

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

In the matter of a request for annexation of 35.65 acres located north of South Holcomb Boulevard within the Portland Metropolitan Urban Growth Boundary (the “UGB”) and a zoning map amendment from the Clackamas County FU-10 zone to the City R-10 zone implementing the City Comprehensive Plan (the “Plan”) map designation of Low-Density Residential (“LDR”)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW APPROVING
THE ZONING MAP AMENDMENT AND
ANNEXATION APPLICATION**

**CITY OF OREGON CITY FILE
NUMBERS AN-16-0004 AND ZC-16-0001**

I. INTRODUCTION.

A. Decision with condition of approval.

This decision **APPROVES** the annexation and rezoning map application with a condition of approval satisfying the Oregon Transportation Planning Rule (“TPR”). These findings constitute the Oregon City City Commission’s (the “City Commission”) final, written decision.

B. Incorporation.

The City Commission’s decision incorporates the following documents by reference. Where these letters or staff documents conflict with these findings, these findings shall control.

1. Three (3) letters from the Applicant’s representative, Michael C. Robinson.

The three (3) incorporated letters are as follows:

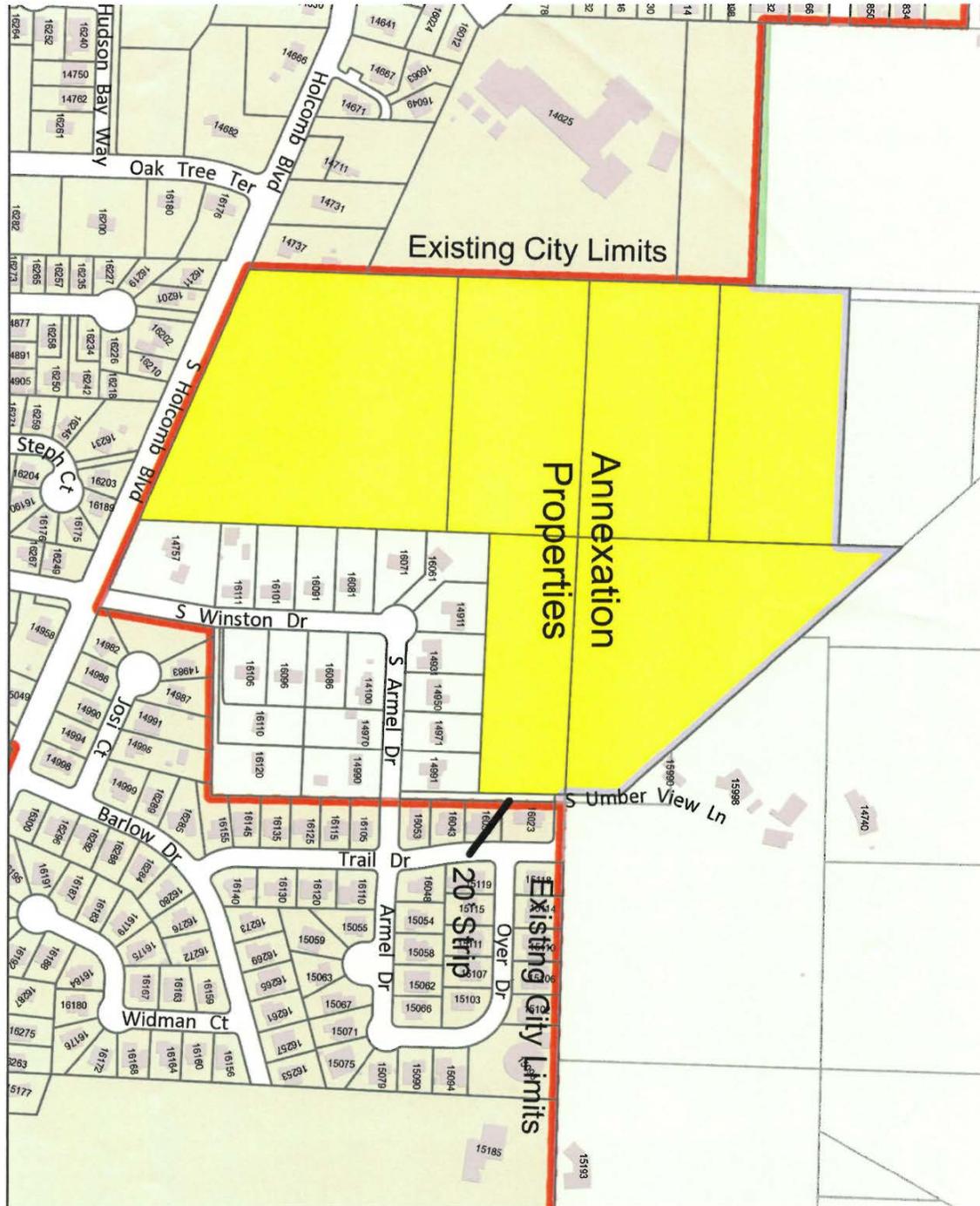
- February 27, 2017 four (4) page letter with five (5) exhibits;
- March 13, 2017 nine (9) page letter with seven (7) exhibits; and
- March 27, 2017 four (4) page letter with two (2) exhibits.

