

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:) Case No. ZCCP 24-004
WOODRY PROPERTIES, LLC) **COMPREHENSIVE PLAN**
) **AMENDMENT / ZONE CHANGE**

RECOMMENDATION

I. Nature of the Application

This matter comes before the Hearings Officer on the Application of Woodry Properties, LLC to change the zone from AR (Acreage Residential) to IUC (Unincorporated Community Industrial) and to change the Comprehensive Plan designation from Rural Residential to Industrial on a 0.39-acre parcel located at 9035 River Rd. NE Keizer (T6S; R2W; Section 18BC; Tax lot 900).

II. Relevant Criteria

The standards and criteria relevant to this Application are found in the Oregon Statewide Planning Goals, Marion County Comprehensive Plan Policies (Rural Development Rural Industrial, Development Limitations, Transportation System Management, Brooks-Hopmere Community Plan), and Marion County Code Chapter 17, especially 17.123 (Zone Change Procedure), 17.128 (Acreage Residential Zone), and 17.164 (Unincorporated Community Industrial Zone).

III. Public Hearing

A public hearing was held on this matter on October 3, 2024. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the Application:

- 1. Austin Barnes Marion County Planning Division
- 2. Steven Kay Representative for Applicant

No documents were presented, marked, or entered into the record as exhibits. No objections were raised as to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing.

IV. Executive Summary

Applicant seeks to change the zone from AR (Acreage Residential) to IUC (Unincorporated Community Industrial) and to change the Comprehensive Plan designation from Rural Residential to Industrial on a 0.39-acre parcel located at 9035 River Rd. NE Keizer. The small site contains a chain link fence around the perimeter and has a gravel surface. A dwelling was removed in 2020, is not well suited for a dwelling. The majority of the property is in

industrial use and is located in an industrial-type area with active businesses. Applicant has established compliance with all applicable criteria, and the hearings officer recommends **APPROVAL** of the application.

V. Findings of Fact

The Hearings Officer, after careful consideration of the testimony and evidence in the record, issues the following finding of fact:

1. The subject property consists of 0.39 acres designated Rural Residential in the Marion County Comprehensive Plan (MCCP) and zoned AR (Acreage Residential) in Chapter 17.128 of the Marion County Code (MCC). The property is within the urban unincorporated community of Brooks-Hopmere.
2. The property is located on the east side of River Rd NE in the 9000 block, just north of its intersection with Brooklake Rd NE. The property is vacant and covered in gravel.
3. Surrounding properties are zoned EFU (Exclusive Farm Use), IUC (Unincorporated Community Industrial), AR, and CC (Community Commercial). Surrounding properties are developed with a mixture of industrial, residential, commercial and farm uses.
4. Applicant seeks to change the Comprehensive Plan designation from Rural Residential to Industrial and change the zoning from AR to IUC.
5. Marion County Planning Division requested comments from various governmental agencies, The following comments were received:

Marion County Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use case, if approved:

ENGINEERING ADVISORIES

- A. PW Engineering has no action items for the proposed Zone Change itself.
- B. The following are PW Engineering guidelines for future development:
 - Pave access approach
 - Additional 3-foot right-of-way dedication along River Road to achieve the county 33-foot half-width standard for an Arterial
 - Transportation System Development Charges (SDCs) with credit for past residential use

Marion County Fire District No. 1 commented regarding standard fire code requirements. The comments addressed fire-flow requirements, temporary water supply, fire department connection, safety during construction, fire protection, access issues, and premises issues. The full comments are included in the record as part of the Planning case file.

Marion County Building Inspection commented that a building permit is required for new construction.

All other contacted agencies contacted either failed to respond or stated no objection to the proposal.

6. The Application was signed by Glenn E. Woodry. The Statutory Warranty Deed, recorded at Reel 4188, Page 137 evidences that property is vested in Woodry Properties, LLC. The Oregon Secretary of State Business Entity Data indicates that Glenn E. Woodry is a member of Woodry Properties, LLC.

VI. Additional Findings of Fact and Conclusion of Law

1. Applicant has the burden of proving compliance with all applicable criteria.
2. The property is within the urban unincorporated community of Brooke-Hopmere, a community identified in 2000 under the provisions in Oregon Administrative Rule 660-022. As such, the entire community is rural exception land to which the Agricultural Goal (Statewide Goal 3) and Forestry Goals (Statewide Goal 4) no longer apply.
3. OAR 660-022 establishes the standards for planning and zoning of unincorporated communities. However, the rule does not provide specific criteria for changing the zone of a property within a community.

