



# ***Marion County*** **OREGON**

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### **MEMORANDUM**

**TO:** Marion County Hearings Officer  
**FROM:** Marion County Planning Division/Alyssa Schrems  
**SUBJECT:** Comprehensive Plan/Zone Change 21-007  
**DATE:** August 26, 2021

The Marion County Planning Division has reviewed the above-named case and offers the following comments:

### **FACTS:**

1. The subject property consists of 0.16 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 at 4965 Brooklake Road NE, Salem, on the north side of Brooklake Road NE, approximately 230 feet southeast of the intersection of Pueblo Ave NE and Brooklake Road NE. The property contains a dwelling and three accessory structures. Sewer service is provided by the Brooks Community Sewer District.
3. Surrounding properties are zoned AR (Acreage Residential) and CC (Community Commercial) and developed with a mixture of residential and commercial uses. Properties to the south with frontage on Brooklake Road are zoned Public and are used as educational facilities.
4. The applicant is requesting to change the Comprehensive Plan designation from Rural Residential to Community Commercial and change the zoning from AR to CC.
5. Marion County Public Works Land Development and Engineering Permits requests that the following conditions, be included in the land use case, if approved.

***Condition A – Prior to establishment of a commercial use, and/or in the event building permits are required, prior to issuance of a Certificate of Occupancy, obtain an Access Permit, and under the Permit widen the concrete driveway approach to provide between 14 to 16 feet of width not including transition panels, and pave the gravel driveway portion back with hot mix asphalt for a minimum distance of 15 feet measured from the north edge of sidewalk.***

*Nexus is to meet PW Engineering driveway approach standards for commercial usage.*

LDEP also commented on requirements that are not part of the land use decision and available for review in the planning file.

Brooks Community Service District commented that the Service District requires any change in use to be approved through a review process and that the system may need to be upgraded depending on type and change in flow. Parking is not allowed over the septic tank. Water services are not available to this property at this time.

At the time of this staff report all other contacted agencies contacted either failed to respond or stated no objection to the proposal.

### **STAFF FINDINGS AND ANALYSIS:**

6. In land use actions of this type, the applicant has the burden of proving compliance with all applicable criteria. This report will outline the criteria that must be satisfied in order for an approval to be granted. If the applicant supplied argument or evidence to address specific criteria, the response will be summarized.
7. 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 and Forestry goals (Goals 3 and 4) no longer apply. The criteria for reviewing a zone change are considered below.
8. While OAR 660-022 establishes the standards for planning and zoning of unincorporated communities, it doesn't provide specific criteria for changing the zone of a property within a community. In this case, the applicant proposes to change the zone from AR to CC. 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.
9. The applicant correctly points out that the proposed use, any uses allowed in the CC zone, is consistent with the Brooks-Hopmere Community Plan land use planning considerations and development standards. 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 CC zone was acknowledged by DLCD as a zone appropriate to be applied in an urban unincorporated community. The uses in the CC zone are limited to small scale uses that have minimal impact on surrounding resource land. The intended use of the subject parcel as an office for professional services is not anticipated to have any adverse effect on agricultural uses in the surrounding area. The subject property is not located adjacent to any parcels in agricultural use. This policy is satisfied by the proposal.

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.*

The applicant proposes to use the property as an office for professional services. The applicant states that fewer than 10 vehicles per day will visit the property for business and that this will not exceed the capacity of Brooklake Road. This policy can be satisfied by the proposal.

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

Commercial uses allowed in the CC zone are likely to require water or sewer services at the same or a lower rate than the existing dwelling. In addition, the CC 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 is able to be established. This policy can be satisfied by requiring a review of sewer capacity before establishment of any commercial activities on the property as a condition of any approval.

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.*

As stated above, commercial uses allowed in the CC zone are likely to require water or sewer services at the same or a lower rate than the existing dwelling. In addition, the CC 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 is able to be established. This policy can be satisfied by requiring a review of sewer capacity before establishment of any commercial activities on the property as a condition of any approval.

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.*

If any industrial uses allowed in the CC zone are proposed, the proposal can be reviewed for compliance with this policy. In addition, the CC 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 is able to be established. This policy can be satisfied by requiring a review of sewer capacity before establishment of any industrial activities on the property as a condition of any approval.

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

## General Policies

3. *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 use of the property is proposed to be limited to the commercial uses allowed in the CC zone. The property is located in the Brooks unincorporated community. The proposal complies with this policy.

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 will be served by the existing well on the property and limited by the available capacity of the Brooks Sewer District. This policy is satisfied.

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 unincorporated 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 CC zone was acknowledged to be appropriate to implement the rural communities rule in the urban unincorporated community of Brooks-Hopmere. It 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 this policy is satisfied.

11. Proposals to amend the Comprehensive Plan must be consistent with the Statewide Planning Goals:
  - Goal 1: Citizen Involvement. The notice and hearings process provides an opportunity for citizen involvement.
  - Goal 2: Land use Planning. The subject application would change the zoning within an urban unincorporated community, an acknowledged exception area.
  - 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.
  - 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.
  - Goal 7: Areas Subject to Natural Disasters and Hazards. The subject property is not within an identified floodplain or geologic hazards area. This goal is not applicable.
  - Goal 8: Recreation Needs. No recreational uses of the property are proposed in conjunction with this application. This 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, thus, 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 met.
  - 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 met.
  - Goal 13: Energy Conservation. The energy use of the property will be minimal with the proposed use. This goal is met.
  - Goal 14: Urbanization. The Brooks-Hopmere Urban Unincorporated Community is rural exception land not subject to the urbanization goal.
12. 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.
13. 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.

14. 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.*

15. As described above, the CC zone implements the Commercial designation in an unincorporated community. The proposal is consistent with applicable goals in the Brooks-Hopmere Community Plan and the Marion County Comprehensive Plan. The applicant describes how the zone change is consistent with surrounding uses and the density and pattern of development in the area. Based on the information submitted, it appears there are adequate public facilities, services, and transportation networks in place to serve the proposed use. The CC zone is only permitted in urban communities; so, the proposed use is limited to a very small amount of rural land in the county. The applicant describes how this location is well suited for the use as other neighboring properties are in a mix of commercial or public uses. The CC is the only zone that implements the Commercial land use designation in an unincorporated community. It appears the use satisfies the criteria for a zone change.

16. 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, Planning does not believe it is necessary to apply a limited use overlay to the subject property. The intensity of the activity in the CC 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. “*

17. MCC 17.143.050 provides conditions that may be imposed where the zone change to CC zone abuts a residential zone:

*“In any zone change or reclassification of property to an CC 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 CC 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 residential properties to the north and west. The applicant states that any sign on the property would be on Brooklake Road, not visible to the neighboring residential property. Lighting will be designed to avoid reflection on the residential property. Landscaping will be maintained adjacent to the residential property and provide adequate screening. A building on the CC property will maintain the required setback of 10 feet. Access to the property will be from Brooklake Road and not affect the residential property to the north or west. Parking must be accommodated onsite as no business parking may occur within the public right-of-way on Brooklake Road. No parking over the existing septic tank is allowed.

18. Based on the above discussion staff recommends the application for a Comprehensive Plan designation from Rural Residential to Community Commercial and a zone change zone from AR to CC be approved.
19. If the zone change is approved, Planning recommends the following conditions be applied:
- A. Any sign on the property shall be placed so that it is visible from the Brooklake Road frontage.
  - B. Lighting shall be directed away from the neighboring residential property.
  - C. Landscaping shall be maintained or provided adjacent to the residential property adequate to provide screening from any industrial use (a six foot fence, wall or hedge).
  - D. Prior to establishing any industrial uses and prior to application for building permits, apply for review of onsite sewage treatment capacity.
  - E. Prior to establishing any commercial uses and prior to application for building permits, review sewer capacity and submit evidence that Brooks Community Sewer System will serve the new use.