2. Staff reports.

The City Commission’s decision incorporates the staff report titled “STAFF REPORT WITH FINDINGS AND RECOMMENDATION” that was presented to the Planning Commission and City Commission. This decision also incorporates the three (3) page memorandum from the City Engineer dated March 9, 2017.

C. Procedure.

The Applicant submitted an application for an annexation of 35.65 acres located North of Holcomb Boulevard within the UGB and a zoning map amendment from the Clackamas County FU-10 zone to the City R-10 zone implementing the City Plan map designation of LDR (Exhibit 1).



The City provided timely notice of the initial Planning Commission hearing on November 14, 2016. The Planning Commission opened that public hearing and continued the hearing to a date time and certain through the final Planning Commission hearing on March 13, 2017. The City

also provided required notice of the post-acknowledgment amendment of the City's acknowledged land use regulations by the zoning map amendment to Metro and the Oregon Department of Land Conservation and Development ("DLCD") thirty-five (35) days prior to the initial evidentiary hearing.

The Planning Commission on March 13, 2017 with a quorum present recommended by a vote of 3-2 that the City Commission approve the annexation application and zoning map amendment.

The City Commission held its hearing on April 5, 2017. Four (4) of the five (5) City Commission members constituting a quorum were present, with Commissioner O'Donnell absent.

No party objected to the City Commission's jurisdiction to hear the applications. No City Commission member disclosed any bias or conflict of interest. Each City Commission member acknowledged that he or she had visited the site. When offered an opportunity to rebut the substance of the site visits, no party requested an opportunity to do so.

The whole Planning Department record for files AN-16-0004 / ZC-16-0001 was physically before the City Commission at the hearing.

The City Commission caused the announcements required by ORS 197.763(5) to be read. The City Commission conducted an "on the record" hearing and no party introduced new evidence into the record of the *quasi-judicial* hearing.

Following the staff report with slides, the City Council provided an opportunity for testimony by the public. Following testimony by the public, the Applicant provided rebuttal.

The City Commission closed the public hearing and record and deliberated to a tentative decision. On a motion by Commissioner Ide, seconded by Commissioner Mengelberg, the City Commission voted 4-0 to tentatively approve the annexation and zoning map amendment, directing staff to return with proposed findings at the April 19, 2017 City Commission meeting at which no new testimony or evidence would be accepted.

D. Relevant facts.

The site that is the subject of the annexation and zoning map amendment is located within the UGB north of South Holcomb Boulevard. The site contains 35.65 acres. The site is designated LDR on the City's acknowledged Plan map. The site is currently zoned Clackamas County FU-10 and the zoning map amendment is proposed to change the site to City R-10, the City's lowest density residential zone. The site to be annexed and rezoned consists of six (6) tax lots. The site is adjacent to the City limits on two (2) sides. A 20-foot wide strip known as South UMBER View Lane is adjacent to the site and is within Clackamas County but is not proposed to be annexed.

II. FINDINGS OF FACT ADDRESSING RELEVANT APPROVAL CRITERIA.

The findings that address the annexation and zoning map amendment application are set forth below.

A. The zoning map amendment from the Clackamas County FU-10 zone to the City R-10 zone.

The applicant requested a zoning map amendment consistent with the acknowledged Plan, as explained above. The sole criterion for a zoning map amendment concurrent with an annexation where a Plan map designation is present on the property is Oregon City Municipal Code (“OCMC”) 17.68.025.A. The City Commission finds that the Plan designation for the property is LDR. Pursuant to the table in OCMC 17.68.025.A, the City Commission finds that the R-10 zoning district is required to be applied to the property. The City Commission further finds that no other discretionary approval criteria in the OCMC or the Plan are required to be addressed.

The City Commission finds that the TPR must be satisfied pursuant to OAR 660-012-0060(1) because the zoning map amendment is an amendment to the City’s acknowledged land use regulations. Based on substantial evidence in the whole record, including a letter dated March 6, 2017 from the Oregon Department of Transportation (“ODOT”) agreeing that the condition of approval #14 below satisfies the TPR, the City Commission agrees with the relevant incorporated staff report that the “significant affect” is mitigated pursuant to OAR 660-012-0060(2)(e) through the condition of approval recommended by the Planning Commission. The recommended condition of approval #14 is as follows:

“In accordance with City, County and State Transportation requirements, no development, except that permitted under the County’s Future Urban FU-10 zoning designation, in effect as of the date of this application’s submittal, shall be allowed until the following occurs and the Applicant demonstrates compliance with these requirements:

a. Highway 213 at Redland Road intersection (an Oregon Highway intersection) is forecasted to fall below adopted performance standards prior to year 2035. As a result, a new Refinement Plan, shall be adopted and acknowledged.

b. Redland Road at Holcomb Boulevard/Abernethy Road (a non-Oregon Highway intersection) is forecasted to fall below adopted performance standards prior to year 2035. As a result, the City must do one of the following:

(1) Adopt amendments to the City’s Transportation System Plan and OCMC Chapter 12.04 to include projects that satisfy the then-applicable performance standards and these standards must be acknowledged; or

(2) Condition of approval of a land division application that satisfies then-applicable OCMC Chapter 12.04

by 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.”

