

BEFORE THE MARION COUNTY BOARD OF COMMISSIONERS

In the Matter of:) Part ____
) Findings Regarding
The Brooks-Hopmere Community Plan) OAR 660 Division 04
And Public Zone.)

I. SUMMARY

This section provides findings to support zoning and comprehensive plan amendments to require compliance with OAR 660, Division 04, the State of Oregon Administrative Rule for exceptions to Statewide Planning Goals for the SE Brooks sub-area.

The Southeast Brooks area consists of 5.07 acres with nine (9) parcels under six (6) separate ownerships. See Exhibit A. This area is currently zoned Exclusive Farm Use (EFU) and is designated as Primary Agriculture on the Marion County Comprehensive Plan Map. There are five (5) rural residential dwellings constructed on the following parcels: #1, #2, #3, #7, and #9. Each dwelling is served by an onsite sewage disposal system and individual well for domestic water. The dwellings were constructed in the 1950’s, 1960’s, and 1970’s, prior to the enactment of the Marion County Rural Zoning Ordinance.

The proposed change to the Southeast Brooks area will be to re-designate parcels 1-5, and 7 as Residential and to zone them as Acreage Residential. Parcels 6, 8 and 9 will be re-designated as Commerical and zoned as Community Commercial with a limited use overlay zone. A goal exception to Goal 3 is being taken as the Southeast Brooks Area is both physically developed and irrevocably committed to rural residential uses and a commercial office use. The findings to the Goal 3 exception are contained below.

II. PHYSICALLY DEVELOPED EXCEPTION - OAR 660-04-025

OAR 660-04-025 contains the following exception requirements for land physically developed for other uses:

- (1) A local government may adopt an exception to the goal when the land subject to the exception is physically developed to the extent that it is no longer available to uses allowed by the applicable goal.
- (2) Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on

structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal which an exception is being taken shall not be used to justify a physically developed exception.

Finding:

The southeast Brooks area consists of an area of approximately 5.07 acres in size that contains nine (9) parcels owned by seven (7) property owners with a variety of uses. An area map identifying the southeast Brooks area, the parcel numbers, and the general uses, can be best seen on Exhibit A.

As can be seen on Exhibit A, the southeast Brooks area is developed with five (5) dwellings, all of which are served by on-site septic systems and wells. The existing houses were built in the 1950's, 60's, and early 70's, prior to the enactment of the Marion County Rural Zoning Ordinance.

The southeast Brooks area also contains two non-conforming uses. The first use operated on parcel No. 3 and consists of a log truck hauling operation that is currently permitted outright in the EFU zone pursuant to Marion County Rural Zoning Ordinance, MCRZO 136.040(j). The second use (Complete Plaster, Inc. (CPI)) consists of a specialty trade contractor use located in an existing dwelling and storage buildings at the extreme south end of the sub-area on Lots 6, 8 and 9.

The entire southeast Brooks area is located within the Brooks Sewer District.

Conclusion:

The southeast Brooks sub-area is physically developed to the extent that it can no longer be practically used for resource uses and therefore satisfies the physically developed exception criteria in OAR 660-04-025.

III. IRREVOCABLY COMMITTED EXCEPTION - OAR 660-04-028

OAR 660-04-028 contains the exception requirements for land irrevocably committed to non-resource uses. Under OAR 660-04-028(1), the local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because the existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable. According to OAR 660-04-028(2), whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception must address the following:

- (a) Characteristics of the exception area;
- (b) The characteristics of the adjacent lands;
- (c) The relationship between the exception area and the lands adjacent to it; and
- (d) The other relevant factors set forth in OAR 660-04-028(6).

Under OAR 660-04-028(3), local governments are required to demonstrate that only the following uses and activities are impracticable:

- (a) Farm use as defined in ORS 215.203;
- (b) Propagation or forcing of a forest product as specified in OAR 660-331-20; and
- (c) Forest operations or forest practices as specified in OAR 660-060-25(2)(a).

Under OAR 660-04-028(6), findings of fact for a committed exception area shall address the following factors:

- (a) Existing adjacent uses;
- (b) Existing public facilities and services (water and sewer lines, etc.);
- (c) Parcel size and ownership patterns of the exception area and adjacent land. This analysis shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Resource and non-resources parcels created pursuant to applicable goals shall not be used to justify a committed exception. Contiguous ownerships shall be considered together in relation to the lands actual use;
- (d) Neighborhood and regional characteristics;
- (e) Natural and manmade features or other impediments to resource use separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, water courses, utility lines, easements, or rights of way that effectively impede practicable resource use of all or part of the exception area;
- (f) Physical development according to OAR 660-04-025; and
- (g) Other relevant factors.

Findings:

The existing adjacent uses in the surrounding area consists of a mixture of Commercial, Industrial, and Farm uses. To the north lies an existing exception area currently zoned Commercial that is being used for used auto sales. To the south, east and northeast there are parcels currently in farm use and zoned Exclusive Farm Use. To the west lies Hwy. 99E and further west lie existing parcels currently zoned Industrial within the Brooks rural community.

Existing public facilities in the immediate area include Hwy. 99E, various utility lines along the highway and into the various properties, individual water and septic systems on five (5) of the nine (9) parcels in the southeast Brooks area.

The proposed exception area is approximately 5.07 acres in size and includes nine (9) small parcels in six (6) separate ownerships. Surrounding properties to the north and entire northwest, west and southwest include exception properties currently in the Brooks unincorporated rural community. These parcels were created prior to the enactment of the Marion County Subdivision and Partition Ordinance, and no findings were made against the statewide planning goals were made at the time of the creation of the parcels.

The areas along Hwy. 99E generally contain parcels in farm use, and within the unincorporated communities there is a mixture of Commercial, Industrial, and Residential uses. Also common

along Hwy. 99E, outside of the unincorporated communities, are non-conforming uses, and uses approved for commercial activities established in conjunction with farm uses.

The subject property is bordered on the west by Hwy. 99E, a major transportation corridor through Marion County. Movement of farm machinery along this highway can be dangerous, and this road can be a barrier to combining parcels on opposite sides of it. Hwy. 99E is not necessarily inhibit farming this site independently or farming it with adjacent parcels on the same side of the highway.

The physical development of the subject property was previously discussed above in the physical developed exception findings.

With respect to other factors relevant to the subject property, the entire Southeast Brooks Exception Area is located within the Brooks Sewer District boundary. Although not currently connected to the Brooks Sewer System, the subject property is located within the Sewer District boundary and it is anticipated that these properties will be serviced by the current sewer system in Brooks.

Whether the commercial and residential use of the subject property will commit the surrounding farm lands to the east to non-resource use will depend on the uses that will remain on the subject property. The limited use overlay zone will be applied to the property identified as Parcels 6, 8 and 9 (Exhibit A) within the Southeast Brooks area. Within the proposed overlay zone, a copy of which can be seen in Exhibit B, only the existing use (specialty trade contractor) would be allowed to continue to be used on the Parcels 6, 8 and 9, and any other change in use would require a complete transportation impact analysis and potentially significant improvements to the intersection of Brooklake Road and Hwy. 99E. Under the proposed limited use overlay zone, it would only allow the current use which is a low level activity use that does not and would not interfere with farm practices on adjacent properties.

SUMMARY.

The various individual properties within the Southeast Brooks area are home to long established residences and a commercial (specialty trade contractor) use. The area has been in non-farm use since the 1950's and 60's. The long-standing use the subject properties has not significantly interfered with adjacent and nearby farm uses. Potentially conflicting uses could be allowed on Parcels 6, 8 and 9 if not restricted under a limited use overlay zone. The limited use overlay zone will be used to eliminate potential conflicting uses and require conditional use review on a case-by-case basis.

CONCLUSION.

The Southeast Brooks area satisfies the requirements for a physically developed and an irrevocably committed exception as identified in the above findings. Parcels 1-5 and 7 will be rezoned to AR, and parcels 6, 8 and 9 will be rezoned to CC(LU).