



To: City Commission  
From: Laura Terway, Community Development Director  
Christina Robertson-Gardiner, Senior Planner  
Josh Wheeler, Assistant City Engineer  
Carrie Richter, Bateman Seidel, Assistant City Attorney  
RE: LEG 19-0003-Beavercreek Road (Thimble Creek) Concept Plan Zoning and Code Amendments  
Date: June 9, 2020

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Staff offers the following findings of approval responding to questions about the adequacy of infrastructure in the Concept Plan area. By way of introduction, it is important to remember that the adoption of urban zoning within the Thimble Creek area is just one step in a multi-step process necessary for development to occur. These steps include: adoption of a concept plan – the comprehensive plan for this specific area, the amendment of various utility / transportation master plans as necessary to implement the concept plan, the identification of funding mechanisms including revisions to system development charge assessments and capital improvement plans, and the development review - such a land division or site plan approval - that authorize a particular proposal. Until an application for development is received, land use and infrastructure planning for this area is an iterative process that is impacted by many factors such as funding priorities and how development in this area occur. In other words, this is not the last opportunity that the City will have to review and identify infrastructure solutions and funding priorities in the future.

### **The Applicable Approval Standard**

OCMC 17.68.020(B), one of the criteria to be satisfied when considering a zone change, provides:

B. That public facilities and services (water, sewer, storm drainage, transportation, schools, police and fire protection) are presently capable of supporting the uses allowed by the zone or can be made available prior to issuing a certificate of occupancy. Service shall be sufficient to support the range of uses and development allowed in the zone.

Finding this criterion is met does not require that utility facilities already exist but rather, whether they “can be made available.” A demonstration that public facilities “can be made available” means only that it must be feasible and does not require that they must exist or otherwise somehow be assured. The words “can be made available” requires a determination of the feasibility of extending utility facilities and services to the property. If it is feasible to extend utilities to the site, this standard is satisfied.

Testimony was presented that this criterion requires that facilities “will be available”

– along with a claim that this imposes a “higher standard.” However, the meaning of “can be made available” does not involve such a demanding interpretation. Had the intent been to require greater certainty about the provision of services, the terms “shall be available” or “will be available” might have

been used. The word “can,” unlike the words ‘will’ or ‘shall,’ requires a subjective determination of the ‘ability to’ provide, or the ‘feasibility of’ providing utility infrastructure.

To further this end, the City has adopted public facility plans to identify the water, sewer, and transportation facilities that are needed to support the designated land uses and to assure that this infrastructure is available for approved uses. The adopted Sanitary Sewer Master Plan (2014), Water Distribution Master Plan (2012), Stormwater Master Plan (2020) and Transportation System Plan (2013) provide direction on how public facilities can extend to new areas, including the Beaver Creek/Thimble Creek Concept Plan area and development anticipated through the proposed map and code amendments, without compromising the ability to provide services to existing areas and residents of the City that meet adopted service standards.

### **Planning for the Provision of Water**

In 2012, the City adopted the Citywide Water Distribution System Master Plan (WMP). The WMP was written for the entirety of the City’s distribution system for both existing and future demands within the Urban Growth Boundary (UGB), inclusive of the Beaver Creek Road (Thimble Creek) Concept Area. The WMP projected a water storage deficiency to serve the Beaver Creek Concept Area and identified the need for a new reservoir located beyond the City’s existing Henrici Reservoir, at a higher elevation along with a new pump station and transmission main. The 2019 Water Capital Improvement Plan (CIP) update confirmed this need.

In 2014, the City, Clackamas River Water (CRW), and the South Fork Water Board (SFWB) entered into a Settlement Agreement. The Agreement required the City and CRW to engage in discussions regarding the potential adjustment of service area boundaries, including possible withdrawal and annexation of certain lands, to better reflect the appropriate entity to serve certain areas based on which entity is most able to serve future development lands. In November 2016, CRW and the City entered into a Memorandum of Understanding (MOU) authorizing a Joint Engineering Study (Study) to meet the terms of the Agreement. The Study was presented in a joint work session to the City Commission and Clackamas River Water Board on March 13, 2018, and the Study was finalized June 11, 2018.

In the Beaver Creek Area, the Study identified a concept providing service with shared infrastructure, including a pump station, transmission main, and reservoirs. This approach reduces the City capital costs to serve the area, since major infrastructure costs are shared with CRW. The study found that in both the joint approach or the “go it alone approach” the City provides service to all residents within the City and UGB long term, therefore, the customer base remains the same, and both options show compliance with the zoning requirements in OCMC 17.68 to show how utilities serve or can be shown to serve the Beaver Creek/Thimble Creek Concept Plan area. The two primary differences are water supply and capital improvements required to serve the area, both in scope and cost. The 2019 CIP reflects Oregon City as the long-term service provider of the Beaver Creek Concept Area, including water supplied by SFWB. The Joint Engineering option includes water supply from SFWB and CRW.

The Commission desires to plan for and provide water supplied by South Fork Water Board or other City-owned water supply sources, as its primary source of water for its water distribution system. Resolution 20-15, Passed on June 3, 2020 “directs staff to proceed with an amendment of the 2012 Water Distribution Plan, inclusive of the 2019 Capital Improvement Plan that reflects planned City service to current and future citizens of Oregon City, including the Beaver Creek Road (Thimble Creek) Concept Plan area with City-owned and operated facilities, and not pursue the joint engineering option identified in the Study.”

Public Works staff is tasked with siting a reservoir and pursuing an Intergovernmental Agreement with Clackamas River Water that provides a Master Meter to the City as an interim solution while the City plans and builds the infrastructure and ultimately withdraw Clackamas River water from the Beaver Creek/Thimble Creek Concept Plan Area.

