

The proposed development must comply with applicable provisions of the OCC (City of Ontario Zoning Ordinance as set forth in the Ontario City Code), and the City of Ontario Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the Zoning Ordinance, it is considered to be consistent with the Comprehensive Plan and the Single Family Residential zone is an approved zoning under the comprehensive plan.

A. Rezone

1. Section 10B-20-30 REQUIRED FINDINGS, DECISION CRITERIA. In preparing findings to support a quasi-judicial zoning map amendment decision, the following findings shall be addressed except when alternatives are set forth or where a required finding clearly does not apply to the current action:

- a. The zoning map amendment is in conformance with statewide planning goals and guidelines.
- b. The zoning map amendment is in conformity with the acknowledged comprehensive plan.
- c. The applicant has demonstrated a mistake or error in the original zone designation, or the applicant has demonstrated a change in physical, social or market conditions generally affecting the area which makes the proposed change appropriate.
- d. A public need is demonstrated for this zoning at this location and is not the granting of a special privilege for a single property or small group of properties.
- e. The property affected by the change is adequate in size and shape to facilitate its use and development as permitted under the new zoning classification.
- f. The property affected by the proposed change of zone is properly related to streets and public facilities and with services adequate to meet the demands of the uses allowed in the new zone.
- g. The proposed zoning map change will not result in adverse effects upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.

Findings:

1. Explain how the proposed zoning map amendment is in conformance with statewide planning goals and guidelines.

The map amendment is to bring the property into the City of Ontario and maintain the zoning of the property consistent with the statewide planning goals and the guidelines to allow for development of the property.

2. As applicant, you must explain how there has been a mistake or error in the original zone designation or a change in physical, social or market conditions generally affecting the area, which makes this proposed zone change appropriate.

The property is within the City of Ontario Urban Growth Boundary (UGA) and the annexation and rezoning of the property is in compliance with the acknowledged Comprehensive plan and zoning.

3. As applicant, you must explain how there has been a mistake or error in the original zone designation or a change in physical, social or market conditions generally affecting the area, which makes this proposed zone change appropriate.

There is no error, the requested zone of Single Family Residential RS-50 is in compliance with the Comprehensive plan for the zoning of this property.

4. As applicant, you must show a public need is demonstrated for this zoning at this location and is not the granting of a special privilege for a single property or small group of properties.

Allowing the annexation and rezoing of the property allows the property to be developed into much needed housing lots. The request is in harmony with the surrounding zoning and matches the zoning as per the comprehensive plan and zing map.

5. Explain how the property affected by the change, if approved, is adequate in size and shape to facilitate its use and development as permitted under the new zoning classification.

The parcel of the proposed rezone far exceeds the minimum parcel size for the type of requested zone and will be able to be developed into single family lots as planned in the Comprehensive Plan.

6. Explain how the property affected by the proposed change of zone is properly related to streets and other public facilities and with services adequate to meet the demands of the uses allowed in the new zone. This shall explain how this proposal will not absorb a disproportionate share of public facilities, utilities and general assets.

The property is in the UGA and is part of the City Transportation Master Plan, City Water Master Plan, City Waste Water Master Plan and the City Storm Water Master Plan and, therefore, has been approved to provide city services. Currently, there is one single family dwelling on the property with a failing sewer drain field. There is city sewer and water within NW 4th Avenue that can be extended to this property to connect the existing dwelling, as well as new lots to the city system.

7. Explain how the proposed change in zoning will not result in adverse effects upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.

The property is already part of the city approved zoning and has been approved for residential use and can be developed once brought into the City limits and is in harmony with the surrounding properties zoned accordingly.

Summary Conclusions: Based on the findings above:

a. The City of Ontario Municipal Code Implements policies contained in the City of Ontario Comprehensive Plan, which conforms to the Statewide Planning Goals; generally, if a proposed rezone meets all criteria and standards contained in the OMC, the request will be consistent with Comprehensive Plan Policies and therefore conform to the Statewide Planning Goals. As this proposal meets the criteria in the above section, this proposal is consistent with Statewide Planning Goals. **CRITERION IS MET**

b. The findings 2 above show that the request is within goals and conformance of the Acknowledged Comprehensive plan. Therefore, this proposal has demonstrated to be consistent with the Comprehensive Plan. **CRITERION IS MET**

c. The applicant states in finding 3, that there has been no mistake and the request follows the comprehensive plan. Therefore, there is no mistake, and the request follows the comprehensive plan and approved zoning and demonstrates that this criterion is met. **CRITERION IS MET**

d. As noted in applicant's finding 4, rezoning from the UGA Residential RS-50 zone to the City Single Family Residential RS-50 zone would not be considered as the granting of a special privilege for a single property or group of property owners as it is providing for the same zoning as the comprehensive plan and is the same zoning of the lands to the west, south, east and north of this property. **CRITERION IS MET**

e. As noted in the findings 5, the subject property size is adequate to demonstrate consistency

with this criterion. **CRITERION IS MET**

f. As noted in the finding 6 above, the properties are properly related to streets and public facilities within the public streets and the existing uses and services demonstrate that uses allowed in the proposed zone are provided. **CRITERION IS MET**

g. The applicant states in finding 7 above, that while the impact on surrounding properties will be low, with the proposed change in zoning, compliance with present City of Ontario ordinances will be essential in eliminating these issues. The permitted uses are related to low volume traffic and uses which do not lend themselves to the creation to significant amounts of noise or other discharges of dust or odor into the air is uncommon in this type of use. **CRITERION IS MET**

Rezone Final Conclusion: ALL CRITERIA ARE MET

B. Annexation:

1. 10B-45-10 INITIATION OF ACTION. When a person, authorized by statute, wishes to extend the city's boundaries, an application on forms supplied by the city shall be filed with the Planning Director and which include: annexation consent forms, by the property owners, and by tenants if required by law or court decision; request for a change in zoning map designation, or plan change if required; request for other quasi-judicial action if required; fees, and other exhibits and requirements for a quasi-judicial action as set forth in this Title. All land use actions associated with the annexation shall be consolidated, as feasible, and one fee paid.
2. Oregon Revised Statute 222.125: Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

Findings based on the answers and information given in the application made a part hereof:

1. The applicants have paid the fees and provided the proper application with signatures.
2. The property is annexable because it lies inside the Urban Growth Boundary and is contiguous with current city limits along the west and south sides of the property.
3. The property is currently zoned for residential use in the Urban Growth Area; the requested zone, City Single Family Residential (RS-50), is consistent with contiguous property.
4. Findings from preceding sections of this report are herein included by this reference. A change to the comprehensive plan map or text is not necessary to annex the property, and the annexation of the property is consistent with all applicable Comprehensive Plan Policies.
5. Annexation would benefit the city by increasing tax revenue, and by providing much needed residential housing building sites.

Annexation Conclusion: All criteria and standards applicable to a request for annexation have been met. The property may be annexed.

SUMMARY CONCLUSIONS AND PLANNING COMMISSION DECISION

A request for annexation and rezone of property may be recommended for approval or denial by the Planning Commission to the City Council if all applicable decision criteria and standards are found met, or able to be met through appropriate conditions of approval. In this case, findings must be made by the Planning Commission that the specific criteria are either met, able to be met through conditions of approval, or not met; options and discussion are provided under "Findings:" and "Conclusion:" for each criterion. All the criteria and standards must be met in order for the request to be recommended for approval. **All conditions and criteria have been met and therefore the Planning commission may approve and recommend the action.**

ANALYSIS:

- A. **STRATEGIC PLAN** *This project falls under the Growth goal of the City Council's five- year strategic plan; specifically allowing for annexation of land to add growth and more tax base. It allows for the development of the property.*
- B. **FINANCIAL** *This annexation will add to the City tax base.*
- C. **TIMING** *The rezoning of this property is needed in a timely manner to allow for development.*
- D. **POLICY/LEGAL** *The proposed development must comply with applicable provisions of the OCC (City of Ontario Zoning Ordinance as set forth in the Ontario City Code), and the City of Ontario Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the Zoning Ordinance it is consistent with the Comprehensive Plan. A rezone must be done by an Ordinance and the City Council is the Final Authority for approving a City Ordinance.*

ALTERNATIVES:

The Planning Commission could table the action until a time certain if more information is needed to make a decision.

RECOMMENDATION:

Staff recommends that the Planning Commission approve and adopt the findings of facts and send a recommendation to the City Council to approve the annexation and rezone from Urban Growth Area (UGA) Residential (UGA-RS-50) to the City Single Family Residential (RS-50) zone of the subject property.

Commissioner Allen asked if they should be using the legal description that was of record for this title.

Mr. Cummings explained that they weren't using that legal description because the DOR required a meets and bounds around the property. It must include the description for the right of way and annex in the right of way along with the property.

Commissioner Allen commented that he thought the legal description included the right of way.

Mr. Cummings said it did not, and said he was concerned that the title company was not using the proper title for closing. He had sent several emails to the title company to let them know they were not reflecting the property line adjustment correctly. He expected that to be handled at the subdivision and partition stage, and he didn't want to hold up the annexation phase of the process.

Commissioner Hall asked how many houses could be put on the lot.

Mr. Cummings said six lots were originally planned but the developer wanted to add additional lots to the back of the property. This was allowed under City Code but would have to be done by creating a flag lot. He explained the function of flag lots and the maximum homes allowed, per City Code. He stated that the number of homes allowed would be finalized at the subdivision/planning stage.

Commissioner Breidenbach asked what a flag lot was.

Mr. Cummings explained the difference between a flag lot and a typical city lot.

Mr. Cummings said normally two homes could be allowed on a flag lot and that the City Code didn't set a maximum for the number of homes on one flag lot. If there was a request/plan to put two homes or a multifamily home on a flag lot, he would take that before City Council for approval and possibly restart the annex process, as either situation would require different zoning.

Commissioner Allen commented about his prior experience living on a flag lot in Eugene, Oregon.