In this case, Applicant proposes to change the zone from AR to IUC. Both zones have been acknowledged by DLCD as complying with the rural community rule and either is able to be applied to the property under the rule. The zone change process is subject to ORS 197.610-197.625, the post-acknowledgement amendment process. While that is the process being followed, there are no specific criteria for this zone change in that statute.

BROOKS-HOPMERE COMMUNITY PLAN

4. There are a number of comprehensive plan policies in the Brooks-Hopmere Community Plan that apply to a zone change:
 - A. Land Use and Transportation
 1. *County plans and land use regulations shall ensure that new uses authorized within the Brooks-Hopmere Community do not adversely affect agricultural uses in the surrounding EFU areas.*

The IUC zone was acknowledged by DLCD as a zone appropriate to be applied in an urban unincorporated community. The uses in the IUC zone are limited to small scale uses that have minimal impact on surrounding resource land. The intended use of the subject parcel as warehousing/storage or a light industrial use that does not rely on water service is not anticipated to have any appreciable effect on agricultural uses in the surrounding area. This policy is satisfied.

2. New development shall be reviewed to ensure that it will not result in the capacity of the transportation system within the community being exceeded.

Applicant states that the additional traffic, while more than a single-family dwelling built on the property, is a minimal increase over the amount of traffic already on Brooklake Road. Applicant states that the transportation system has the capacity to accommodate this use, and any additional traffic would be minimal as the size of the site greatly limits expansion and additional traffic generation. This policy is satisfied.

3. New development shall be limited to prevent excess demand on the Brooks Community Sewer System.

Applicant states that the proposed use will not require water or sewer services. Applicant proposes to use a holding tank and not extend sewer service. This policy is satisfied by the proposal. In addition, the IUC zone itself implements this policy because it contains standards for development to ensure a proposed use in the zone undergoes a review of sewer capacity before it can be established.

6. Parcels subject to a Limited Use overlay zone designation that was based on a reasons exception to statewide Goal 3 prior to adoption of the Brooks-Hopmere Community Plan shall continue to be subject to the limitations of the overlay zone.

This property was not subject to a Limited Use Overlay Zone designation upon the adoption of the Brooks-Hopmere Community Plan based on a reasons exception to Statewide Goal 3. This policy does not apply.

B. Utilities

1. New uses or expansion of existing uses requiring land use approval in Brooks-Hopmere shall be approved only upon confirmation from the Brooks Community Sewer District that it can provide sewer services to the property, unless an on-site system has been approved by Marion County or the Oregon Department of Environmental Quality.

The proposed use will not require new water or sewer services, according to the applicant. Applicant states that an existing well located on 3511 Brooklake Rd NE and a septic holding tank would be utilized. In addition, the IUC zone itself implements this policy because it contains standards for development to ensure a proposed use in the zone undergoes a review of sewer capacity before it can be established. This policy is met.

2. Industrial uses that require water as part of their industrial or manufacturing processes shall be required to demonstrate a capability for on-site sewage disposal.

Applicant states that the proposed use will not require water or sewer services. As such, this policy does not apply. In addition, the IUC zone itself implements this policy because it contains standards for development to ensure a proposed use in the zone undergoes a review of sewer capacity before it can be established.

MARION COUNTY COMPREHENSIVE PLAN

5. In addition to the policies in the Brooks-Hopmere Community Plan, policies in the Rural Development elements of the Marion County Comprehensive Plan apply:

General Policies

1. Rural industrial, commercial and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.

Brooks-Hopmere is an urban unincorporated community recognized by OAR 660-022. The community, and the zoning that applies in the community, ensure that the industrial, commercial and public uses are suited to the location of the community and compatible with existing rural developments and agricultural goals and policies. This policy is satisfied.

Rural Development Policies

1. Where there is a demonstrated need for additional commercial uses in rural Marion County they should be located in designated unincorporated communities.

The proposed use of the property is considered more of an industrial use than a commercial use. Public Warehousing (SIC 4225) is generally more of industrial than commercial use because it consists of structures on land used for storage with occasional customer visits. Storage facilities are not the kind of retail use where customers visit daily and travel from shop to shop in a commercial area. As such, this policy does not apply.

2. The boundaries of identified unincorporated communities shall not be expanded to accommodate additional development.

The boundaries of the community are not being expanded by this proposal. This policy does not apply.

3. Service districts within unincorporated communities may be created and expanded to serve the entire designated rural community; however, services shall not be extended outside of the community unless necessary to correct a health hazard.

The boundaries of the service district community are not being changed or expanded by this proposal. This policy does not apply.

