

BEFORE THE CITY COMMISSION  
FOR THE CITY OF OREGON CITY, OREGON

In the Matter of an Application by	)	
Hidden Falls Development, LLC for	)	FINDINGS OF FACT AND
a Type IV Annexation and Zoning Map	)	CONCLUSIONS OF LAW
Amendment (the “Application”) for	)	APPROVING THE APPLICATION;
Fourteen Tax Lots Consisting of	)	CITY OF OREGON CITY FILE
Approximately 92 Acres in the Park Place	)	NUMBERS AN-16-0007 AND
Concept Plan (the “PPCP”) Area, located	)	ZC-16-0005
on the south side of Holcomb Boulevard	)	
and north of South Livesay Road	)	

**1. Introduction.**

The Application requests approval of annexation and a zoning map amendment on fourteen lots containing approximately 92 acres located within the Portland Metropolitan Urban Growth Boundary (the “UGB”).

The Planning Commission held three public hearings, the last of which was May 14, 2018. The Planning Commission closed the public hearing and record and voted 5-1 to tentatively approve the Application with conditions. The Planning Commission directed staff to return with proposed Findings to the Planning Commission for adoption at the June 11, 2018 Planning Commission meeting.

No party raised any procedural objections or alleged that their substantial rights had been prejudiced by the Planning Commission’s hearing process.

The Oregon City City Commission considered the Planning Commission’s recommendation for approval of the Application at its duly noticed, on the record public hearing on June 20, 2018. The Deputy City Attorney made the announcements required by ORS 197.763(5) and inquired of the City Commission members if they had any *ex parte* contacts, conflicts of interest, or bias. All City Commissioners noted that they had visited the site and Commissioner Ide disclosed that she lives in the Park Place neighborhood. No person challenged the disclosures.

Deputy City Attorney Richter further disclosed Mr. Tom Geil’s June 20, 2018 email sent to each of the City Commissioners. Ms. Richter noted that the email constituted an *ex parte* contact and included facts outside of the Planning Commission record and an issue not preserved before the Planning Commission. The Applicant’s attorney questioned the City Commission about the June 20 email and asked that they exclude it from the record.

The City Commission opened the public hearing and took testimony from the Applicant and one person opposed to the Application, Mr. Geil. Mr. Geil argued that his June 20 email did not disclose facts outside of the record.

The Applicant then rebutted Mr. Geil’s testimony noting that while the issue of tree cutting was raised before the Planning Commission, the fact of tree cutting was not raised before the Planning Commission.

The City Commission closed the public hearing and the Applicant waived final written argument. The City Commission, on a motion by Commissioner Ide, seconded by Commissioner Shaw, moved to approve the Application, to strike the June 20, 2018 email and to not consider facts or issues outside of the Planning Commission record and directed that the Applicant prepare revised Findings for adoption and approval of second reading at the City Council meeting on July 5, 2018.

The City Commission voted 4-1 (Commissioner O’Donnell opposed) to adopt the motion and approve the Application and Ordinance on first reading.

The remainder of this decision explains why the Applicant met its legal burden of proof by substantial evidence to demonstrate that the applicable approval criteria are satisfied. The Planning Commission hereby incorporates the Staff Reports for the February 12, 2018, April 9, 2018, and May 14, 2018 Planning Commission public hearings. Where there is a conflict between these Findings and the Staff Reports, these Findings shall control.

## **2. Applicable Approval Criteria.**

This quasi-judicial Application is subject to the applicable approval criteria contained in ORS Chapter 222, Metro Code (“MC”) Title 3.09 and Oregon City Municipal Code (“OCMC”) Title 14 for the annexation application and OCMC 17.68.020(A)-(B) for the zoning map amendment Application.