### **Planning for the Provision of Sanitary Sewer**

The Sanitary Sewer Master Plan (2014) was created subsequent to initial adoption of the Beaver Creek Road Concept Plan (2008 and incorporated the Beaver Creek/Thimble Creek Concept Plan area into future capital improvement projections and will ensure adequate water and sewer capacity is developed. An Infrastructure Analysis completed by 3J consulting indicated that the population and development projects are consistent with the 2014 sewer analysis and can be found on Figure 5-8 on page 5-11 of the 2014 Sanitary Sewer Master Plan refers specifically to the projected Housing and Employment Estimates on page 42 of the adopted Beaver Creek Road Concept Plan (2008/2016). Development consistent with these plans will ensure adequate treatment capacity throughout the system – including the treatment plant – even should other areas, such as Happy Valley or Damascus, develop first.

### **Planning for Adequate Transportation**

Zone Changes in Oregon must show compliance with the requirements of Oregon Administrative Rule (OAR) 660- 012-0060, the Transportation Planning Rule (TPR), are met. DKS and Associates were contracted to provide this analysis, which was further reviewed by the city contract Transportation Engineer, John Replinger. The Study found that the current TSP includes adequate transportation system projects for the Beaver Creek Concept Plan area to comply with the Transportation Planning Rule (TPR). Moreover, all transportation impacts as a result of the additional housing units and employees in the Beaver Creek Concept Plan area are addressed by current Transportation System Plan projects, which include the recently adopted alternate mobility projects and standards.

It is incorrect to say that Beaver Creek Road / Highway 213 intersection is not “up-to-standard.” The City made a decision to adopt alternative mobility standards which will be satisfied when traffic generated from Thimble Creek development occurs. Although there may be a preference for the more expensive grade-separated interchange to alleviate congestion, this was not the policy choice that the City selected. Thimble Creek development can satisfy the alternate mobility standards.

Development will occur in the concept plan area iteratively based on market conditions. Each development will be required to build abutting new connecting streets and provide upgrades offsite if proportionally triggered. Projects identified in the Transportation System Plan, such as the unrestricted

right turn lane at Beaver Creek/213, will be closer to being built with SDCs paid by new development, as contemplated in the concept plan.

Public comments are often concentrated in the desire to see all improvements be built before development can be approved. This approach only works if development is large enough that their proportional impact legally allows a jurisdiction the ability to exact large offsite improvement during the land use process. These types of large development have not been built to date in Oregon City. Another option not generally pursued is the use of municipal bonding, urban renewal or other upfront funding mechanisms that are paid back over time through development generated monies. What has occurred and will occur in the Concept Plan area, unless there is further direction given by the City Commission, is piecemeal improvements implemented over time proportional to the proposed development coupled with directed city-led capital improvement projects identified in the TSP, such as the unrestricted right turn lane on Highway 213.

The Transportation System Plan identified projects that are unlikely to be funded or likely be funded by the public entity. Unlikely to be funded projects are infrastructure improvements that are the direct result of development. When private development occurs, those that most directly benefit from the streets become responsible for their construction. For example, the City has not prioritized Holly Lane for improvement to serve existing development and for that reason, it is not identified for funding in the capital improvement plan (CIP). However, when development occurs that triggers the need for Holly Lane, a condition of approval requiring its improvement may be imposed. The alternative, if it turns out that Holly Lane is needed, the CIP could be amended to provide some level of public funding.

The burden the City has in reviewing zone changes is to verify that there is an adequate plan adopted that identifies the needed transportation projects for an area to be able to meet the adopted mobility targets. How adopted projects are prioritized, or how future private/public partnerships are created, or grants pursued are implementation measures at the policy discretion of the City Commission.

### **Urban-Level Development Cannot Occur Without Urban Infrastructure**

Finally, it is important to remember that all urban development – whether a land division or a site plan approval – requires utility infrastructure and services necessary to serve that development. For example, in order to divide land in Thimble Creek, as with anywhere else in the City:

The applicant shall design and install a water system to serve all lots or parcels within a development in accordance with the city public works water system design standards, and shall connect those lots or parcels to the city's water system. Applicants are responsible for extending the city's water system to the development site and through the applicant's property to allow for the future connection of neighboring undeveloped properties that are suitably zoned for future development. OCMC 16.12.095(D).

The same is true for transportation, sanitary sewer, stormwater and other utilities. The site plan design review standards cross-reference the same OCMC 16.12 obligations. OCMC 17.62.050(B), (D) and (E). In

other words, a development that cannot connect their development to services at standards identified or provide connecting roads as set forth in the applicable master plan will be denied until such time as the infrastructure is available.

## **Conclusion**

Based on the foregoing, along with all of the other evidence such as the June 19, 2019 memo from 3-J Consulting (Exhibit 18) contained in the record, it would be reasonable for the City Commission to conclude that the public facilities and services can be made available at the time they are needed, when development is proposed in the future.

### **Exhibits:**

1. Resolution No. 20-15, Declaring Oregon City's Position to Provide Water Service with Water Supplied by South Fork Water Board to Current and Future Citizens of Oregon City
  - a. June 3, 2020 City Commission Work Session Agenda and Video <https://oregon-city.legistar.com/Calendar.aspx>
  - b. Staff Report
  - c. Resolution No. 20-15
  - d. Attachment 1 BC Service 2019 CIP vs Joint Eng Solution
  - e. Attachment 2 Beavercreek 2019 CIP vs Joint Solution CIP
  - f. Attachment 3 CRW Backbone Projects Map