4. Public facilities in rural communities and rural service centers should be designed to service low density rural development and not encourage urbanization.

The proposed use does not rely on water or sewer service. This policy does not apply.

5. Additional residential development should be discouraged within Interchange District zones at rural service centers. Only rural service businesses and related uses should be located at these centers.

The property is in an incorporated community - not a rural service center. This policy does not apply.

6. Zoning ordinance provisions shall ensure that new uses permitted in unincorporated communities will not adversely affect agricultural and forestry uses.

The IUC zone was acknowledged to be appropriate to implement the rural communities rule in the urban unincorporated community of Brooks-Hopmere. The IUC zone contains a set of uses limited in size and nature to ensure the property remains rural and compatible with surrounding uses. The zoning proposed to be applied to the property ensures that his policy is satisfied.

STATEWIDE PLANNING GOALS

6. The proposal to amend the Comprehensive Plan must be consistent with the Statewide Planning Goals or seek exemptions to them. The relevance of each goal in this proposal is addressed below.

Goal 1: Citizen Involvement. The notice and hearings process provides an opportunity for citizen involvement. The goal is satisfied.

Goal 2: Land use Planning. The subject application would change the zoning within an urban unincorporated community, an acknowledged exception area. The Marion County staff recommendation was presented to the Hearings Officer for consideration and application of applicable case law. The Hearings Officer makes a recommendation to the Marion County Board of Commissioners who will make the decision on behalf of the County. The goal is satisfied.

Goal 3: Agricultural Lands. Since the property is within an urban incorporated community, this goal no longer applies.

Goal 4: Forest Lands. Since the property is within an urban incorporated community, this goal no longer applies.

Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources. The Marion County Comprehensive Plan does not identify any significant open spaces, scenic and historic areas and natural resources on the subject property. The goal does not apply.

Goal 6: Air, Water and Land Resources Quality. The subject property is not within an identified air quality area. The property is not in the sensitive groundwater overlay zone. The goal does not apply.

Goal 7: Areas Subject to Natural Disasters and Hazards. The subject property is not within an identified floodplain or geologic hazards area. This goal does not apply.

Goal 8: Recreation Needs. No recreational uses of the property are proposed in conjunction with this application. The goal does not apply.

Goal 9: Economic Development. Because this goal focuses on commercial and industrial development, primarily within an urban growth boundary, it does not apply to this proposal. However, the proposal would provide an economic service to area residents and businesses.

Goal 10: Housing. This goal applies to housing within an urban growth boundary and, therefore, does not apply to this proposal.

Goal 11: Public Facilities and Services. The subject parcel can be served by the usual rural facilities, such as a roadway, telephone and electrical service. While water and sewer service area available to the property, the proposed use does not require it. This goal is satisfied.

Goal 12: Transportation. The applicant describes how the property would generate a minimal amount of additional traffic onto Brooklake Road. Additionally, the property is served in the area by an adequate roadway network in the area. This goal is satisfied.

Goal 13: Energy Conservation. The energy use of the property will be minimal with the proposed use. This goal is satisfied.

Goal 14: Urbanization. The Brooks-Hopmere Urban Unincorporated Community is rural exception land not subject to the urbanization goal. The goal does not apply.

COMPREHENSIVE PLAN AMENDMENT

7. All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). DLCD was notified as required by State Law and did not comment prior to this report being prepared.
8. The MCCP establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer properties will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established

in Marion County Code Chapter 17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 123 of the MCRZO.

9. The proposal appears to be consistent with the policies in the Marion County Comprehensive Plan, and the comprehensive plan amendment from Rural Residential to Industrial approval is recommended.

ZONE CHANGE

10. The criteria for a zone change are found in the Marion County Code Chapter 17.123.060:

A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and

B. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and

C. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and

D. The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and

E. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

11. As described above, the Unincorporated Community Industrial (IUC) zone implements the Industrial designation in an unincorporated community. The proposal is consistent with applicable goals in the Brooks-Hopmere Community Plan and the Marion County Comprehensive Plan.

Applicant's proposal supports a determination that a zone change is consistent with surrounding uses and the density and pattern of development in the area. Based on the information submitted by the Applicant, it is found that there are adequate public facilities, services, and transportation networks in place to serve the proposed use.

The IUC zone is only permitted in unincorporated communities; so, the proposed use is limited to a very small amount of rural land in the county. Applicant describes how the subject location is well suited for the use while other locations are not available for it.

The IUC is the only zone that implements the Industrial land use designation in an unincorporated community. It appears the use satisfies the criteria for a zone change.