Mr. Cummings commented that having more than two homes on a flag lot wasn't practical from a planning perspective. If the developer wanted to put more than two homes on the flag lot it would have to go through the Planning Commission and City Council. If two homes were put on one flag lot, it could be a case study for potentially updating City Code to set a limit to two homes per flag lot.

Commissioner Hall asked Mr. Cummings if the developer would be responsible for building the road, should the property be subdivided in the future, and where sidewalks would be built in that situation.

Mr. Cummings said yes, the developer would have to build the road out, and that the sidewalks would be built on the developed side of the road.

Commissioner Hall asked if that meant there would be a strip without sidewalks.

Mr. Cummings confirmed. The City Council had indicated they did not want half streets. On this section there was currently a full, two-lane road and that the developer would have to develop his half and widen it out to City standards. Other sidewalk decisions would be up to the developer. An offset sidewalk would be preferred but wasn't required by the City Code.

Commissioner Poole asked about the setback from the interchange for the first driveway.

Mr. Cummings said the setback was 150 ft and explained the layout.

Commissioner Poole asked for the definition of NW 4th Avenue in relation to the definition of Dorian, and asked if both were streets were TSP collectors.

Mr. Cummings said he thought NW 4th Avenue was a collector.

Commissioner Poole added that it seemed like there was only a certain number of driveways that could enter a collector.

Mr. Cummings said that issue had been discussed at the PDAC. The arrangement with the flag lot and driveways associated with it would be addressed at the subdivision stage.

Commissioner Poole suggested another possible layout for a street and driveways.

Mr. Cummings said he was working with the developer to achieve the best possible design for the development. Some of the layout limitations were imposed by which properties the developer owned and their ability to maintain access to all the lots.

Commissioner Hall expressed a concern about pedestrian safety along NW 4th Avenue. Both the intersection and road were going to be even more of a hazard due to the proposed annexation and subdivision, the speed of traffic, and the increased number of kids walking down NW 4th Avenue without a sidewalk.

Mr. Cummings said that, if necessary, the City could choose to build sidewalks and claim the recapture fees, but the City Code didn't currently require a developer to be responsible for both sides of the street.

Commissioner Hall commented again how much of a hazard the road was currently with bike and foot traffic. He commented that even though it's a full-size road, it still wasn't very wide going through that area.

Mr. Cummings indicated that the developer wanted to buy additional lots along NW 4th Avenue. If that happened, the development would all be done at same time. He explained there wasn't a way to make existing homeowners adapt their curb cutouts along the road.

Mr. Cummings reiterated that the developer was only seeking to annex at this point and that this was not a large development. The property was in the UGA, zoned appropriate to the request to annex and had thus far met the City's requirements.

Commissioner Hall asked if the City waived the sidewalk/improvements at tax lot 3500 when the home was brought into the City because of sewage requirements.

Mr. Cummings explained that the improvements were deferred, not waived. He explained the circumstances of the Deferred Improvement Agreement (DIA) and how the City helped with costs (Recapture Agreement).

Councilman Ken Hart (ex officio) asked if the development would affect other lots in such a way that they would also eventually have to pay for sewer extensions on their properties.

Mr. Cummings agreed and explained that sewer and water requirements would always have to be met in that situation.

Mr. Cummings then explained that a new Planning Department policy had recently been put in place for situations where previously existed properties may have recapture fees claimed against them due to development or annexation. Notice would be given during the planning/subdivision stage, which was sooner than the required three-week.

Commissioner Hall asked for confirmation that developers would be responsible for sewer and recapture where applicable.

Mr. Cummings affirmed and again referenced the policy to notify nearby landowners at the subdivision stage. In general, it was the developer's responsibility to notify the landowners, but it was found that they had not been doing so.

Commissioner Poole asked about the setback from the interchange.

Mr. Cummings responded that the setbacks were taken care of at the PDAC meeting and that this was only the annex action, not the subdivision stage.

Commissioner Poole stated that he felt this development should be treated the same as the development on the south side of NW 4th Avenue, and that the setback and street requirements should be the same on both sides of the street. All lots along NW 4th Avenue should be treated fairly.

Mr. Cummings said the requirements were the same and that developer had met all code requirements to be annexed and rezoned.

Commissioner Poole commented that he would rather have one street intersection with six lots than multiple curb cuts opening onto NW 4th Avenue. He expressed concerns with traffic load due to potential development in other tax lots along NW 4th Avenue (referenced tax lot 3402).

Mr. Cummings agreed. He explained City would require the developers follow City Code. A street intersection would be preferred. There were options for right of way, bioswales, etc., and there would possibly a lighted intersection as development progressed. This was the annex and rezone stage, and those design decisions would be made at a later time.

Commissioner Poole pointed out that the intersection in question was the only intersection from the freeway all the way to Nyssa that had residential development on an interchange.

Mr. Cummings explained the residential zoning in that area was assigned based on ODOT traffic studies and preference, and the City's Land Use requirements for commercial and residential zones. Commercial zoning was not preferred by ODOT along any interchanges.

Commissioner Poole observed that he thought most people west of Verde will use NW 4th Avenue and the interchange to get to the freeway.

Mr. Cummings agreed but thought that residents along this route would most likely use alternative routes to go into Ontario itself. He referenced the ODOT traffic study that indicated commercial zoning around the interchange would increase the interstate traffic substantially more than traffic typical to residential zones.

Commissioner Poole asked Mr. Cummings to point out the 150 foot setback from the interchange on the map.

Mr. Cummings pointed out the setback and highlighted where he hoped the developer would place the setbacks and curb cutouts for the project.

Commissioner Poole asked about the specific zoning of tax lots along NW 4th Avenue.

Mr. Cummings explained the zoning along NW 4th Avenue.

Mr. Cummings assured Chairman Poole that he recognized his concerns. City Code and ODOT requirements would be closely followed at all stages of this development.

Chairman Poole asked if there were any more questions for the City staff.

There were no proponents or opponents.

Chairman Poole closed the public hearing.

Mr. Cummings added for clarification that there was a 1041 Exchange for this property.

APPROVAL OF PLANNING ACTION 2022-05-022AZ – FINDINGS OF FACT

John Hall moved, seconded by John Breidenbach, to accept the Findings of Fact as presented. Roll call vote: Fortner-out; Allen-yes; Grissett-out; Hall-yes; Breidenbach-yes; Twombly-out; Poole-yes. Motion carried 4/0/3.

APPROVAL OF PLANNING ACTION 2022-05-022AZ

Mike Allen moved, seconded by John Breidenbach, to approve the action. Roll call vote: Fortner-out; Allen-yes; Grissett-out; Hall-yes; Breidenbach-yes; Twombly-out; Poole-yes. Motion carried 4/0/3.

Commissioner Poole commented that they should be diligent with any development along NW 4th Avenue. Mr. Cummings agreed.

Mr. Cummings gave a brief update regarding the next Planning Commission meeting.

MOTION TO ADJOURN

Commissioner Breidenbach moved, seconded by Commissioner Hall, to adjourn.

Roll call vote: Fortner-out; Allen-yes; Grissett-out; Twombly-out; Hall-yes; Breidenbach-yes; Poole-yes. Motion carried 4/0/3.

Ralph Poole
Commission Chairman

Attest: Marcy Siriwardene
Planning Technician

PLANNING COMMISSION MEETING MINUTES

**Monday
August 8, 2022**

The Ontario Planning Commission was called to order at 6:00 pm in the Council Chambers of City Hall. Commission members present were: Mike Allen, James Grissett, John Hall, John Breidenbach, Max Twombly, and Chairman Ralph Poole (All in person but James was online). Blu Fortner was absent.

City Staff present were; Dan Cummings, Community Development Director/ City Manager; Marcy Siriwardene, P&Z Technician; and Justin Zysk, Airport Manager. Ken Hart, Ex-Officio was excused.

The meeting was recorded on tape and the tape is on file at the City Community Development Center. The Agenda for this meeting was emailed on or before August 2, 2022. Copies of the Agenda were available at the City Community Development Center.

Ralph Poole led everyone in the Pledge of Allegiance.

ADOPTION OF AGENDA

John Briedenbach moved, seconded by John Hall, to adopt the Agenda as presented. Roll call vote: Fortner-out; Allen-yes; Grissett-yes; Hall-yes; Briedenbach-yes; Twombly-yes; Poole-yes. Motion carried 6/1/0.

ADOPTION OF MINUTES

There were no minutes to adopt.

There were no unscheduled public appearances, objections to Planning Commission jurisdiction and no abstentions or ex-parte contact.

ACTION 2022-06-26RZ: A REQUEST BY JOEL RUIZ OF J. RUIZ ENTERPRISES, LLC FOR A REZONE OF PROPERTY FROM HEAVY INDUSTRIAL (I-2) TO GENERAL COMMERCIAL (C-2).

Dan Cummings, Community Development Director gave the Staff Report.

SUMMARY:

The applicants/owner owns a parcel, known as Tax Map 18S4705, tax lot 3603, which said tax lot is currently zoned Heavy Industrial (I-2) and would like to rezone the property to General Commercial as a transitional zone between the Heavy Industrial lands and the residential lands.

BACKGROUND:

The applicant owns the subject property as well as the adjacent lands to the west and is in the process of developing the Heavy Industrial lands to the west and wishes to be a good neighbor to the property owner to the east of this parcel, which is zoned residential by providing a compatible zone which would allow transitional development of alternate housing (RV Park) adjacent to the residential zone, providing a buffer for the residential zone.

CURRENT SITUATION:

The proposed development must comply with applicable provisions of the OCC (City of Ontario Zoning Ordinance as set forth in the Ontario City Code), and the City of Ontario Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the Zoning Ordinance, it is considered to be consistent with the Comprehensive Plan and a planned development is an approved zoning under the comprehensive plan and is recognized as a much needed type of development to meet the needs of the community to provide for emergency response agency training as well as other city/county agencies.

A. *Rezone*

1. *Section 10B-20-30 REQUIRED FINDINGS, DECISION CRITERIA. In preparing findings to support a quasi-judicial zoning map amendment decision, the following findings shall be addressed except when alternatives are set forth or where a required finding clearly does not apply to the current action:*

- a. *The zoning map amendment is in conformance with statewide planning goals and guidelines.*
- b. *The zoning map amendment is in conformity with the acknowledged comprehensive plan.*
- c. *The applicant has demonstrated a mistake or error in the original zone designation, or the applicant has demonstrated a change in physical, social or market conditions generally affecting the area which makes the proposed change appropriate.*
- d. *A public need is demonstrated for this zoning at this location and is not the granting of a special privilege for a single property or small group of properties.*
- e. *The property affected by the change is adequate in size and shape to facilitate its use and development as permitted under the new zoning classification.*
- f. *The property affected by the proposed change of zone is properly related to streets and public facilities and with services adequate to meet the demands of the uses allowed in the new zone.*
- g. *The proposed zoning map change will not result in adverse effects upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.*

Findings:

- 1. *Explain how the proposed zoning map amendment is in conformance with statewide planning goals and guidelines.*

The proposed zone change is in conformance with the statewide planning goal in providing new much needed affordable housing.

2. *Explain how the proposed zoning map amendment is in conformance with the Acknowledged Comprehensive Plan.*

The rezone is not in conformance with the Comprehensive plan map and a map change will be needed. But the change is in conformance with the plan in needed alternate affordable housing, which is the current goal of the State.

3. *As applicant, you must explain how there has been a mistake or error in the original zone designation or a change in physical, social or market conditions generally affecting the area, which makes this proposed zone change appropriate.*

There was not necessarily a mistake made in the original zones, but the current social market for compatibility as well as alternative methods of affordable housing makes this zone change appropriate for current conditions as well as provide a transition between non- compatible zones.

4. *As applicant, you must show a public need is demonstrated for this zoning at this location and is not the granting of a special privilege for a single property or small group of properties.*

There is a huge need for alternative affordable housing as well as work force housing and this is not necessarily granting of a special privilege as there is a need for this type of housing in this area as well as because there are other commercial type uses within the industrial lands adjacent hereto.

5. *Explain how the property affected by the change, if approved, is adequate in size and shape to facilitate its use and development as permitted under the new zoning classification.*

The parcel is capable of providing approximately 29 to 30 RV spaces for use as transitional and work force housing.

6. *Explain how the property affected by the proposed change of zone is properly related to streets and other public facilities and with services adequate to meet the demands of the uses allowed in the new zone. This shall explain how this proposal will not absorb a disproportionate share of public facilities, utilities and general assets.*

The property is fronted on the North by Malheur Drive and on the West by N. Dorian Drive which said Dorian Drive will be the access to the property and will be developed to city standards with this and other development on the property to the west. Sewer and water is

available to the parcel with plenty of capacity.

7. *Explain how the proposed change in zoning will not result in adverse effects*

upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.

This rezone will provide for a good transition between the two principal zones and the proposed development is no normally subject to adverse conditions to adjacent zones.

Summary Conclusions: Based on the findings above:

- a. The City of Ontario Municipal Code Implements policies contained in the City of Ontario Comprehensive Plan, which conforms to the Statewide Planning Goals; generally, if a proposed rezone meets all criteria and standards contained in the OMC, the request will be consistent with Comprehensive Plan Policies and therefore conform to the Statewide Planning Goals. As this proposal meets the criteria in the above section, this proposal is consistent with Statewide Planning Goals. CRITERION IS MET*
- b. The findings 2 above show that the request is within goals and conformance of the Acknowledged Comprehensive plan. Therefore, this proposal has demonstrated to be consistent with the Comprehensive Plan. CRITERION IS MET*
- c. The applicant states in finding 3, that there has been a change in current conditions and the need for alternative housing is needed as well as a buffer between non-compatible zones. Therefore, there is a change in social conditions, and it demonstrates that this criterion is met. CRITERION IS MET*
- d. As noted in applicant's finding 4, rezoning from the Industrial zones to the Commercial zone would not be considered as the granting of a special privilege to a single property or group of property owners as it is providing alternative housing which is needed for all citizens as well as the surrounding area. CRITERION IS MET*
- e. As noted in the findings 5, the subject property size is adequate to demonstrate consistency with this criterion. CRITERION IS MET*
- f. As noted in the finding 6 above, the properties are properly related to streets and public facilities within the public streets and the existing uses and services demonstrate that uses allowed in the proposed zone are provided. CRITERION IS MET*
- g. The applicant states in finding 7 above, that while the impact on surrounding properties will be low, with the proposed change in zoning, compliance with present City of Ontario ordinances will be essential in eliminating these issues. The permitted uses are related to low volume traffic and uses which do not lend themselves to the creation of significant amounts of noise or other discharges of dust or odor into the air is uncommon in this type of use. CRITERION IS MET*

Final Conclusion: ALL CRITERIA ARE MET

SUMMARY CONCLUSIONS AND PLANNING COMMISSION DECISION

A request for a rezone of property may be recommended for approval or denial by the Planning Commission to the City Council if all applicable decision criteria and standards are found met, or able to be met through appropriate conditions of approval. In this case, findings must be made by the Planning Commission that the specific criteria are either met, able to be met through conditions of approval, or not met; options and discussion are provided under "Findings:" and "Conclusion:" for each criterion. All the criteria and standards must be met in order for the request to be recommended for approval.

ANALYSIS:

- A. ***STRATEGIC PLAN*** *This project falls under the Desirability goal of the City Council's five- year strategic plan, as well as lifestyle for the citizens of ontario.*
- B. ***FINANCIAL*** *There is no direct cost to the city.*
- C. ***TIMING*** *The rezoning of this property is needed in a timely manner to allow for construction of new facilities.*
- D. ***POLICY/LEGAL*** *The proposed development must comply with applicable provisions of the OCC (City of Ontario Zoning Ordinance as set forth in the Ontario City Code), and the City of Ontario Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the Zoning Ordinance, it is consistent with the Comprehensive Plan. A rezone must be done by an Ordinance and the City Council is the Final Authority for approving a City Ordinance.*

ALTERNATIVES:

The Planning Commission could table the action until a time certain if more information is needed to make a decision.

RECOMMENDATION:

Staff recommends that the Planning Commission approve and adopt the findings of facts and send a recommendation to the City Council to approve the rezone from Heavy Industrial (I-2) to General Commercial (C-2) zone of the subject property.

Chairman Poole asked if Malheur Drive would be the access point for tax lot 3603.

Mr. Cummings stated that traffic would cross Yturri Beltline in the future. The Oregon Dept of Transportation (ODOT) would not put a lighted intersection in unless there was a large amount of traffic. The access to Tax Lot 3603 would eventually be off Dorian, connected to Malheur Drive.

Commissioner Twombly asked if the property had already been annexed into the city.

Mr. Cummings confirmed that only Tax Lot 3903 had been annexed in.

Chairman Poole closed the hearing.

APPROVAL OF PLANNING ACTION 2022-06-26RZ FINDING OF FACTS

John Hall moved, seconded by John Briedenbach to accept the finding of facts as presented Roll call vote: Fortner-out; Allen-yes; Grissett-yes; Hall-yes; Briedenbach-yes; Twombly-yes; Poole-yes. Motion carried 6/1/0.

Chairman Poole asked how Dorian would get across the interchange without ingress or egress.

Mr. Cummings explained that ODOT would not allow a right-in, right-out access. The only access that they would allow would be a lighted interchange. Dorian would have to be built all the way through at once, and this would be determined by the traffic demands that were significant enough to warrant the intersection.

Commissioner Poole asked when 30th Avenue would be developed.

Mr. Cummings said that the road construction would be dependent on the size of development in the future. He gave information about the future development of the lift station on that side of town.

Commissioner Hall asked about the location of the sewer and water for the site.

Mr. Cummings showed the location of the mainline and how far it was from the lift station.

There was discussion about how slow the Fire Department response would be for that area due to the location. There was also clarification about which tax lots were included.

APPROVAL OF PLANNING ACTION 2022-06-26AZ

John Briedenbach moved, seconded by John Hall, to approve the request for annexation and rezone. Roll call vote: Fortner-out; Allen-yes; Grissett-yes; Hall-yes; Briedenbach-yes; Twombly-yes; Poole-yes. Motion carried 6/1/0.

There was discussion about Tax Lot 3602, which was city-owned. It was zoned Industrial and could be rezoned although Dan was unsure what zone the city would want to rezone it to. High Density housing including townhouses, apartments, duplexes, and planned development would be possibilities.

Commissioner Twombly asked about the entrance into Tax Lot 3602.

Mr. Cummings said that it only had one access. The property was 10.42 acres.

There was discussion about whether a park, soccer field, baseball field, would receive complaints from noise. There was also discussion about possibly moving the road to the east to develop everything to the west.

Commissioner Briedenbach commented that a nice park would be an attraction to people driving down the Yturri Beltline.

Commissioner Grissett wanted to develop the property by adding housing to the area instead of a park and recreation area.

Commissioner Twombly commented that maybe there could be High Density Residential as well as a park.

Mr. Cummings said that all the property was currently zoned UGA Residential. They also discussed that Beck Park was around 17 acres.

He also stated that the city was very deficient in parks versus residential per Oregon regulations for open park.

Commissioner Briedenbach discussed the trial going through that area.

Mr. Cummings said that the property was in the City Master Plan slated for multi-purpose uses.

Can Grissett expressed the need for more affordable and lower cost housing in the city.

MOTION TO ADJOURN

Ben Fortner moved, seconded by John Hall, to adjourn. Roll call vote: Fortner-out; Allen-yes; Grissett-yes; Hall-yes; Briedenbach-yes; Twombly-yes; Poole-yes. Motion carried 6/1/0.

Ralph Poole
Chairman

Attest: Marcy Siriwardene
Planning & Zoning Technician



PLANNING COMMISSION MEETING MINUTES
Wednesday
October 26, 2022

The Ontario Planning Commission was called to order at 6:00 pm in the Council Chambers of City Hall. Commission members present were: Blu Fortner, Mike Allen, James Grissett, John Breidenbach, and Max Twombly. John Hall and Chairman Ralph Poole was excused.

City Staff present were; Dan Cummings, Community Development Director/City Manager; Marcy Siriwardene, Building Department; and Justin Zysk, Airport Manager. Ken Hart, Ex-Officio was excused.

The meeting was recorded on tape and the tape is on file at the City Community Development Center. The Agenda for this meeting was emailed on or before October 19, 2022. Copies of the Agenda were available at the City Community Development Center.

Max Twombly led everyone in the Pledge of Allegiance.

ADOPTION OF AGENDA

Blu Fortner moved, seconded by John Briedenbach, to adopt the Agenda as presented. Roll call vote: Fortner-yes; Allen-yes; Grissett-yes; Hall-out; Briedenbach-yes; Twombly-yes; Poole-out. Motion carried 5/2/0.

ADOPTION OF MINUTES

There were no minutes to adopt.

There were no unscheduled public appearances.

ACTION 2022-09-31A AN APPEAL TO HEARINGS OFFICER DECISION TO PLANNING ACTION 2022-07-27CUP-Scott Matthews

Max Twombly opened the Public Hearing.

There were no objections to Planning Commission jurisdiction, no abstentions or ex-parte contact, or conflict of interest declarations.

There were no Old Business Discussion Items.

Dan Cummings, Community Development Director and City Manager, gave the staff report.

"On September 13, 2022 the Hearings Officer (Dan Cummings) denied a request by Scott Matthews for a Conditional Use Permit for a Retail Marijuana Dispensary because, amongst other matters, the proposal did not meet the requirements of (i) Ontario Municipal Code (OMC) 10A-59-15(A)(3) (1000 feet buffer requirement for Retail Marijuana Dispensary from a Public Facility zone), (ii) OMC 10A-59-15(A)(7) (500 feet buffer requirement for Retail Marijuana Dispensary from a residential zone) and (iii) failure to provide sufficient information to evaluate compliance with parking, setback, and landscaping requirements. The Applicant is appealing that decision. See Attachment 2 (Appeal Application).

BACKGROUND:

In November of 2018, the citizens of Ontario voted to remove a previously enacted local ban on marijuana uses within the city limits of Ontario. In anticipation that the ban may be lifted, the City engaged in extensive community outreach to develop standards and criteria for marijuana uses. This effort led to the adoption of Ordinance #2748-2018 on October 23, 2018, which, upon removal of the local ban, allows for various marijuana facilities, within specified zones, and subject to specified criteria, standards, and review procedures. As pertinent to this decision, marijuana retail facilities are allowed as a conditional use in the I-2 Heavy Industrial Zone provided standards and criteria established under OMC Title 10A-59 and other City Codes are met including, without limitation, OMC 10A-59-15(A)(3) and OMC 10A-59-15(A)(7). OMC 10A-59-15(A)(3) requires a 1000-foot setback from a Public Facility zone and OMC 10A-59-15(A)(7) requires a 500-foot setback from a residential zone (and is not met in the subject application as discussed below). See Attachment 3 Marijuana Restricted Area Map.

Notwithstanding the buffer requirements of OMC 10A-59-15(A)(3) and OMC 10A-59-15(A)(7), the Applicant submitted a Land Use Compatibility Statement (LUCS) for a marijuana retail facility on the property located at 420 North Oregon Street on May 25, 2022. Pursuant to the guidance in Scott Inc. v. City of Ontario, 503 P3d 502 (2021), the City refused to take action on the LUCS until the Applicant submitted an application for a conditional use permit.

The Applicant then applied, under protest, for a Conditional Use Permit to establish a marijuana retail facility on the subject property. See submitted application in Attachment 1. As explained in the Applicant's burden of proof statement, the Applicant contends that a conditional use permit is not required because "the City agreed to approve a marijuana retailer facility on the subject property when the then-existing moratorium/ban on dispensaries was lifted" pursuant to an agreement between the Applicant and the City dated April 18, 2016. The Applicant did not submit the referenced agreement as part of the application or provide any specific citations to provisions within the agreement supporting the quoted assertion, but presumably is referring to the following provision from the agreement:

Changes in Law. If there is a change in Oregon law or Ontario ordinances to permit medical marijuana dispensaries or recreational marijuana businesses in the Ontario city limits, this Settlement Agreement shall not preclude Scott, Inc. from operating such a business in compliance with Oregon law and/or Ontario ordinances enacted hereafter.

In the appealed decision, the Hearings Officer found that neither this provision, nor any other provision of the agreement, provides any entitlement for a Marijuana Retail facility. Rather, the Hearings Officer found that this provision provides that the agreement (as opposed to subsequently adopted land use regulations) "shall not preclude" the Applicant from operating a Marijuana Retail facility provided such business complies with applicable law. In other words, this provision simply provides that the Applicant can pursue any opportunities for a marijuana business that might arise under future enactments and is not waiving any such rights by entering into the agreement. The Hearings Officer found that neither this provision nor any other provision of the agreement prohibits the City from adopting land use or time, place, and manner restrictions that would preclude a marijuana business. Per the Hearings Officer's decision, to approve a retail marijuana facility on this subject property, the Applicant must comply with all the regulations and requirements of applicable law, including, without limitation, approval of a Conditional Use Permit (CUP) and compliance with all buffers related to Marijuana Retail facilities under OMC Chapter 10A-59.

Furthermore, the Hearings Officer found that the agreement could not even provide the type of entitlements alleged by the Applicant. First, the Applicant did not cite any authority for the proposition that a city can grant a land use approval for a prohibited use based on the potential for the use to become lawful in the future. Second, the Hearings Officer reasoned that the City cannot pre-exemptively waive future generally applicable land use regulations (outside of the statutory development agreement process under ORS 94.504 to .528 and there is no record that such a development agreement exists). Third, to the extent cities have any of the foregoing authority, the Hearings Officer found that the agreement was not subject to any notice or otherwise processed as a land use application requisite for granting a land use entitlement.

The Hearings Office found that the Applicant could not have a nonconforming marijuana retail use as there was no point in time when such a use could have been lawfully established. Prior to lifting the ban, marijuana retail uses within the City were illegal under state and/or local law. Following, the repeal of the local ban, the only way to lawfully establish a marijuana retail use is through the conditional use approval process. Applicant has never obtained such approval and has only now applied for such a use. It must be further noted that per OMC 10A-05-35(2), the discontinuance of a nonconforming use of land for six months out of any 12 consecutive months or change of nonconforming use of land to some other kind of nonconforming use constitutes abandonment and termination of the nonconforming use. To the extent the use could ever have been lawfully established, City is not aware of the Applicant ever obtaining appropriate licensures or paying applicable taxes that would otherwise be required if the use had ever been in operation (and particularly not within the past year). See Hearing officer's full decision included as part of the Appeal Application in Attachment 2.

SUBJECT APPEAL:

The Applicant's Notice of Appeal cites the following reasons as to why the Hearings Officer's decision is in error:

1). The City of Ontario's decision fails to properly apply the applicable standards in the City's zoning code, in particular the Applicant's prior nonconforming use of the subject property as a nonconforming retail use. The decision improperly describes the proposed use as a "new commercial use", when in fact the proposed use is similar in every respect to the use of the property currently.

Findings: Staff does not find any error in the Hearings Officer's decision with respect to non-conforming uses, which was summarized above. The proposal is properly characterized as a new marijuana retail use because no prior marijuana retail use has been approved or established on the subject property. It must be further noted that marijuana retailers are a distinct use from other retail or commercial uses as reflected in the use tables and special standards set out in the City land use regulations. Thus, Staff does not agree that any prior retail or commercial uses on the site, to the extent those uses were lawfully established and/or not subject to abandonment, could serve as the basis for finding that a non-conforming use exists for a marijuana retailer.

Staff further notes that Applicant's appeal materials describe the proposal as an effort to "open a new retail use on the subject property". This statement further supports the Hearings Officer's finding that the no marijuana retail use has been established on the subject property (and thus no establishment of a non-conforming use). It also implicates OMC 10A-05-35, which requires that a non-conforming use may not altered or extended to another part of the structure or site without approval for a conditional use for a

non-conforming use exception, which Applicant did not request as part of the subject application nor has Applicant separately sought such approval.

2). The City's decision also violates the Applicant's right to an impartial decision maker, as the "Hearings Officer" is also the City's Planning Director, who has openly fought the Applicant's attempts to open another retail use on the subject property.

Findings: *The Hearings Officer/Planning Director disagrees with the Applicant's statement that he "openly fought the Applicant" or is otherwise biased. As is required for such positions, the Hearings Officer/Planning Director simply seeks to apply applicable land use regulations. The Hearings Officer/Planning Director has no personal disagreement or malice against the Applicant nor any predisposition towards the proposed use or property. In the Hearings Officer's/Planning Director's experience, the parties have always been very professional and friendly in all their communications with each other. Notably, there were no issues raised by the Applicant when the Hearings Officer/Planning Director indicated the application would initially be processed administratively by the Hearings Officer/Planning Director. In any event, and to the extent of any bias, the Applicant has invoked its right for the Planning Commission to review this matter, the Applicant will have an opportunity to challenge any individual Commissioner for bias, and any remaining Commissioners will constitute an unbiased decision body.*

3). The City's decision breaches a prior agreement between the parties in which the Applicant is contractually entitled to operate a cannabis dispensary on the subject property once the City of Ontario's ban on recreational dispensaries was lifted.

Findings: *Staff does not find any error in the Hearings Officer's decision with respect to any alleged contractual obligation. The Hearings Officer's finding on this issue are summarized above.*

4). The ordinance applied to the subject property violates the contracts clause of both the Oregon and federal constitutions in that the ordinance breaches the settlement agreement between the Applicant and the City.

Findings: *Staff does not find any error in the Hearings Officer's decision. The Hearings Officer determined that the document to which that Applicant is presumably referring does not contain any prohibition on the subsequent adoption of land use regulations. Because there was no breach of this instrument, there is no violation of state or federal constitutions.*

5). The ordinance which the City seeks to apply against the subject property was improperly adopted, and is therefore invalid. The "Hearings Officer" could not, and did not, objectively consider the Applicant's objections to the ordinance because of the "Hearings Officer's" obvious bias in favor of the ordinance and prejudice against the Applicant.

Findings: *The Applicant's submission alleged that various aspects of the ordinance adoption process were irregular and/or unfair, but did not cite any authority as to how those allegations invalidate an ordinance adopted several years ago that was not subject to any appeals. In staff's estimation, the cited actions are simply typical of legislative proceedings where proposed code language gets revised and refined during the course of the process. Furthermore, even if the allegations were meritorious, the Applicant did not*

cite any authority as to why procedural issues from a prior un-appealed land use action are subject to review as part of a subsequent conditional use review process. Staff again disputes the notion of bias particularly in the context of adhering to an acknowledged land use ordinance. Staff does not find any error in the Hearings Officer's determination that the adopted land use regulations are applicable to Applicant's proposal.

ANALYSIS:

- A. **STRATEGIC PLAN** None
- B. **FINANCIAL** No financial costs at this time
- C. **TIMING** The time and place for the Public Hearing on the appeal have been meet.
- D. **POLICY/LEGAL** OMC 10A, 10B and 10C.

ALTERNATIVES:

No alternative offered

RECOMMENDATION:

Staff recommends the planning commission weigh all the testimony, findings and facts presented in writing and at the public hearing and base their decision on legal findings."

Mr. Cummings stated that he had just received 45 pages of additional information from the attorney that day to add to the record. This was handed out to all of the Planning Commissioners. Also, that applicant had said that they had not heard about the 1,000 feet buffer. Mr. Cummings explained about the rezoning of property near them that had a new 1,000 feet buffer and that they were notified. He also stated that the PC could not grant a variance on large rezones. One letter was received from Nancy Weever that was read into the record.

HEARING OPENED TO DISCUSSION OF PROPONENTS:

Ross Day, Keiser Oregon, attorney represented the applicants in the matter. They submitted a conditional use permit although they didn't think they should have to. Years ago, the marijuana buffers were only 250 with it being extended to 500 square feet. They tried to work with the city and had roadblocks. He felt that Mr. Cummings decision was biased. There were two types of bias: conflict and prejudgement bias. Mr. Day felt that Mr. Cummings had prejudged the applicant unfairly. He wanted the PC to approve the CUP with some conditions and explained that procedure. He was worried about the process being tainted. He had never had a Planning Director serve as the Hearings Officer. He asked for the conditions to be modified to ask for a traffic study.

Commissioner Briedenbach asked if Mr. Day's client was at the meetings that were held previously by the City Council that went over the buffers.

Mr. Day answered that he did not know if they were there or not. He felt that the only property that was affected by the 500 ft buffer zone being established was his clients. He also thought that his circumstances were unique.

Commissioner Fortner asked if he was correct in thinking that a second buffer arose from a public facility property being rezoned near the client's property.

Mr. Day said it was news to him.

Commissioner Grissett commented that Mr. Day's client should have been up to date on what was going on with the marijuana facility rules, during the process. He asked why the variance was backwards.

Mr. Day clarified that since 2014 his clients attempted to operate a dispensary at the location. The ban was challenged, and he thought an agreement was reached with the City of Ontario. His client said he had asked to speak at one of the previous City Council meetings and was told he couldn't speak. A Conditional Use Permit was filed by a different lawyer representing his client. He felt that going through the variance process after the Conditional Use Permit. He went on to explain that the variance application would be filed

Commissioner Grissett asked if there was parking access off of Oregon St or on the side.

Mr. Day answered that there is not direct access off of Oregon but through a side road.

Mr. Briedenbach said that there were three buffers that were considered in the past.

Mr. Day said that he thought there was a 250 ft buffer and that some cities remove the buffer altogether, like Keiser, Oregon.

Vice-Chairperson Twombly asked if there were any more proponents to the action.

Rachel Garcia, Ontario Oregon, said that her and Scott Matthews had started the process of opening a marijuana dispensary back in 2014 (project) thinking they would be able to open when the ban was lifted. She didn't understand why some dispensary's were allowed to operate and they were zoned out. They had to open in Huntington instead. She was hoping that the City of Ontario Planning Commission would reconsider.

Butch, Redmond Oregon, said that he wasn't sure why the Conditional Use Permit wasn't approved but that he was a man of his word and the City needed to stand on their word as well. Scott had spent a lot of money fighting for opening a dispensary. He said they wanted to work with the city and that they had a huge investment in the city.

Commissioner Fortner got clarification of the word "Precluded".

Commissioner Grissett stated that they could open a dispensary in a different location. He answered that they had put a lot of money into that location.

HEARING OPENED TO DISCUSSION OF OPPONENTS:

Dixie Woods, Ontario, OR, thought that Ontario had changed since marijuana dispensaries were introduced. She was not in favor of a dispensary in that location in close proximity to the recovery house, tiny homes, etc. She felt that Idaho was benefiting from marijuana more than Oregon.

CITY OF ONTARIO, 444 SW 4TH STREET, ONTARIO OREGON 97914

Jennifer Shaffer, Ontario, OR, was concerned about dispensaries and worried about the outcome. As a parent she thought it was a detriment to the community. She was worried about kids and marijuana being normalized.

Renae Kessler, Nyssa OR, said that studies were showing that children were becoming addicted to marijuana as well as adults. She said it caused mental illness and issues.

Mr. Day asked that the record be left open for 14 days to allow for a response.

Butch Henry, Redmond, OR, was a proponent for cannabis. He had a friend that had opioid addiction. He lost his family, friends, and life. He said that Larry Sullivan tried to ban their dispensary on purpose.

Mr. Chrostek, lawyer for the City of Ontario, agreed with the open record request of 14 days so there would not be any deliberations that night.

Mr. Day said what process he would like and it was decided that it would be 7-7-7, open record, and rebuttal.

Mr. Chrostek commented on the 120 day period. Mr. Day stated that he would have to talk to his client about waiving the 120 day period. The City had 120 days to make a land use decision.

Mr. Cummings thought it would probably take a special Planning Commission meeting to make it work.

Mr. Day suggested a motion. November 2 for submittal of additional evidence, November 9 for rebuttal, and November 16 for Planning Commission.

Mr. Chrostek said that it would be an open record for everyone until November 2, rebuttal period until November 9 with the Planning Commission meeting on November 16 for the final argument.

MOTION FOR 7-7-7 AND MOVE MEETING TO NOVEMBER 16TH 2022 AT 6PM

John Briedenbach moved, seconded by Ben Fortner to leave written record open until November 2 for all testimony, to leave the written record for strictly rebuttal evidence until November 9th, written record open for final argument November 16th at 5:00pm. Roll call vote: Fortner-yes; Allen-yes; Grissett-yes; Hall-out; Briedenbach-yes; Twombly-yes; Poole-out. Motion carried 5/2/0.

Mr. Chrostek commented that until a decision was rendered, there should be no ex-parte contact, just written record only.

MOTION TO ADJOURN

Blu Fortner moved, seconded by James Grissett, to adopt the Agenda as presented. Roll call vote: Fortner-yes; Allen-yes; Grissett-yes; Hall-out; Briedenbach-yes; Twombly-yes; Poole-out. Motion carried 5/2/0.

Ralph Poole
Chairman

Attest: Marcy Siriwardene
Planning & Zoning Technician & B.O.



PLANNING COMMISSION MEETING MINUTES
Joint PC/CC Meeting
Tuesday, March 28, 2023

The Ontario Joint City Council and Planning Commission meeting was called to order at 6:00 pm in the Council Chambers of City Hall. Commission members present were Blu Fortner, Mike Allen, James Grissett (attended online), Antonio Sunseri, John Briedenbach and Vice-Chair Max Twombly. Chairman Ralph Poole was excused.

City Staff present were Dan Cummings, Community Development Director/City Manager; Marcy Siriwardene, Planning Tech; and Susann Mills, Ex-Officio.

The meeting was recorded on tape and the tape is on file at the City Community Development Center. The Agenda for this meeting was emailed on or before March 21, 2023. Copies of the Agenda were available at the City Community Development Center.

Mayor Deborah Folden led everyone in the Pledge of Allegiance.

ADOPTION OF AGENDA

John Briedenbach moved, seconded by Blu Fortner, to adopt the Agenda as presented. Roll call vote: Fortner-yes; Allen-yes; Grissett-yes; Sunseri-yes; Briedenbach-yes; Twombly-yes; Poole-out. Motion carried 6/1/0.

ADOPTION OF MINUTES

There were no minutes to adopt.

There were no unscheduled public appearances.

JOINT MEETING OF THE CITY COUNCIL/PLANNING COMMISSION MEETING REGARDING THE ONTARIO NORTH-SOUTH CONNECTOR TRAIL PLAN (Informational Only)

Nick Foster presented a Power Point presentation on the North-South Connector Trail Plan.

Commissioner Fortner asked if maintenance costs had been factored into the budget of the newly proposed trail.

Mr. Foster said that only the estimated construction costs had been determined at that time.

Commissioner Allen asked if the proposed trail would affect any adjacent property owners.

Mr. Foster stated that only one section of Right Of Way would affect property owners.

Commissioner Grissett asked about the amount of public input and the number of people who responded to the public meetings on the trail.

Mr. Foster answered that there were many avenues of advertising used; social media, flyers, and even door to door advertising. Only one person questioned did not want any trails.

Commissioner Briedenbach stated that he spoke to several commercial business owners who didn't want to take the effort to participate in the trail meetings.

Commissioner Fortner asked if there would be any trash receptacles placed along the route.

Mr. Foster said that trash receptacles were factored into the project cost estimate.

Councilor Hart asked if we had the funds to maintain the trail since the current trail near where he lived was an eyesore.

Commissioner Briedenbach stated that a big request that he would get from new visitors was for a place to ride their bikes, walk, and take their dogs. He thought that the new design was a good design.

MOTION TO ADJOURN

John Briedenbach moved, seconded by Blu Fortner, to adjourn. Roll call vote: Fortner-yes; Allen-yes; Grissett-yes; Sunseri-yes; Briedenbach-yes; Twombly-yes; Poole-out. Motion carried 6/1/0.

Ralph Poole
Vice-Chairman

Attest: Marcy Siriwardene
Planning & Zoning Technician



**AGENDA REPORT
PUBLIC HEARING
June 12, 2023**

To: Planning Commission

FROM: Dan Cummings, City Manager

SUBJECT: **ACTION 2023-04-04AZ: A REQUEST BY BECKY YZAQUIRRE REPRESENTING THE STREY FAMILY TRUST, FOR AN ANNEXATION AND REZONE OF 38.548 ACRES OF PROPERTY FROM UGA COMMERCIAL (C-2) TO CITY C-2 GENERAL COMMERCIAL (C-2), UGA RESIDENTIAL TO CITY HIGH DENSITY RESIDENTIAL (RM-10)**

DATE: May 5, 2023

PROPOSED MOTION:

A. APPROVAL:

1. I MOVE THAT THE PLANNING COMMISSION APPROVE THE FINDING OF FACTS FOR THE ANNEXATION AND REZONE OF 38.548 ACRES OF THE SUBJECT PROPERTY FROM UGA COMMERCIAL (C-2) TO CITY C-2 GENERAL COMMERCIAL (C-2) BEING 26.568 ACRES, AND UGA RESIDENTIAL (RS-50) TO CITY HIGH DENSITY RESIDENTIAL (RD-40) BEING 11.980 ACRES AS SET FORTH IN ACTION 2023-04-04AZ BASED ON THE INFORMATION, FINDINGS AND CONCLUSIONS SET FORTH IN THIS REPORT.

2. I MOVE THAT THE REQUEST FOR ANNEXATION AND REZONE OF 38.548 ACRES OF THE SUBJECT PROPERTY FROM UGA COMMERCIAL (C-2) TO CITY C-2 GENERAL COMMERCIAL (C-2) BEING 26.568 ACRES, AND UGA RESIDENTIAL (RS-50) TO CITY HIGH DENSITY RESIDENTIAL (RD-40) BEING 11.980 ACRES AS SET FORTH IN ACTION 2023-04-04AZ BASED ON THE INFORMATION, FINDINGS AND CONCLUSIONS SET FORTH IN THIS REPORT BE RECOMMENDED FOR APPROVAL TO THE CITY COUNCIL

B. DENIAL:

1. I MOVE THAT THE REQUEST FOR ANNEAXTION AND REZONE OF THE OF 38.548 ACRES OF THE SUBJECT PROPERTY FROM UGA COMMERCIAL (C-2) TO CITY C-2 GENERAL COMMERCIAL (C-2) BEING 26.568 ACRES, AND UGA RESIDENTIAL (RS-50) TO CITY HIGH DENSITY RESIDENTIAL (RD-40) BEING 11.980 ACRES AS SET FORTH IN ACTION 2023-04-04AZ BE RECOMMENDED FOR DENIAL TO THE CITY COUNCIL, BASED ON THE INFORMATION, FINDINGS AND CONCLUSIONS SET FORTH IN THIS REPORT. (NEED TO CHANGE STAFF FINDINGS).

SUMMARY:

The applicants/owner owns parcels of land, known as Tax Map 18S4708, tax lots 2800, 2900, 3000, 3100 and 3200, which said tax lots currently have two different zoning, being UGA Commercial, and UGA Residential, and would like to annex the parcel and rezone to City zones C-2 General Commercial and, RD-40 High Density Residential as shown in this report.

BACKGROUND:

The applicant has submitted an application for the annexation and rezone of a parcel of land known as Tax Map 18S4708, tax lots 2800, 2900, 3000, 3100 and 3200, which said tax lots currently have two different zoning being UGA Commercial, and UGA Residential and would like to annex the parcel and rezone to City zones C-2 General Commercial and, RD-40 High Density Residential, which consists of gross area of 38.548 Acres and includes the right of way Hwy 201 along the west side of the property, which was found to be complete on April 19, 2023 and provided enough information to schedule a public hearing on the matter once all the reports and exhibits were created.

The property is mixed zoned with 26.568 acres zoned UGA Commercial C-2, and 11.980 acres zoned UGA Residential (RS-50).

This request for rezone needs a recommendation for approval or rejection from the Planning Commission to the City Council, who will be the decision maker for this request. This action specifically seeks approval for rezoning 26.568 acres from UGA Commercial to City General Commercial (C-2), 11.980 acres zoned UGA Residential (RS-50) to City High Density Residential (RD-40) within the City Limits of the City of Ontario. The annexation and rezone include the adjacent public right of way.

The most recent planning action on the property was the 2007 comprehensive plan update.

CURRENT SITUATION:

The proposed development must comply with applicable provisions of the OCC (City of Ontario Zoning Ordinance as set forth in the Ontario City Code), and the City of Ontario Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the Zoning Ordinance, it is considered to be consistent with the Comprehensive Plan and the planned development is an approved zoning under the comprehensive plan.

A. Rezone

1. Section 10B-20-30 REQUIRED FINDINGS, DECISION CRITERIA. In preparing findings to support a quasi-judicial zoning map amendment decision, the following findings shall be addressed except when alternatives are set forth or where a required finding clearly does not apply to the current action:
 - a. The zoning map amendment is in conformance with statewide planning goals and guidelines.
 - b. The zoning map amendment is in conformity with the acknowledged comprehensive plan.

- c. The applicant has demonstrated a mistake or error in the original zone designation, or the applicant has demonstrated a change in physical, social or market conditions generally affecting the area which make the proposed change appropriate.
- d. A public need is demonstrated for this zoning at this location and is not the granting of a special privilege for a single property or small group of properties.
- e. The property affected by the change is adequate in size and shape to facilitate its use and development as permitted under the new zoning classification.
- f. The property affected by the proposed change of zone is properly related to streets and public facilities and with services adequate to meet the demands of the uses allowed in the new zone.
- g. The proposed zoning map change will not result in adverse effects upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.

Findings:

1. Explain how the proposed zoning map amendment is in conformance with statewide planning goals and guidelines.

The City of Ontario, Malheur County and the State of Oregon have all agreed upon the Comprehensive Plan and Map. Within that map the parcel is currently two different zones (cross zoned), which are UGA-Commercial, and UGA- Residential. It is a natural progression per the Comprehensive Plan that this parcel be moved into the City as City General Commercial, and City Residential Zone requesting as High Density designation for a transition from the commercial land to the land zones single family adjacent to the east of this property for the economic growth and development of Ontario, Malheur County, and the State of Oregon.

2. Explain how the proposed zoning map amendment is in conformance with the Acknowledged Comprehensive Plan.

The property is within the City of Ontario UGA and the annexation and rezoning of the property is in compliance to the acknowledged Comprehensive Plan and in fact, will bring further compliance by fixing the cross zoning of the property, which is not a recognized policy, as well as matching the two UGA zones in the Comprehensive Plan to two city matching zones city zones.

3. As applicant, you must explain how there has been a mistake or error in the original zone designation or a change in physical, social or market conditions generally affecting the area, which makes this proposed zone change appropriate.

The applicants requested zone change from UGA-Zone to City Zones does not imply that there has been a mistake or an error in the original zone. In fact, this request for annexation and

zone change only shows that the original zone designation of UGA zones was done with future thought of economic growth in mind. What has changed is the growth and development around the parcel and the need for more high-density residential land to meet the need for more affordable housing. As part of the action, a partition plat is being proposed which will create two different parcels that will fix the cross-zoning issue.

4. As applicant, you must show a public need is demonstrated for this zoning at this location and is not the granting of a special privilege for a single property or small group of properties.

The public will benefit by annexing and re-zoning this parcel into the city limits through increased tax revenue, increased development and improving the roads, curb, gutter, etc. This will also benefit the public by attracting business and employees at this location. The rezoning of the UGA Commercial portion to City Commercial, which matches the Comprehensive Plan, and the rezone of the residential land to High Density land allows for more affordable housing as well as a transition between the commercial lands and the adjacent single family zoned lands to the east. This action and the following partition will fix the crossing zoning of the land which is usually not allowed.

5. Explain how the property affected by the change, if approved, is adequate in size and shape to facilitate its use and development as permitted under the new zoning classification.

The property consists of 38.548 acres, 26.568 acres zoned commercial and 11.980 zoned residential which are large enough to allow for development into the allowed zones.

6. Explain how the property affected by the proposed change of zone is properly related to streets and other public facilities and with services adequate to meet the demands of the uses allowed in the new zone. This shall explain how this proposal will not absorb a disproportionate share of public facilities, utilities and general assets.

The parcels far exceed the minimum parcel size for each zoning and will be able to be developed into large developments as planned for in the comprehensive plan. The property is adjacent to existing streets and utilities and are readily available to be extend and expanded to accommodate the planned development of the parcels. As part of the UGA the property has been part of the City Transportation Master Plan, Water Master Plan, Waster Water Master Plan and the City Storm Water Master Plan and therefore have been approved to provide city services to the properties.

7. Explain how the proposed change in zoning will not result in adverse effects upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.

The property is part of the city approved zoning and has been approved for the type of zoning once brought into the City limits and is in harmony with the surrounding developed property zoned accordingly and will not result in any adverse effects to the adjacent properties zoned the same.

Summary Conclusions: Based on the findings above:

a. The City of Ontario Municipal Code Implements policies contained in the City of Ontario Comprehensive Plan conform to the Statewide Planning Goals; generally, if a proposed rezone meets all criteria and standards contained in the OMC, the request will be consistent with Comprehensive Plan Policies and therefore conform to the Statewide Planning Goals. As this proposal meets the criteria in the above section, this proposal is consistent with Statewide Planning Goals. **CRITERION IS MET**

b. The findings 2 above show that the request is within goals and conformance of the Acknowledged Comprehensive plan. Therefore, this proposal has demonstrated to be consistent with the Comprehensive Plan. **CRITERION IS MET**

c. The information in finding 3, indicates that there has been no mistake and the request follows the comprehensive plan. Therefore, there is no mistake, and the request follows the comprehensive plan and approved zoning and demonstrates that this criterion is met. **CRITERION IS MET**

d. As noted in finding 4, rezoning from the UGA zones to City zones would not be considered as the granting of a special privilege for a single property or group of property owners as it is providing for the same zoning as the comprehensive plan and is the same zoning of the lands adjacent to these properties. **CRITERION IS MET**

e. As noted in the findings 5, the subject property size is adequate to demonstrate consistency with this criterion. **CRITERION IS MET**

f. As noted in the finding 6 above, the properties are properly related to streets and public facilities within the public streets and the existing uses and services demonstrate that uses allowed in the proposed zone are provided. **CRITERION IS MET**

g. In the finding 7 above, that while the impact on surrounding properties will be low, with the proposed change in zoning, compliance with present City of Ontario ordinances will be essential in eliminating these issues. The permitted uses are related to low volume traffic and uses which do not lend themselves to the creation of significant amounts of noise or other discharges of dust or odor into the air are uncommon in this type of use. **CRITERION IS MET**

Final Conclusion: ALL CRITERIA ARE MET

B. Annexation:

1. 10B-45-10 INITIATION OF ACTION. When a person, authorized by statute, wishes to extend the city's boundaries, an application on forms supplied by the city shall be filed with the Planning Director and which include: annexation consent forms, by the property owners, and by tenants if required by law or court decision; request for a change in zoning map designation, or plan change if required; request for other quasi-judicial action if required; fees, and other exhibits and requirements for a quasi-judicial action as set forth in this Title. All land use actions associated with the annexation shall be consolidated, as feasible, and one fee paid.

2. Oregon Revised Statute 222.125: Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

Findings:

1. The applicants have paid the fees and provided the proper application with signatures.
2. The property is annexable because it lies inside the Urban Growth Boundary and is contiguous with the current city limits.
3. The property currently has three different UGA zones in the Urban Growth Area and the companion requested City zones are consistent with contiguous property.
4. Findings from preceding sections of this report are herein included by this reference. A change to the comprehensive plan map or text is not necessary to annex the property; however, the annexation of the property must be consistent with all applicable Comprehensive Plan Policies.
5. Annexation would benefit the city by increasing tax revenue, and by providing more potentially developable residential land.

Final Conclusion: All criteria and standards applicable to a request for annexation have been met. The property may be annexed.

SUMMARY CONCLUSIONS AND PLANNING COMMISSION DECISION

A request for annexation and rezoning of property may be recommended for approval or denial by the Planning Commission to the City Council if all applicable decision criteria and standards are found met, or able to be met through appropriate conditions of approval. In this case, findings must be made by the Planning Commission that the specific criteria are either met, able to be met through conditions of approval, or not met; options and discussion are provided under “**Findings:**” and “**Conclusion:**” for each criterion. **All** the criteria and standards must be met in order for the request to be recommended for approval.

ANALYSIS:

- A. **STRATEGIC PLAN** This project falls under the Growth goal of the City Council's strategic plan; specifically allowing for annexation of land to add growth and more tax base. It allows for the development of the property.
- B. **FINANCIAL** This annexation will add to the City tax base.

- C. **TIMING** The rezoning of this property is needed in a timely manner to allow for development.
- D. **POLICY/LEGAL** The proposed development must comply with applicable provisions of the OCC (City of Ontario Zoning Ordinance as set forth in the Ontario City Code), and the City of Ontario Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the Zoning Ordinance it is consistent with the Comprehensive Plan.
- A rezone must be done by an Ordinance and the City Council is the Final Authority for approving a City Ordinance.

ALTERNATIVES:

The Planning Commission could table the action until a time certain if more information is needed to make a decision.

RECOMMENDATION:

Staff recommends that the Planning Commission approve and adopt the findings of facts and send a recommendation to the City Council to approve the annexation and rezone from Urban Growth Area zones to City zones of the subject property as per the report.

ATTACHMENTS:

1. Attachments 1 Annexation Description
2. Attachments 2 Annexation Boundary Map
3. Attachments 3 Parcels Before Rezone
4. Attachments 4 Parcels After Rezone
5. Attachments 5 Commercial Area Description
6. Attachments 6 Residential Area Description

Attachment “1”

Annexation Boundary Description

A parcel of land located in the W1/2 of the NW1/4 of Section 8, Township 18 South, Range 47 East, Willamette Meridian, Malheur County, Oregon, more particularly described as follows:

COMMENCING at a 5/8 inch rebar marking the northwest corner of said Section 8; thence, along the west boundary of said NW1/4,

A) S.02°31'19"E., 658.84 feet to the westerly prolongation of the north boundary of Parcel 2 as described in Bargain and Sale Deed Instrument No. 98-7494, records of Malheur County, Oregon, and the **POINT OF BEGINNING**; thence along said prolongation and north boundary,

1) N.87°41'55"E., 1302.33 feet to the northeast corner of said Parcel 2; thence along the east boundary of said W1/2 of the NW1/4,

2) S.02°27'05"E., 1290.45 feet to the southeast corner of Parcel 1, Tract 1 as described in said Instrument No. 98-7494; thence, along the south boundary and westerly prolongation of said Parcel 1, Tract 1,

3) S.87°43'37"W., 1300.74 feet to the west boundary of said W1/2 of the NW1/4; thence along said boundary,

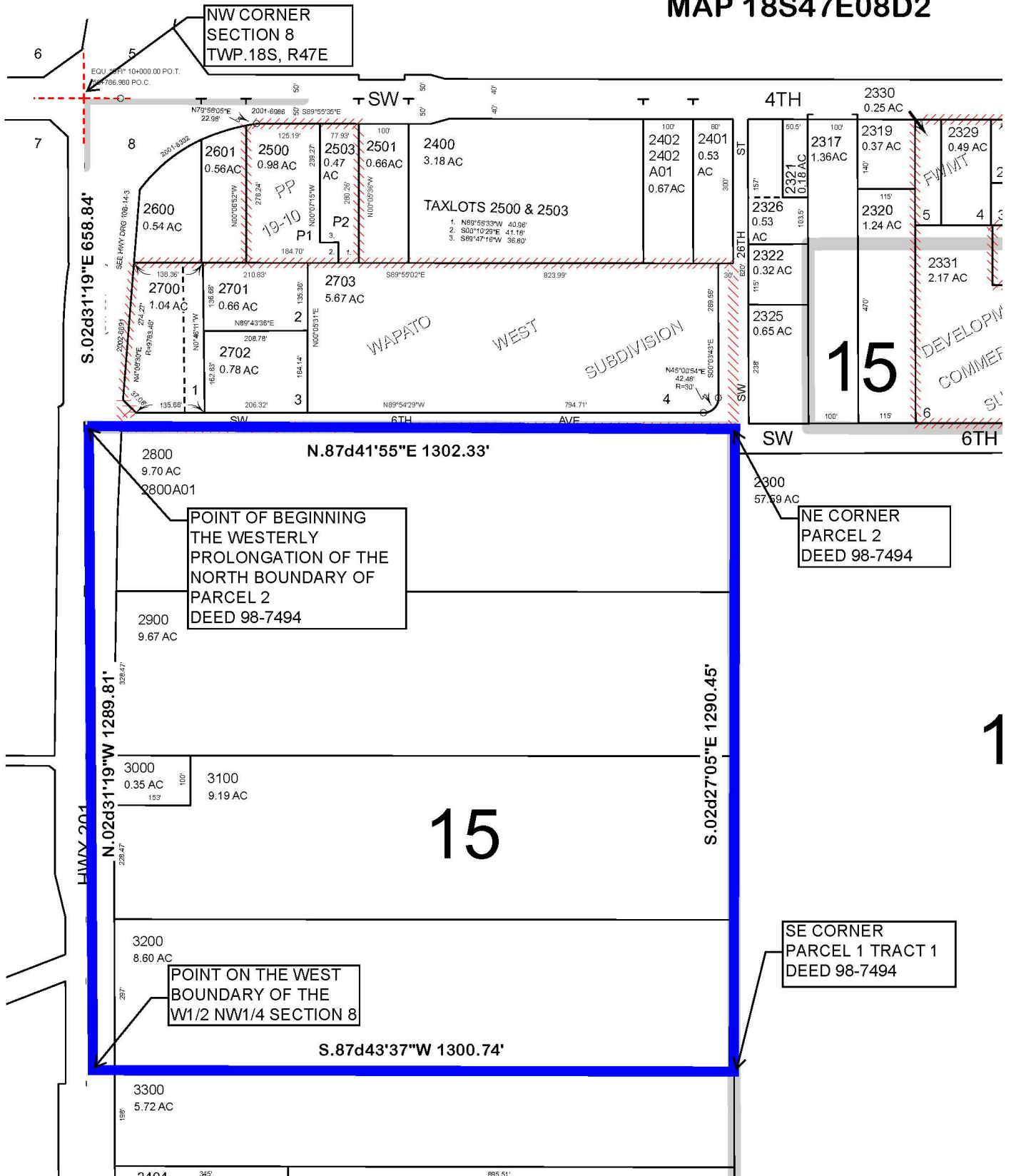
4) N.02°31'19"W., 1289.81 feet to the **POINT OF BEGINNING**.

Containing: 38.548 acres.

- End of Description –

Annexation Boundary Map

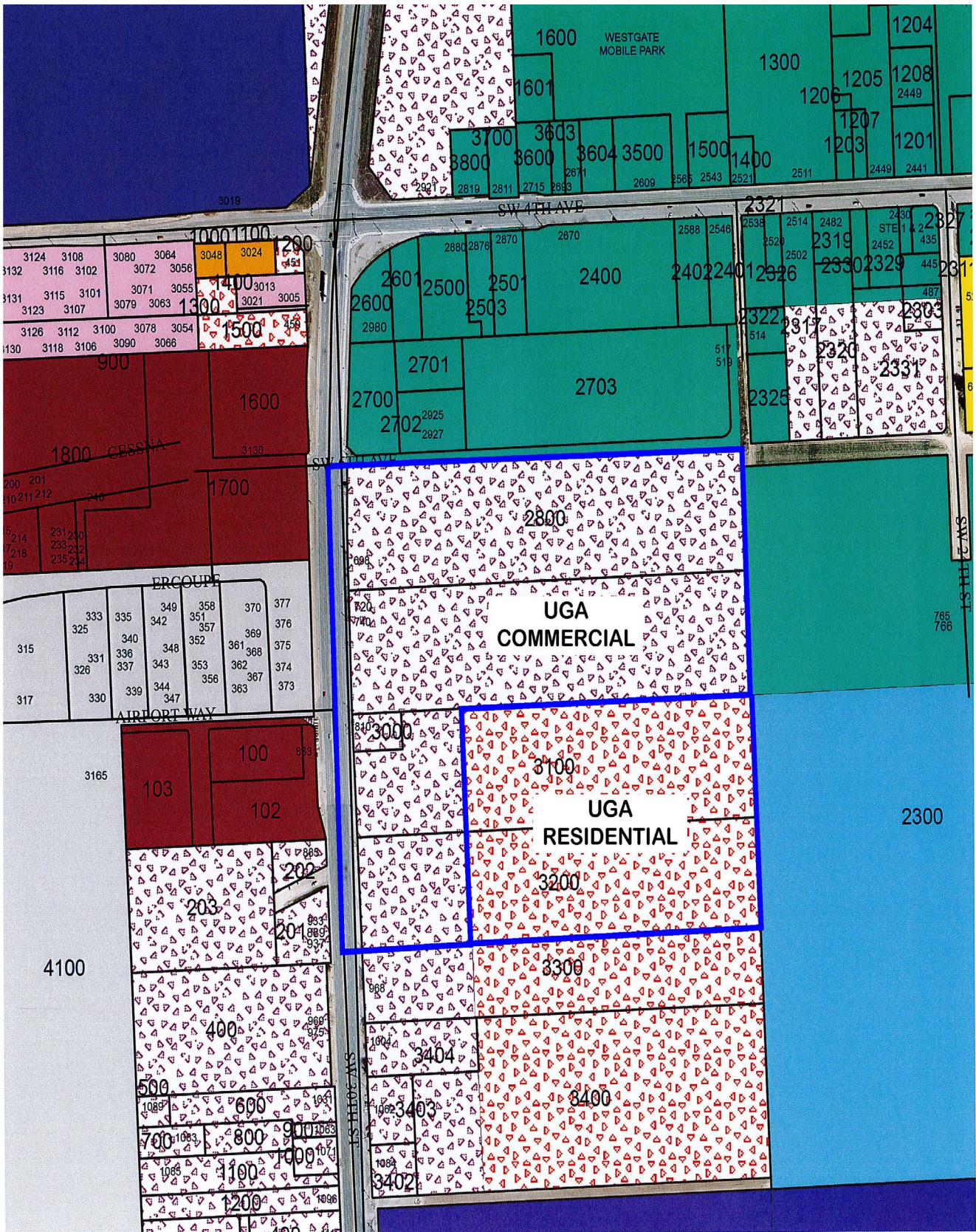
MAP 18S47E08D2



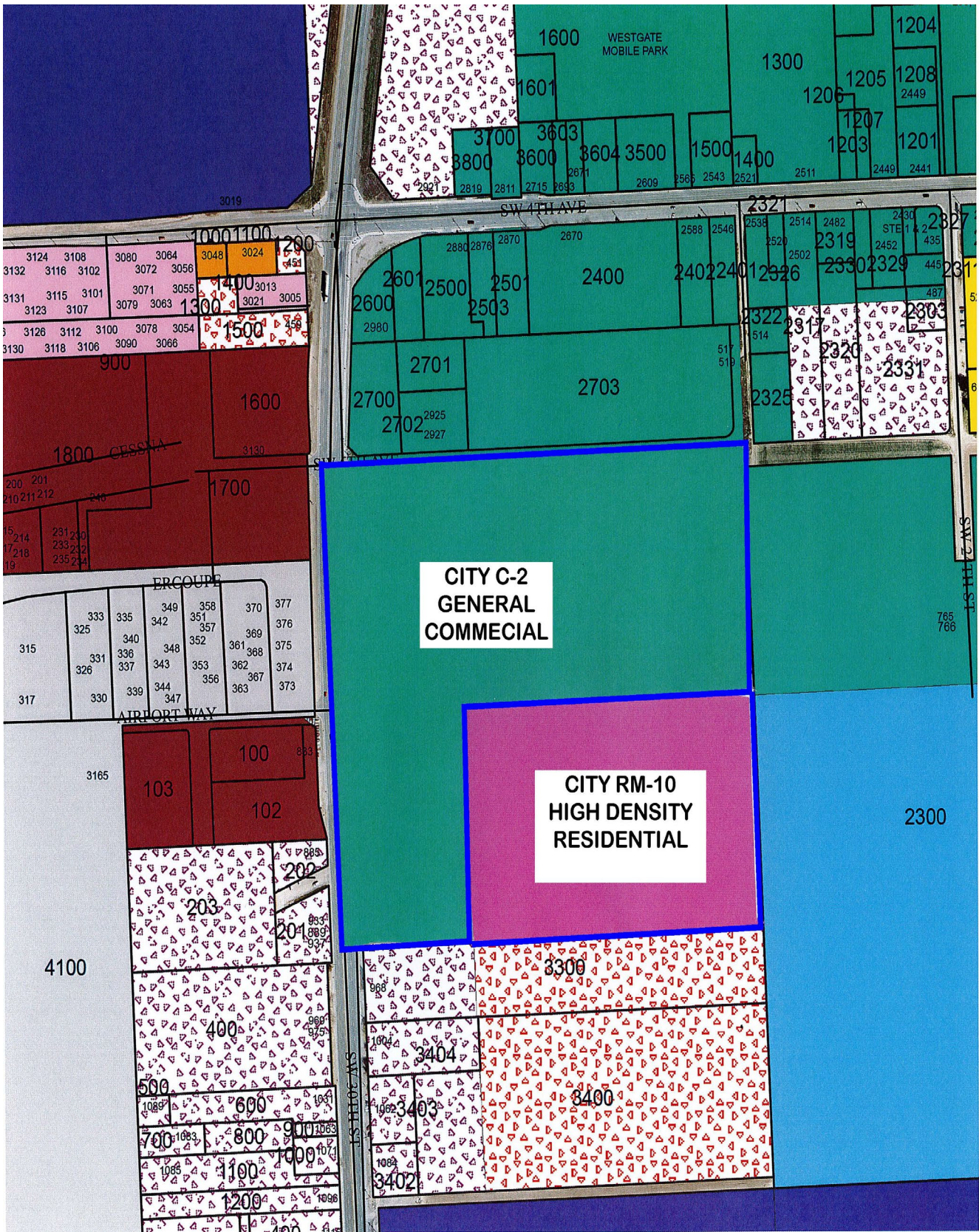
1

Attachment “3”

Parcels Before Rezone



Parcels After Rezone



Attachment “5”

Commercial Area Description

A parcel of land located in the W1/2 of the NW1/4 of Section 8, Township 18 South, Range 47 East, Willamette Meridian, Malheur County, Oregon, more particularly described as follows:

COMMENCING at a 5/8 inch rebar marking the northwest corner of said Section 8; thence, along the west boundary of said NW1/4,

A) S.02°31'19"E., 658.84 feet to the westerly prolongation of the north boundary of Parcel 2 as described in Bargain and Sale Deed Instrument No. 98-7494, records of Malheur County, Oregon, and the **POINT OF BEGINNING**; thence along said prolongation and north boundary,

1) N.87°41'55"E., 1302.33 feet to the northeast corner of said Parcel 2; thence along the east boundary of said W1/2 of the NW1/4,

2) S.02°27'05"E., 659.39 feet to the southeast corner of Parcel 3 as described in said Instrument No. 98-7494; thence, along the south boundary of said Parcel 3,

3) S.87°43'04"W., 827.41 feet; thence, parallel with the west boundary of said NW1/4,

4) S.02°31'19"E., 630.92 feet to the south boundary of Parcel 1, Tract 1 of said Instrument No. 98- 7494; thence, along said south boundary and the westerly prolongation of said Parcel 1, Tract 1,

5) S.87°43'37"W., 474.10 feet to the west boundary of said NW1/4; thence, along said boundary,

6) N.02°31'19"W., 1289.81 feet **POINT OF BEGINNING**.

CONTAINING: 26.568 acres.

- End of Description –

Attachment “6”

Residential Area Description

A parcel of land located in the SW1/4 of the NW1/4 of Section 8, Township 18 South, Range 47 East, Willamette Meridian, Malheur County, Oregon, more particularly described as follows:

COMMENCING at a brass cap monument marking the west one-quarter corner of said Section 8; thence, along the west boundary of said SW1/4 of the NW1/4,

- A) N.02°31'19"W., 687.04 feet to the westerly prolongation of the south boundary of Parcel 1, Tract 1 as described in Bargain and Sale Deed Instrument No. 98-7494, records of Malheur County, Oregon; thence along said prolongation and south boundary,
- B) N.87°43'37"E., 474.10 feet to the **POINT OF BEGINNING**; thence leaving said south boundary, parallel with said west boundary of the SW1/4 of the NW1/4,
 - 1) N.02°31'19"W., 630.92 feet to the north boundary of Parcel 1, Tract 2 as described in said Instrument No. 98-7494; thence along said north boundary,
 - 2) N.87°43'04"E., 827.41 feet to east boundary of said SW1/4 of the NW1/4; thence along said boundary,
 - 3) S.02°27'05"E., 631.05 feet to the southeast corner of said Parcel 1, Tract 1; thence along the south boundary of said Parcel 1, Tract 1,
 - 4) S.87°43'37"W., 826.64 feet to the **POINT OF BEGINNING**.

CONTAINING: 11.980 acres

- End of Description -