For the reasons contained herein, the City Commission finds that the Applicant has satisfied the relevant approval criteria for a zoning map amendment implementing the City’s acknowledged Plan and that the TPR is satisfied by adopting the above condition of approval.

B. Annexation application.

The annexation of property within the UGB is subject to OCMC 14.04.060.(A).1.-7., relevant Plan policies, Metro Code Chapter 3.09 and ORS Chapter 222. The City Commission finds that based on the incorporated staff reports, the applicant’s incorporated letters and other substantial evidence in the whole record, the relevant annexation approval criteria are satisfied for the annexation.

The City Commission notes the Oregon City Public School District’s letter dated March 13, 2017 from Mr. Wes Rogers, Director of Operations for the school district, in which the school district states that it has adequate secondary school enrollment capacity to accommodate the expected number of students from development of the property to be annexed and that forecast enrollment for 2026-2027 for Holcomb Elementary School would exceed the 2016 forecasted capacity by five (5) students. However, the school district did not object to the annexation on this basis and noted that Holcomb Elementary School had yet to enroll any students from the almost completed Sunny Brook Ridge development from the west of the school. The City Commission finds that school facilities will be adequate to serve the site based on the letter.

The City Commission also relies upon the incorporated March 9, 2017 memorandum from the City Engineer regarding stormwater design standards and low impact development and the Applicant’s available public facilities and services narrative explaining why there is, or will be, sufficient water, sanitary sewer, stormwater, and park facilities to serve the site in concluding that OCMC 14.04.060.A.3 (adequacy and availability of public facilities and services to service potential development) is satisfied.

The City Commission also adopts findings addressing the following four (4) other issues:

1. The approval of the annexation application will not create an island.

Several persons argued that the annexation would result in the creation of an “island”. An island is an area of unincorporated Clackamas County completely surrounded by the City. The City Commission finds based on substantial evidence in the whole record that the annexation will not create an island. Since the City Commission found that this proposed annexation did not create an island, Plan Policy 14.4.3 is satisfied.

2. The Barlow Trail on the property will be preserved.

While not an approval criterion, the City Commission notes that several persons raised the issue of preservation of the Barlow Trail on the site. The Applicant committed to complying with

relevant OCMC land division requirements that require preservation of the Barlow Trail.

3. Land division issues do not apply to the annexation application.

Several persons raised issues concerning how the property would develop following annexation. The City Commission finds that issues related to future development are irrelevant to the annexation application. The City Commission relies on a statement in the Plan, Section 14, “Urbanization”, at page 118 as follows for support for this finding:

“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. . . . Applications for annexation, whether initiated by the City or individuals, are based on specific criteria contained in the *City of Oregon City Municipal Code*.” (Emphasis in original).

4. Senate Bill (“SB”) 1573.

Several persons argued that the City Commission should require a vote of the electorate on the annexation application as required by the Oregon City City Charter despite SB 1573. The City Commission finds that SB 1573 provides that, notwithstanding a contrary provision of the City Charter, upon receipt of an annexation petition submitted by all owners of land in the territory, the legislative body of a City shall annex the territory without submitting a proposal to the electors if certain criteria are satisfied. SB 1573, Section 2(2). The City Commission finds that substantial evidence in the whole record demonstrates that all of the owners of the land proposed to be annexed have signed the annexation petition.

The City Commission further finds that the requirements of SB 1573 for dispensing with an election to approve the annexation are satisfied. First, the City Commission finds that the territory proposed to be annexed is included within the UGB adopted by Metro. SB 1573, Section 2(2)(a). Second, the City Commission finds that the area proposed to be annexed is subject to the City’s acknowledged Comprehensive Plan. SB 1573, Section 2(2)(b). Third, the City finds that the area proposed to be annexed is contiguous to the City limits. SB 1573, Section 2(2)(c). Fourth, the City Commission finds, as explained elsewhere in this decision that the proposed annexation conforms to all of the requirements of the City’s ordinances. SB 1573, Section 2(2)(d).

Pursuant to SB 1573 Section 2(4), the City Commission has determined that the criteria in subsection (2) apply and may, therefore, annex the proposed territory by ordinance without submitting the annexation to the electors of the City.

III. FINDINGS AND DECISION.

For the reasons explained in this decision, the City Commission **APPROVES** the zoning map amendment and annexation application and specifically includes the recommended condition of approval demonstrating that the zoning map amendment is consistent with the TPR in the decision.