12. Marion County Code 17.176 provides a means to apply a limited use overlay when a new zoning is applied to the property. The purpose of the overlay is described in MCC 17.176.010:

“The purpose of the LU (limited use overlay) zone is to reduce the list of permitted or conditional uses in a zone to those that are suitable for a particular location. Zones permit a number of uses without notification or opportunity for a hearing, because the uses are considered generally acceptable, although type and intensity of activity may vary. Zones also include conditional uses which may be permitted if certain criteria are met. However, on a particular property certain of these uses may conflict with adjacent land uses or may not be considered suitable for a particular site. Rather than deny a zone change because the proposed zone would allow an objectionable permitted or conditional use, the limited use overlay can be used to identify the appropriate uses and either require a conditional use permit for other uses normally permitted in the zone or delete objectionable permitted or conditional uses from the zone.”

In this case, Marion County Planning does not believe it is necessary to apply a limited use overlay to the subject property. Planning indicates that the intensity of the activity in the IUC zone is inherently limited due to the nature of the zone being a rural zone that complies with the rural communities rule for scale and size of use. In addition, the zone itself contains conditions which can be applied when the zone abuts a residential zone to ensure the use is compatible with that zoning, which will be considered below. Finally, the zone also contains property development standards in MCC 17.164.060 which must be considered regarding traffic and sewage disposal before uses can be established. These standards are applied at the time of development of the property through the building permit process:

“G. Traffic. Any new or expanded use shall demonstrate that the new development will be consistent with the identified function, capacity, and level of service of transportation facilities serving the site. A transportation impact analysis approved by the Marion County department of public works may be required prior to building permit approval.

H. Sewage Disposal. Any new or expanded use shall demonstrate that the new development will not exceed the existing carrying capacity of the community sewage disposal system or has an on-site sewage disposal site approved by Marion County or the Department of Environmental Quality. “

13. MCC 17.164.050 provides conditions that may be imposed where the zone change to IUC zone abuts a residential zone:

“In any zone change or reclassification of property to an IUC zone where the territory proposed to be changed abuts upon a residential zone, or abuts upon a street or alley which would be the boundary line between the proposed IUC zone and the residential

zone, conditions to preserve neighborhood qualities may be imposed by the governing body relating to:

- A. Size and location of signs;*
- B. Size, type and location of outdoor lighting;*
- C. Landscaped areas;*
- D. Screening;*
- E. Building setbacks;*
- F. Ingress and egress for industrial uses.”*

The subject property abuts a split zoned residential and industrial property to the north, 3501 Brooklake Rd NE. Due to the split zoned nature of the property and the lack of sewer in the area, there is not expected to be any residential development to the north. The whole property is used as part of a larger industrial business that has been operating on the property. These policies do not apply.

14. Marion County Planning recommended that the application for a Comprehensive Plan designation from Rural Residential to Industrial and a zone change zone from AR to IUC be approved. If the zone change is approved, Marion County Planning recommended that the following conditions be applied:
 - A. Buildings on the IUC property shall otherwise comply with setback requirements and property development standards of the zone.
 - B. Access to the property shall be from Brooklake Road.
 - C. Prior to issuance of building permits, dedicate sufficient right-of-way (R/W) to provide the public R/W half-width of 30 feet for a rural Major Collector road along the subject property Brooklake Road frontage.
15. The proposed conditions of approval are necessary for the public health, safety, and welfare.
16. The zone change is recommended.

VII. Recommendation

It is hereby found that Applicant has met the burden of proving the applicable standards and criteria for approval of change the zone from AR (Acreage Residential) to IUC (Unincorporated Community Industrial) and to change the Comprehensive Plan designation from Rural Residential to Industrial on a 0.39-acre parcel located at 9035 River Rd. NE Keizer.

Therefore, the Hearing Officer recommends that the Marion County Board of Commissioners **GRANT** the Application subject to the following conditions that are necessary for the public health, safety, and welfare:

1. Buildings on the IUC property shall otherwise comply with setback requirements and property development standards of the zone.
2. Access to the property shall be from Brooklake Road.
3. Prior to issuance of building permits, dedicate sufficient right-of-way (R/W) to provide the public R/W half-width of 30 feet for a rural Major Collector road along the subject property Brooklake Road frontage.

VIII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this Application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 16th day of January, 2025.



Jill F. Foster

Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

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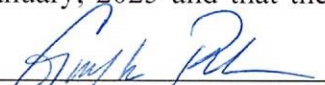
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By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 16th day of January, 2025 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer