

MEMORANDUM

TO: Oregon City Planning Commission
FROM: Carrie A. Richter
DATE: January 6, 2017
RE: Annexation of Oregon City Golf Course and Abutting Right-of-Way
City File No. AN-16-0003

It has been many months since the Planning Commission considered this matter and as a result, this memo is to provide a recap of the events since the last Planning Commission hearing and to start to frame the policy issues presented for the Commission's consideration in this request.

Recent Factual Background

On October 24, 2016, the Planning Commission opened the public hearing for consideration of the Oregon City Golf Course property for annexation. At that hearing, a number of Commissioners raised concerns about the adequacy of public utilities necessary to support an urban-scaled development. One concern was regarding the status of the Beavercreek Road Concept Plan and the remaining steps to be undertaken for the plan to be acknowledged by DLCD and implemented through adoption of comprehensive plan map amendments, zoning and development standards. You asked for greater explanation about how utilities will be extended to serve the proposed development and questioned whether the various utility master plan identified projects would be in place in advance of development. You asked whether the identification of public facilities contained within the utility master plans was sufficient to justify annexation and instead suggested that the facilities must either be in place or be imminent before annexation may be approved. Whether the extension of utilities necessary to serve this annexation area is economically viable and whether the public or development should or will be responsible the cost associated with expansion or extension, were also raised. Finally, the relationship between annexation and the adoption of alternative mobility measures necessary to address the Highway 213 / Beavercreek Road intersection was discussed. At that point, the hearing was continued to November 14, 2016.

At the applicant's request, the hearing scheduled for November 14, 2016 was continued to January 9, 2017. During this time, city staff reached out to the applicant and its representatives to coordinate the timing for filing a written response to the Commissioners' questions and concerns. On December 19, 2016, the applicant's representatives filed a request to continue the hearing to February 13, 2017 to allow a sufficient time to circulate responsive materials in advance of the hearing. Later that same day, the continuance request was rescinded and the January 9 hearing date preserved. With the hearing back on, City staff reached out again to the applicant and its representatives to determine when additional

responsive materials would be provided. On December 30, the applicant emailed city staff asking that the hearing be continued to February 13. As a result, city staff published the agenda for the January 9 meeting noting the request for a continuance. Again, a few hours after the request was given and the agenda published, the applicant rescinded its continuance request.

Nature of the Request

The subject property is included within the Metro Urban Growth Boundary and as a result, the City has an obligation to urbanize it in order to accommodate projected population and employment growth throughout the region. In order to fulfill this obligation, the City had to adopt a long-term land use development plan for this area, which was accomplished through the adoption of the Beaver Creek Concept Plan (BRCP). The BRCP identifies certain development objectives for the area and quantifies the various utility demands necessary to support those objectives. These utility demands resulting from BRCP development at urban densities were included in the utility master plans for the various utilities including a 2013 Transportation System Plan, a 2012 Water Distribution System Master Plan, a 2014 Sanitary Sewer Master Plan and the 2015 Stormwater and Low Impact Storm Water and Erosion Control Standards. All of these plans were adopted and have become part of the City's comprehensive plan and land use regulations. As a result, before any development could be approved within the annexation area, or anywhere else within the BRCP, the site would have to be served by utilities as prescribed by these various utility plans. If the Planning Commission determines that greater utility capacity is necessary to accomplish BRCP objectives or the BRCP objectives are no longer desired, amendments must be made to these plans.

As the Planning Commission is aware, the BRCP was re-adopted on remand in the spring of 2016 and that decision was appealed to LUBA. In late November 2017, LUBA affirmed the City's decision. LUBA's decision has been appealed to the Oregon Court of Appeals. The parties are briefing the case now and it is anticipated that the Court will reach a decision in the spring of 2017.

In order for the BRCP to take effect, the City must apply Comprehensive Plan designations, amend its zoning regulations to create zoning categories necessary to implement the BRCP, and adopt a zoning map amendment re-zoning all of the BRCP property to urban densities. All of these actions must be done in accordance with the adopted utility master plans as well as with the statewide land use goals. It is anticipated that through the process of adopting implementing zoning that the City will gain greater specificity as to permitted uses, densities, lot coverage and design limitations (which could affect utility infrastructure demand.) As a result, this effort will provide greater clarity and certainty for development and the utility demand that will result.

In addition to adopting plan and zoning designations for the BRCP area, the City must also deal with the limited capacity of the Highway 213 corridor between Redland Road and Molalla Ave, including the intersection of Highway 213 / Beaver Creek Road. Before any development in the BRCP area may occur, the City must adopt alternative mobility measures, as required by OCMC 12.04. The alternative mobility measures process is largely a policy-making effort to identify capacity limitations based balancing of community objectives including movability for various modes as well as improvement costs.

Once alternative mobility measurements for the intersections along Highway 213 and the BRCP zoning are in place, then BRCP-affected property owners may begin to file development applications, such as land divisions and site plan approvals. Every applicant seeking a subdivision or site plan approval must establish that utilities necessary to serve the use are either in place or will be in place before the development may occur. For example, if the Oregon City Golf Course property filed a subdivision application and the water and sewer lines necessary to serve had not yet been extended down Beaver Creek Road, the subdivision would have to be denied. In no circumstance could the City allow urban-scaled development to occur before the infrastructure identified within the various adopted utility master plans is in place to serve the use.

With this background, it is important to remember the limited nature of this request – it is for an annexation only. Annexation does nothing more than allow the City to take jurisdiction over the property such that it can collect property taxes and provide the existing club house and two existing single-family homes with city utilities and services. The only additional development that could occur, without first proceeding with the steps identified above and guided by the BRCP, would be the subdivision and creation of 8 additional 10-acre residential lots. City staff has determined that the City's existing infrastructure would accommodate an additional 8 residential homes, in the event that the property never redevelops to urban densities.

Utility Adequacy for Annexation

Given the dearth of additional information necessary to respond to the Planning Commissioners' more detailed questions as to how utilities will be extended, it is important to understand what the applicable approval criteria require with regard to infrastructure adequacy in order to approve the annexation. OCMC 14.04.060 sets forth a series of "factors" that are to be considered as part of an annexation approval decision. The key factor raised by a number of Planning Commissioners is the "adequacy and availability of public facilities and services to service potential development." OCMC 14.04.060(3). Therefore, it is up to the Planning Commission to interpret the terms "adequacy and availability" and then determine, based on the facts presented, how it will balance the factors to determine whether the annexation should be approved. The Planning Commission's interpretation must be reasonable when considering the plain language of the standard as well as contextual support that may come from other parts of the code or comprehensive plan.

In other words, the Planning Commission must decide, in cases where no "development" is proposed, to what degree is a finding of "adequacy and availability" required? This task is difficult for a number of reasons. First, determining when something is "adequate" requires a high degree of discretionary decision-making. The Planning Commission could conclude that there are too many unknowns with regard to the substance of the alternative mobility measures to conclude that transportation utility adequacy can be achieved. Or it could conclude that necessary utility extensions and facilities are feasible, based on the adopted master planning documents along with the additional planning steps needed before development. The second challenge is that the existing annexation policies presumed actions that are not present in this case. For example, it assumed the City decision-makers' decision on annexation would precede referral to the voters. This matter will not be considered by the voters. Also, some portions of the code presume that annexation will occur after the zoning designation is in place.

For example OCMC 17.68.025 requires rezoning upon annexation when urban planning designations are in place.

Assuming that the implementing zone and urban-scaled utilities need not actually be in place, particularly when the intensity of the development is not certain, “adequacy and availability” must impose some lesser requirement. The City’s Comprehensive Plan supports an interpretation of “adequacy and availability” that focuses on the City’s ability to provide services rather than a requirement that the services are actually available or imminent. For example, the plan explains:

Once inside the Urban Growth Boundary, areas can be proposed for annexation. The Oregon City zoning code lists factors for evaluating a proposed annexation. The Planning Commission and City Commission should not consider issues related to annexations that are better suited to development reviews. The City should consider its ability to adequately provide public facilities and services to an area and leave development plans and related issues to the site development/design review process. P. 118

However, the Comprehensive Plan also provides:

The zoning of the property should be considered when the Planning Commission and City Commission review the annexation request. Applications for annexation, whether initiated by the City or by individuals, are based on specific criteria contained in the City of Oregon City Municipal Code. An annexation may not be approved because the City cannot provide public services to the area in a timely fashion, as required by state and metro regulations. Therefore, an annexation plan that identifies where and when areas might be considered for annexation can control the expansion of the city limits and services to help avoid conflicts and provide predictability for residents and developers. Other considerations are consistency with the provisions of this Comprehensive Plan and the City’s public facility plans, with any plans and agreements of urban service providers, and with regional annexation criteria. P. 118

Comprehensive Plan Policy 14.4.2 is also relevant to the City’s ability to provide services:

Include an assessment of the fiscal impacts of providing public services to unincorporated areas upon annexation, including the costs and benefits to the city as a whole as a requirement for concept plans.

Based on the foregoing, it appears that compliance with annexation factor 3 does not require that urban-scaled infrastructure necessary to serve development must be in place or imminent before lands can be annexed to the City. This is particularly true given the number of additional steps necessary for the Oregon City Golf Course to be developed. Instead, this factor likely requires some evaluation of the likely potential development resulting from annexation and the adequacy and availability of utilities to serve that development at the time that development occurs along with some discussion of the costs associated with extending services and an evaluation of who will bear those costs. In other words, a

determination that necessary services could be extended to serve the use and that the costs associated with those improvements have been evaluated.

There are a number of LUBA cases supporting this result. For example, in *Just v. City of Lebanon*, LUBA held that neither Goal 11 or 14 required development approval or the provision of all urban facilities and services at the time of annexation. Rather, reliance on the City's utility master plans along with an explanation of how various utility systems will be improved and funded to provide capacity to serve the proposed development area was deemed sufficient. Similarly, in *Cutsforth v. City of Albany*, LUBA held that when a city's annexation criteria require that adequate infrastructure "is available, or will be made available in a timely manner," that criteria is satisfied by showing that urban services can be readily extended into the annexation territory, as development occurs. 49 Or LUBA 559, 565 – 566 (2005).

Taken together, the Comprehensive Plan and LUBA cases suggest that a reasonable interpretation of "adequacy and availability" would be to identify the intensity of the development contemplated by the BRCP and with that, evaluate whether the utility infrastructure called for in the master plan, if installed in advance of development, their timing for extension will be sufficient to support the use.

Conclusion

Although this memo does not respond to the more detailed utility adequacy questions raised at the last hearing, it provides some guidance for determining the extent to which utility adequacy must be assured, considering the procedural posture of this case along with the applicable approval standard. The staff report explains that the BRCP identified this area as suitable for mixed-use residential development, small-scale employment and retail uses and parks. The staff report summarizes the key components of the various utility master plans that will be required to support these identified uses including a water reservoir, a pump station, water transmission mains, sewer lines, transportation improvements, schools and parks, police, emergency and fire protection services. Staff believes that this analysis is sufficient to satisfy the applicable criteria and approve this request.

However, you may certainly interpret the utility adequacy criterion differently, take another approach to balancing the various factors, or simply find that the evidence presented by the applicant is insufficiently detailed to establish that utilities will be adequate to justify the annexation.

We look forward to discussing this matter in greater detail with you on Monday evening.