## **3. Summary of Annexation and Zoning Map Approval Criteria.**

The record contains substantial evidence demonstrating that the Application satisfies the applicable approval criteria with conditions. The Application contains the information required for an annexation narrative by OCMC 14.04.050.E.7 and satisfies the annexation factors in OCMC 14.04.060. The annexation factors are satisfied because the Application demonstrates by substantial evidence that there is, or will be, adequate access to the site; that the Application conforms to the acknowledged Plan; that public facilities and services are, or will be, available to the site; that ORS Chapter 222 and MC Title 3.09 are satisfied (ORS Chapter 222 does not prohibit the creation of islands, as noted in the City Attorney’s memorandum dated April 5, 2018); that no significant adverse effects on resources will be created because the Application is required to follow acknowledged Plans that protect resources; and that there is no significant adverse effects on economic, social and physical environment or community by the overall impact of the annexation.

The annexation will add new land uses to the City which will generate System Development Charges (“SDC’s”) at the time of building permit issuance for public infrastructure improvements and will also generate real property taxes that go not only to the City and to special districts but to other governmental districts, such as Oregon City School District No. 62. The social impacts are positive because development of the proposed area will add new residents and neighbors to the City. The physical environment will be maintained because future

development is required to adhere to acknowledged Plans, including the protection of identified Goal 5 resources.

The Application also satisfies OCMC's 17.68.020.A-D. The Application narrative explains how the Application is consistent with the acknowledged Plan and the Park Place Concept Plan ("PPCP"). The Application explains how public facilities and services will be made available to serve urban development. Finally, substantial evidence in the whole record demonstrates that the planned uses will be consistent with the City's TSP.

#### **4. Relevant Transportation Requirements are Satisfied.**

The Planning Commission finds that the three transportation entities reviewing the Application have all found that relevant transportation approval criteria have been satisfied or have identified how they can be satisfied.

The Oregon Department of Transportation ("ODOT") has jurisdiction over state highway facilities. The Oregon Transportation Planning Rule (the "TPR"), OAR 660-012-0060(1)-(3), applies to zoning map amendments. The Applicant's transportation engineer, the City and ODOT collaborated on analyzing the Application's evidence to demonstrate that the TPR was satisfied. ODOT's April 2, 2018 letter concluded that the TPR is satisfied.

The City's Transportation Engineer submitted a letter dated March 29, 2018 in which he concluded that he was satisfied with the Applicant's transportation analysis and recommended a number of conditions of approval, including a "trip cap" (allowed by OAR 660-012-0060(2)(e)), as suggested by the Applicant, the requirement for a Master Plan identifying the extent and timing of development onsite prior to significant development, a delay in the application of the zoning, and various conditions of approval implementing the City's acknowledged TSP. The City's Transportation Engineer also found that the TPR was satisfied.

Finally, Clackamas County reviewed the Application's transportation analysis. With one exception, the County found the analysis to be acceptable. The single exception requested additional analysis for the intersection of Anchor and Redland Roads. The City's Transportation Engineer said that the lack of an analysis of that intersection by the Applicant was "not a serious deficiency" because, in part, the City's TSP includes improvements for that intersection and these improvements are included in the City's CIP, allowing the City to evaluate and require proportional contributions to necessary improvements as part of Master Plan review.

Subsequent to the County's April 6, 2018 comment, the Applicant submitted an analysis of the intersection at Anchor and Redland Roads, dated April 9, 2018, concluding that the intersection would be improved pursuant to improvements included in the City's acknowledged TSP. The County submitted a memorandum dated April 23, 2018 in which it concurred with the Applicant's April 9 analysis.

The City's Transportation Engineer submitted a revised review letter dated May 2, 2018 in which he concluded that he was satisfied with the Applicant's additional transportation analysis, and recommended revisions to the conditions of approval consistent with the revised analysis mitigation for transportation impacts of the proposed development based on identified improvements in the City's adopted Transportation System Plan.

The recommended conditions of approval assure the City that all intersections and roads will meet, maintain or improve the level of service.

## **5. Annexation Factor 6 is Satisfied.**

The Planning Commission heard testimony that Annexation Factor 6 was not satisfied and that the Application adversely impacted the community because it adds “too many additional vehicle trips” to the transportation system. Some asked that Holly Lane be completed prior to annexation and noted that none of the developments considered by the City, including this Application, included a “cumulative analysis” for transportation impacts.

The Planning Commission rejects these arguments for two reasons. First, because the Application satisfies relevant Plan policies regarding transportation and the TPR, the Planning Commission can find that this Application does not add “too many” additional vehicle trips to the system. The transportation infrastructure adequacy analysis contained in the TSP assumed development at densities identified in the Park Place Concept Plan, including all of the development that may result from this approval. As a result, the TSP accounts for the cumulative effect of impacts resulting from development. Moreover, the recommended conditions of approval, including the requirement for a Master Plan showing phasing, conditions of approval requiring transportation improvements and deferral of urban development until the Alternative Mobility Standards are adopted, assure adequate transportation facilities for the annexation area. The Transportation Impact Analysis (the “TIA”), prepared by the Applicant was reviewed by three reviewing agencies found to be adequate and demonstrate compliance with the TPR.

Second, the assertion that cumulative impacts were not analyzed is inaccurate. The Applicant’s TIA, like every other TIA, includes an analysis of background conditions and vehicle trips from in-process developments (those developments that have already been approved). The Applicant’s TIA at page 19 states:

**“Background conditions analysis volumes include all City-approved development through 2035.”**

The Planning Commission can find that the Applicant’s TIA accounts for cumulative traffic impact.

However, the Planning Commission also acknowledges that Holly Lane will be critical to serving this annexation area as it urbanizes. As a result, the Planning Commission recommends that as part of an updated Transportation Impact Analysis for Master Plan approval for the subject properties, the developer specifically analyze and identify the timing of construction of the Holly Lane Extension (TSP Project D48) and the Holly Lane/Holcomb Boulevard intersection Operational Enhancement (TSP Project D43), and identify traffic impacts, including construction traffic, on adjacent stub streets, i.e. Cattle Drive, Shartner Drive and Journey Drive. The timing of construction of the Holly Lane Extension through the subject property shall be considered with the first phase Detailed Development Plan. It may be that mitigation measures are necessary to ensure that projected traffic levels are consistent with the traffic volumes,

speeds, and function of local residential streets. Such mitigation measures, if necessary, shall be incorporated as conditions into the Master Plan approval.

## **6. Relevant Approval Criteria Do Not Prohibit Development in Areas With Landslides.**

Several persons testified about the potential for landslides on the site. The Oregon City Municipal Code requires the Applicant to demonstrate compliance with OCMC Chapter 17.44, “US-Geologic Hazards”, and OCMC Chapter 17.49 “Natural Resource Overlay District” prior to development onsite.

None of the annexation approval criteria require consideration of landslides. *See* Plan Policy 7.1.1, which provides for the City to regulate, not just deny, development<sup>1</sup> in areas of known or potential hazards. This Plan Policy is applied at the development stage.

The annexation approval criteria do not require the Applicant to analyze site characteristics. However, the zoning map amendment approval criterion at OCMC Chapter 17.68.02.A requires demonstration of compliance with the Plan. The Application narrative addresses Oregon City Comprehensive Plan (the “Plan”) Goal 7, “Natural Hazards”, and concludes that future development is capable of satisfying and implementing OCMC Chapters 17.44 and 17.49. The Oregon Department of Geology and Mineral Industries (“DOGMI”) map submitted into the record is neither an approval criterion nor substantial evidence directed toward approval criteria for either the annexation or the zoning map amendment.

Landslide considerations apply at the development stage and not with this application. It is clear that this property would not be inside the Portland-Metropolitan Urban Growth Boundary (“UGB”) and the City would not have adopted the PPCP if this area were not capable of being safely developed.

The Planning Commission finds that landslide hazard is not a relevant approval criteria for the Application.

## **7. Oregon City Comprehensive Plan Policy 14.4.3 Does Not Prohibit the Creation of an “Island” by this Application.**

Oregon City Comprehensive Plan Policy 14.4.3 states, in relevant part:

***“Evaluate and in some instances, require that parcels adjacent to proposed annexations be included to:***

- **Avoid unincorporated islands within the City.” (Emphasis added).**

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<sup>1</sup> OCMC 17.04.300 - Development.

"Development" means a building or grading operation, making a material change in the use or appearance of a structure or land, dividing land into two or more parcels, partitioning or subdividing of land as provided in ORS 92.010 to 92.285 or the creation or termination of an access right.

Plan Policy 14.4.3 is not a mandatory policy. The Policy does not use the phrase “shall prohibit”, which would be a mandatory direction to prohibit the creation of islands. Like ORS Chapter 222, the Plan Policy does not prohibit the creation of islands through annexations. Instead, the Plan Policy requires the Planning Commission to “evaluate and in some instances, require” which means that the Planning Commission and the City Commission analyzes the creation of islands on a case-by-case basis. The Planning Commission compares the language in Plan Policy 14.4.3 to that in Plan Policy 14.4.1, which states “do not consider” long linear extensions of the City. The language in Plan Policy 14.4.1 is an example of mandatory language prohibiting an action.

This Plan Policy is intended to allow the Planning Commission to determine if the creation of islands has an adverse effect on future development. In this case, the Staff has identified that transportation facilities and other public facilities and services can be provided to the annexed area without the island being annexed. Further, the island properties have transportation and other public facilities and services available to them in the County.

If the Planning Commission were to prohibit the creation of an island in this case and other annexations, it would effectively stop annexations consistent with the acknowledged concept plans, as is the case here. The Plan Policy instead should be applied in a way that Plan Policy 14.3 requires: a case-by-case analysis of the creation of an island and the consideration of whether its creation will impact the provision of public facilities and services.

The Planning Commission finds based on substantial evidence in the whole record that the annexation should not be denied because the creation of an island consisting of three lots will not preclude the future provision of public facilities and services.

#### **8. Issues Concerning Livability Are Not Relevant to Annexation and Zoning Map Approval Criteria Beyond the Issues Discussed in These Findings.**

Some of the testimony raised concerns that have to do with what is generally described as “livability” for current Oregon City residents, such as traffic congestion, pedestrian safety, school over-crowding, loss of rural lifestyle, economic impacts from additional density, and the impact of SB 1573, eliminating voter-approved annexation. Most of these impacts are not germane to the applicable approval criteria.

In 2002, Metro made a decision to expand the urban growth boundary identifying the subject properties as suitable for urbanization within the city limits. The City adopted a concept plan in 2008 identifying transportation and infrastructure demands necessary to serve projected urban levels of development. These infrastructure service demands have been incorporated into the City’s various utility and transportation master plans as a measurable way to protect the quality of life enjoyed by current Oregon City residents.

Beyond the applicable approval criteria identified in the incorporated Staff Reports and these Findings, some of these issues may be addressed at the development stage. The Planning Commission acknowledges and appreciates the time and testimony of Oregon City’s citizens who participated at or before the three public hearings. However, the issues identified above are more appropriately addressed at the Master Plan and Land Division stage (the General

Development Plan and Detailed Development Plan Applications) when development is proposed. It is at this time the City will learn the extent of the development proposed, associated mitigation, and compliance with applicable code criteria. To the extent these issues are relevant to the annexation and zoning map approval criteria, as noted above, the Planning Commission finds that the incorporated three Staff Reports and these Findings address those relevant issues.

The Planning Commission finds that issues generally associated with livability have either been addressed as described in the incorporated three Staff Reports and these Findings, are appropriately addressed at the development stage, which is requires public notice and hearings prior to a final City decision.

## **9. Conclusion.**

For the reasons contained in this decision, the City Commission hereby approves this Application with the recommended conditions of approval contained in **Exhibit A**.

DATED this 5<sup>th</sup> day of July, 2018.

**APPENDIX A**  
**CONDITIONS OF APPROVAL**

1. Highway 213 at Beaver Creek Road intersection (an Oregon Highway intersection) is forecasted to fall below adopted mobility standards prior to year 2035. As a result, the City has adopted a new Refinement Plan and amendments to OCMC Chapter 12.04 implementing the new Refinement Plan, that is not yet acknowledged. This re-zoning shall not be effective until the new Refinement Plan including alternative mobility measures is adopted and acknowledged.
2. Prior to the effective date of this zone change, the property will remain zoned FU-10. No new structures or additions to existing structures or site grading that triggers erosion control permits or overlay district review, other than what otherwise would be allowed under the County's applicable FU-10 zoning, will be allowed. In addition the property shall be subject to the City's overlay districts, fence regulations in OCMC 17.54.100 as well as the City's nuisance, business licensing and animal regulations.
3. A trip cap for the approximate 92-acre annexation shall be imposed on all development as follows: 538 AM peak hour trips; 679 PM peak hour trips; and 7406 total weekday trips. Any proposal involving development exceeding this trip cap will require additional analysis showing compliance with the Transportation Planning Rule, OAR 660-12-0060 subject to review by the Planning Commission and City Commission as a modification.
4. Prior to issuing any development approval authorized by this annexation and zone change, the applicant shall obtain General and Detailed Development Plan approval, that includes the approximate 92-acre property, pursuant to OCMC 17.65. Until such time, all development shall conform to requirements of the County's FU-10 zoning. The General Development Plan and all phases of development authorized by it, must implement the Park Place Concept Plan and Oregon City's adopted Public Facilities Plans with regard to the provision of open space, park and trails, sewer, water, stormwater and transportation improvements. These include, but are not limited to, addressing the timing of parkland acquisitions and development, proposed phasing of major roads to ensure a timely connection to Holly Lane and an analysis of utility phasing that can foster redevelopment of the entire concept plan area. All land division and site plan and design review applications shall be in conformance with the approved Master Plan, although the normal provisions for Amendments to Master Plans apply.
5. As a result of future transportation analyses associated with specific development plans for any of the properties subject to this annexation, the applicant may be obligated in subsequent conditions of approval to mitigate for development impacts by participating in funding of both TSP and non-TSP projects regardless of whether those projects are listed in the conditions of approval for this annexation and zone change pursuant to the applicable approval criteria for a Master Plan.

6. At such time as a Master Plan is reviewed, the applicant shall submit additional materials to address specific requirements outlined in the city's Guidelines for Transportation Impact Analyses and calculate the proportionate share of transportation impacts of the proposed development including proportional mitigation of the application's impacts on that intersection, or such other mitigation measure(s) as may be approved which assure(s) that the intersection will either meet, or perform no worse than, the then-applicable performance standards. More intense development than identified in this report is likely to increase the applicant's share of project differently than calculated below. The applicant's final share may be modified as necessary when a Master Plan is approved to reflect any a modification of the development's trip generation or a change in project costs resulting from revisions to project costs associated with updates to the City's Transportation System Plan or Capital Improvement program that will be paid on a schedule determined as part of the Master Plan.
  - a. Redland Road at Holcomb Boulevard/Abernethy Road (a non-Oregon Highway intersection) is forecasted to fall below adopted performance standards prior to year 2035. The applicant shall demonstrate either of the following:
    1. That the City has adopted amendments to the City's Transportation System Plan to include projects that satisfy the applicable mobility standards as specified in OCMC 12.04.205 at this location; or
    2. Accept a condition of approval for a development application that obligates the applicant to implement a project that satisfies applicable mobility standards at that intersection.
  - b. The developer shall participate in the funding of improvements for the I-205/OR-99E ramp terminal projects (TSP Projects D75 and D76) in proportion to the development's traffic volumes as a percentage of total year 2035 intersection volumes from the TSP. The project cost for D75 is \$2,990,000. Based on this methodology and the preliminary PM peak hour trip generation from the proposed development, the development accounts for 0.96 percent of the 2035 volume and the development's share of the project is \$28,700. The project cost of D76 is \$1,990,000. The development accounts for 0.87 percent of the 2035 volume and the development's share is \$17,300.
  - c. The developer shall participate in the funding of improvements for the Main Street/14<sup>th</sup> Street improvements (TSP Projects D7 and D8) in proportion to the development's traffic volume as a percentage of the predicted 2035 traffic volume at the intersection calculated in the TSP. The cost of these projects as listed in the 2017 TSDC Project List is \$845,000 and \$960,000, respectively. Based on this methodology and the preliminary PM peak hour trip generation from the proposed development, the development accounts for 3.63 percent of the 2035 volume and the development's share of the project is \$65,500.
  - d. The developer shall participate in the funding of improvements for the Abernethy/Holcomb/Redland intersection in proportion to the development's traffic volume as a percentage of the predicted 2035 traffic volume. No project is

currently identified in the TSP. The project concept is to provide an additional lane on the eastbound approach; it may involve restriping or widening and signal modifications. No project cost is available at this time. Based on this methodology and the preliminary PM peak hour trip generation from the proposed development, the development accounts for 19.7 percent of the 2035 volume.

- e. The developer shall participate in the funding of improvements for the intersection of OR213/Redland Road (TSP Project D79) in proportion to the development's traffic volume as a percentage of the predicted 2035 traffic volume at the intersection calculated in the TSP. The 2017 TSDC project list shows a project cost of \$10,105,000. Based on this methodology and the preliminary PM peak hour trip generation from the proposed development, the development accounts for 4.77 percent of the 2035 volume and the development's share of the project is \$482,000.
- f. The developer shall participate in the funding of improvements for the Holly Lane/Holcomb Boulevard intersection (TSP Project D43) in proportion to the development's traffic volume as a percentage of the predicted 2035 traffic volume. Project D43 is a roundabout with an estimated project cost in the TSP of \$1,040,000 according to the 2017 TSDC Project List. Based on this methodology and the preliminary PM peak hour trip generation from the proposed development, the development accounts for 38.1 percent of the 2035 volume and the development's share of the project is \$396,000.
- g. The developer shall participate in the funding of improvements for the Holly Lane/Redland Road intersection (TSP Project D36) in proportion to the development's traffic volume as a percentage of the predicted 2035 traffic volume. Project D36 is a roundabout with an estimated project cost \$1,040,000 according to the 2017 TSDC Project List. Based on this methodology and the preliminary PM peak hour trip generation from the proposed development, the development accounts for 28.3 percent of the 2035 volume and the development's share of the project is \$294,000.
- h. The developer shall participate in the funding of improvements for the Highway 213/Beavercreek Road intersection in proportion to the development's traffic volume as a percentage of the predicted 2035 traffic volume. A project to add a right-turn lane on westbound Beavercreek Road and a merge lane on northbound Highway 213 was identified in the July 2017 Highway 213 Corridor Alternative Mobility Study and was adopted as Project D95 as an amendment to the TSP. The project's cost listed in the TSP amendment is \$2.7 million. Based on this methodology and the preliminary PM peak hour trip generation from the proposed development, the development accounts for 0.35 percent of the 2035 volume and the development's share of the project is \$9,400.
- i. The developer shall participate in the funding of improvements for pedestrian and bicycle projects on Holcomb Boulevard that implement the Holcomb Boulevard Pedestrian Enhancement Concept Plan (HBPECP, adopted by Ord. 05-1003) in

accordance with the Transportation System Plan sidewalk Infill projects W11, W12, W13, bike lane project B12, and crossing projects C3, C4, C5 and C6 in proportion to the development's motor vehicle traffic volume using Holcomb Boulevard as a percentage of the total motor vehicle traffic volume on Holcomb Boulevard. Based on this methodology and the preliminary PM peak hour trip generation from the proposed development, the development accounts for 11.5 percent of the 2035 volume. The combined cost of these seven projects is \$3,735,000. The development's share of the projects' cost is calculated to be \$429,500. The developer is entitled to System Development Charge credits pursuant to OCMC 13.12.040 for qualified public improvement as part of development.

- j. The developer shall participate in the funding of improvements for the Redland Road/Anchor Way intersection in proportion of the development's traffic as a development's traffic volume as a percentage of the predicted 2035 traffic volume. Project D35 specifies operational improvements at the intersection with an estimated project cost of \$425,000 according to the 2017 TSDC Project List. Based on this methodology and the preliminary PM peak hour trip generation from the proposed development, the development accounts for 25.0 percent of the 2035 volume and the development's share of the project is \$106,000.
- k. The applicant's preliminary proportionate share for project listed above as conditions of approval are based on the total trip generation for the annexation property using the proposed trip cap of 538 AM peak hour trips; 679 PM peak hour trips; and 7,406 total weekday trips. A less intense development is likely to decrease the applicant's share of projects as calculated above. A more intense development, in addition to requiring analysis showing compliance with the Transportation Planning Rule, is likely to increase the applicant's share of projects as calculated above.