

A BILL FOR AN ORDINANCE ANNEXING AND ZONING PROPERTY FOLLOWING CONSENT FILED WITH THE CITY COUNCIL BY LANDOWNERS IN SAID AREA PURSUANT TO ORS 222.120 AND ORS 222.170 (File A-03-03)

ORDINANCE BILL NO. 13 for 2003

ORDINANCE NO. 2349

WHEREAS, the City of Lebanon has received a submission by written request for annexation of real property to the City of Lebanon, signed by more than one-half of the landowners who also own more than one-half of the land in the contiguous territory described in Exhibit "A", which real property represents more than one-half of the assessed value of all real property in the contiguous territory to be annexed; and

WHEREAS, the Lebanon City Council has elected to dispense with submitting the question of the proposed annexation to the electors of the City, initiating the annexation of the territory pursuant to ORS 222.120, calling a hearing and directing that notice be given as required by ORS 222.120(3); and

WHEREAS, after conducting the hearing and considering all objections or remonstrances with reference to the proposed annexation, and further considering the recommendation of the Lebanon Planning Commission, and the parties having requested that the record be kept open, and the City Council further considering submissions to the record, the City Council finds that this annexation is in the best interest of the City and of the contiguous territory.

NOW, THEREFORE, the City of Lebanon ordains as follows:

Section 1. Findings. In addition to the findings referred to above, the City Council further adopts and finds those matters contained in Exhibit "B", which is incorporated herein by this reference as if fully set forth at this point.

After recording please return to: City of Lebanon Page 1 Public Works Administration 925 Main Street, Lebanon, OR 97355

Section 2. Annexation Area. Based upon the findings contained above and in Exhibit "B", the contiguous territory described in Exhibit "A" and incorporated herein by this reference as if fully set forth at this point is hereby proclaimed to be annexed to the City of Lebanon, and zoned as indicated in accordance with the Lebanon Zoning Ordinance No. 1773, and given the zoning of Residential Mixed Density (RM).

Section 3. Record. The City Recorder shall submit to the Oregon Secretary of State a copy of this Ordinance. The City Recorder is further ordered to send a description by metes and bounds, or legal subdivision, and a map depicting the new boundaries of the City of Lebanon within ten (10) days of the effective date of this annexation ordinance to the Linn County Assessor, Linn County Clerk and the Oregon State Department of Revenue.

Passed by the Lebanon City Council by a vote of 5 for and 0 against and approved by the Mayor this 23rd day of July, 2003.

Kenneth I. Toombs
Ken Toombs, Mayor [X]
Ron Miller, Council President []

ATTEST:

John E. Hitt
John E. Hitt, City Recorder

I hereby certify that I am the City Recorder for the City of Lebanon, State of Oregon; that the foregoing is a full, true, correct copy of the original; and the J. Scott Simpson, whose signature appears on the original document, was at the time of signing the Mayor of the City of Lebanon.

John E. Hitt
John E. Hitt, City Recorder

~~VOL. 1463 PAGE 933~~

JAMES F. UDELL

EXHIBIT "A"

ENGINEERING & SURVEYING

VOL. 1463 PAGE 934

DDIDDEDIT
63 EAST ASH STREET
LEBANON, OREGON 97355
PHONE (541) 451-5125
FAX (541) 451-1366

LEBANON FILE #
A-03-03
T12S-R2W-22D,
TAX LOT 1000

**Kidco Head Start
Annexation Legal**

An area of land in the Southeast ¼ of section 22 in Township 12 South of Range 2 West of the Willamette Meridian, Linn County, Oregon described as follows:

Beginning at a point which bears North 0°03' East 1458.60 feet and South 89°42' East 1442.2 feet from the Northwest corner of the Samuel Carroll DLC NO. 64 in Township 12 South of Range 2 West, said point also being the Northeast corner of a tract of land deeded to Mark Colvin by deed recorded November 7, 1979 in MF volume 249 page 406; thence South 0°03' West, along the East line of the Colvin tract, 328.25 feet to the most Easterly Southeast corner of a tract of land conveyed to Robert E. Colvin, et al by contract recorded July 20, 1973 in MF volume 67 page 534; thence following the East line of said Robert E. Colvin tract North 89°42' West 120.0 feet; thence South 0°03' West 311.75 feet to the most Southerly Southeast corner of said Robert E. Colvin tract; thence South 89°42' East 326.82 feet to a point on the East right-of-way of South Main Street (County Road no. 777); thence North 0°12' East, along the said East right-of-way 640 feet to a point South 89°42' East of the point of beginning; thence North 89°42' West 50.00 feet to a point; thence North 0°12' East 20.00 feet to a point on the North right-of-way of Vaughn Lane; thence North 89°42' West, along said North right-of-way, 158.55 feet to a point; thence South 0°03' West 20.00 feet to the point of beginning.

Contains 3.98 acres.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian Vandetta

OREGON
JULY 13, 1999
BRIAN S. VANDETTA
51041-LS

Exp. 6-30-2004

POINT OF BEGINNING
N 0°03' E 1458.60' AND
S 89°42' EAST 1442.20'
FROM THE NORTHWEST CORNER
OF THE SAMUEL CARROLL DLC NO. 64

EXHIBIT "A"

(N89°42'00"W 158.35')

(S00°03'V 20.00')

VAUGHN LANE (CR. 713)

(N 89

(65')



0' 50' 100'

SCALE

(S00°03'V 328.25')

SOUTH MAIN STREET (CR. 777)

(N00°12'E 640.0')

(N89°42'00"W 120.00')

ANNEXATION AREA

3.98 AC

(S00°03'00"V 311.75')

(50')

(S89°42'00"E 326.82')

CURRENT CITY LIMITS BOUNDARY
PER ORDINANCE NO. 2259 AS
RECORDED IN MF 1103-463

ANNEXATION MAP - LEBANON FILE #
T125-R2W-22 D, A-03-03
TAX LOT 1000

(50')

EXHIBIT "B"

PROPOSED FINDINGS**Criteria 1:**

City Annexation Policy, Section 1: Requires proof that urban services are available or can be made available to serve the property considered for annexation and that the additional demands that would be placed on those services will not overburden their present capacities.

Finding #1:

The proposed annexation complies with City Annexation Policy, Section 1, in that services can be made available to serve the property. The subject property currently has City services available. Sanitary sewer is available via 12-inch main on South Main Road at Vaughn Lane, thus, sewer lines could be extended to serve the subject property. City water service is available from connecting 12-inch water main lines along both Vaughn Lane and South Main Road; City water service could readily be extended to serve the subject property. Storm drainage in this area is attended to by an 18-inch main on South Main Road; piped and/or surface drainage improvements could be made to adequately drain this site.

The opponents to this project, Friends of Linn County (FOLC), argue that there is insufficient evidence to indicate when a water main extension might be placed or financed to connect with the subject property. FOLC also argues that similar improvements must be made for storm drainage. However, the City Council is persuaded that this criteria is met because the staff report provides sufficient evidence that urban services can be made available and that such a criterion does not require a specific plan as to when or how such improvements might be financed. The Council further finds that the provisions of ORS 197.754, which the opponents argue would require annexation only if the City's Capital Improvement Plan establishes that the City can and will provide key urban facilities and services to the area, is not mandatory by the language of said statute. Accordingly, the evidence presented is sufficient, for purposes of the annexation policy criterion, to convince the City that such services can be made available.

Furthermore, with respect to storm drainage, the Council finds that the evidence of the City Engineer is sufficient for satisfying Criteria 1, City Annexation Policy, Section 1. The City finds that further development according to the city's development standards may require further storm drainage improvements, which will prevent adverse drainage impacts to neighboring properties. Therefore, for purposes of annexation, the City finds that the evidence of the City Engineer is sufficient to satisfy this criterion.

Opponents argue that there is insufficient evidence to satisfy this criterion with respect to fire and police protection and "other utilities and public services". However, the opponents present no evidence to convince the City that such considerations are relevant to this proposal. Considering the location of the subject property, within the Urban Growth

Boundary, which provides services for fire and school, and in further consideration of the minimal impact that this proposed annexation shall have on police services, the City finds that consideration of fire and police protection and "other utilities and public services" is satisfied by the evidence in this record. .

Criteria 2:

City Annexation Policy, Section 2: States that *public rights of way necessary for the safe and efficient movement of traffic, bicycles and pedestrians shall be provided with the annexation and without obligation to the City of Lebanon.*

Finding #2:

The proposed annexation complies with City Annexation Policy, Section 2, in that the annexation territory also includes the appropriate abutting Rights-of-Way on South Main Road which provides for the safe travel of pedestrian traffic. Future Right-of-Way to enhance and improve traffic and pedestrian movement and safety is more likely possible with this annexation and would provide connectivity for the dedication associated with a future extension of Joy Street westwards along the southern property boundary. Those further standards will be addressed at the time that access to this future street is proposed. The City finds that addressing future Right-of-Way dedication with respect to Joy Street is more economical and more efficient when addressed with respect to the City's development standards.

Opponents to this annexation argue that the applicant has not complied with various provisions of the Oregon Administrative Rules concerning state mandates about transportation planning. The City finds that the City is in the process of developing its Transportation standards, but that, in the interim, OAR 660-012-0030 do not apply because the City is allowed to use its own standards until adoption of its' TSP, in concurrence with the State of Oregon.

Criteria 3:

City Annexation Policy, Section 3: Specifies that *parties involved in seeking the annexation or who may be included in the annexation shall initiate a program to upgrade any urban services and/or public facilities within the area considered for annexation that do not meet standards as may be established by the City of Lebanon.*

Finding #3:

The proposed annexation complies with City Annexation Policy, Section 3, in that the subject property is currently bordered by the necessary major public infrastructure and that appropriate public infrastructure improvements shall be provided at the time or juncture when the nexus or need is established by an actual development proposal. Mitigation

cannot be required until the impacts of an actual development proposal have been established.

FOLC argues that ORS 197.754 requires a provision of urban services concurrent with zoning for urban uses. The Council finds that the provisions of ORS 197.754 are not mandatory and that, based upon the evidence provided herein, such a requirement is not necessary in this case. The City has established development standards which specifically involve programs to upgrade services, dependant upon the specific development. Therefore, for purposes of annexation, the fact that the subject property herein is bordered by the necessary major public infrastructure, coupled with the development standards which would require additional appropriate infrastructure improvements as the property actually develops is sufficient evidence that the applicant has met the requirements of City Annexation Policy, Section 3. FOLC has presented no evidence to contradict this Finding.

Criteria 4:

City Annexation Policy, Section 4: States that *no annexation shall be considered that does not conform with the Lebanon Comprehensive Plan and its goals and policies.*

Finding #4:

The proposed annexation complies with City Annexation Policy, Section 4, in that the property complies with Zoning Ordinance and Comprehensive Plan policies pertaining to the property and zoning. The submitted conceptual development strategy identifies possible future land uses that conform to the Comprehensive Plan and Zoning Map designations for the property.

Criteria 5

City Annexation Policy, Section 5: States that *it shall be a burden of proof of the applicant that a public need exists for the proposed annexation and that the annexation is in the public's interest.*

Finding #5:

The proposed annexation complies with City Annexation Policy, Section 5, in that a public need exists for an affordable and accessible site for a Head Start program in Lebanon, and this annexation is clearly in the public's interest. Head Start is a comprehensive early childhood program for 4-year-old children from low income families and their parents. The program provides a wide range of services in the areas of pre-school education, child health, disability, nutrition, mental health, social services, family involvement, and parenting education. Head Start services are free to families whose income falls below the federal poverty guideline (currently \$18,400 for a family of four), or for families with children who have disabilities or other special needs. In Lebanon, Head Start is currently the only

program that provides this array of vital resources for the community's families that are least able to afford such services. Currently Kidco Head Start serves 54 Lebanon area families and their preschoolers.

Furthermore, the Public Need for this annexation is underscored by the following considerations:

- The applicant notes that over one in four children under age five in Lebanon live in families with incomes below the poverty level. The 2000 Census reported 201 such children who are at risk for later health, education, and crime related problems. Research indicates that Head Start services significantly impact child health, well-being and success in school.
- However, the applicant notes that the Lebanon Head Start Center's ability to continue serving even 54 of these children and families, is in jeopardy because Kidco Head Start currently lacks a permanent location.
- The applicant notes that they have approached Linn County for approval of their Head Start development proposal. However, the Linn County Planning Department will not issue a conditional use permit for a preschool since the subject property is within the City of Lebanon's Urban Growth Boundary.
- The applicant notes that if this property is not annexed and they are not able to utilize their federal grant before the end of 2003, they will lose this funding opportunity.
- If Kidco is unable to find in the very near future an appropriate location to house their program, they could be in jeopardy of no longer being able to serve the above identified community needs.
- Kidco has indicated that no other properties are available that are both affordable and otherwise suitable.

FOLC again argues that particular public need must be identified and quantified with any planning time horizon because of the provisions of ORS 197.754, which FOLC argues are mandatory. The City finds that the provisions of ORS 197.754 are not mandatory and that sufficient public need is found for this proposed annexation, as indicated above. Additionally, FOLC argues that a Head Start facility would be best suited in a central location, without providing any factual support or evidence to support this assertion. On the contrary, the City finds more credible the testimony of the applicant that this property is located within easy commuting distance for Head Start parents, many of whom have limited resources for transportation. Facilities that are located farther from town are hard for parents to access, require longer busing distances for young children, and hinder provision of community field trips. There is sufficient public need to support this annexation request.

The City also finds that notwithstanding FOLC's assertion to the contrary, specific acres of residential land are not required to be identified to support the "public need" under the annexation policies because the 1999 *Analysis of the Regional Economy and Housing for Linn and Benton County* by Echo Northwest was determined to establish a minimum required need, rather than a maximum need. Therefore, considering the evidence presented by the applicant, the City finds that the public need element is satisfied for this specific project.

Criteria 6:

Urbanization Element of the Comprehensive Plan, Phased Growth Program, Policy #1 (page 4-P-1): States that...*the City shall maintain a compact growth pattern that expands the City limits incrementally in an orderly and efficient manner within the service capabilities of the City.*

Finding #6:

The proposed annexation complies with Comprehensive Plan Urbanization Element, Phased Growth Program, Policy #1, (page 4-P-1) in that it would be an orderly and efficient expansion of City limits within City service capabilities. The properties immediately south, southwest, southeast, and northeast are all within the current City limits. The City limits are also within close proximity to the northwest, and north of the subject property. This annexation enables more compact development in this area by helping bridge a narrow gap in the City limits in nearly all directions except the west. Therefore, this annexation represents a timely infill opportunity that will result in a compact growth pattern that expands the City limits incrementally in this area of the City while maintaining and providing the framework for the future expansion of vital pre-school/family educational, health and social services for the community.

FOLC points to this element of the Comprehensive Plan and argues that the applicant has not established that high priority service areas have reached 75% of development capacity. FOLC also argues that the City's 1997 Residential Lands Study and the 1999 "Analysis of the Regional Economy and Housing for Linn and Benton County" by EcoNorthwest indicates that the City has a surplus of residential land. To the contrary, the City finds that such studies establish a minimum of lands available for residential land, rather than a maximum. Accordingly, and in consideration of the location of the subject property in relation to existing city limits, the City finds that this proposal represents an acceptable and orderly compact growth pattern of the city limits.

Criteria 7:

Urbanization Element of the Comprehensive Plan, Annexation Policy #1 (4-P-2): States that...*the City shall annex land only within the Urban Growth Boundary on the basis*

of findings that support the need for additional developable land in order to maintain an orderly, compact growth pattern within the City's service capability.

Finding #7:

The proposed annexation complies with Urbanization Element of the Comprehensive Plan, Annexation Policy #1 (page 4-P-2) in that a public need exists for an affordable and accessible site for a Head Start program in Lebanon (See Finding #5 above).

The proposed annexation also complies with Urbanization Element of the Comprehensive Plan, Annexation Policy #1 (page 4-P-2) based on the following factors:

- First, the proposed annexation is within the City's Urban Growth Boundary.
- Second, the proposed annexation promotes an orderly, compact growth pattern in that the properties immediately south, southwest, southeast, and northeast are all within the current City limits. The City limits are also within close proximity to the northwest, north, and east of the subject property. This annexation enables more compact development in this area by helping bridge a narrow gap in the City limits in nearly all directions except the west.
- Therefore, this annexation represents a timely infill opportunity that will result in a compact growth pattern that expands the City limits incrementally in this area of the City while maintaining and providing the framework for the future expansion of vital pre-school/family educational, health and social services for the community.

Criteria 8:

Urbanization Element of the Comprehensive Plan, Annexation Policy #3 (page 4-P-2):
States that...Unless otherwise approved by the City, specific development proposals shall be required for annexation requests on vacant land adjacent to the City to insure completion within a reasonable time limit in conformance with a plan approved by the City.

Finding #8:

The City finds that a specific development proposal shall not be required for this annexation request and that the conceptual development strategy or plan and the development of the subject property is sufficient for purposes of determining whether or not the project can be completed within a reasonable time limit in conformance with a plan approved by the City. The City specifically finds that, based upon the evidence of this record, the proposed construction schedule provided by the applicant, and the applicant's indication that there will be future expansion for additional classrooms, can be completed within a reasonable time limit and can be completed in conformance with a plan approved

by the City. The conceptual development strategy identifies uses that comply with the Comprehensive Plan and the Zoning Ordinance and can be served by existing and proposed public and private infrastructure improvements in this area. Therefore, this proposed annexation complies with the Urbanization Element of the Comprehensive Plan, Annexation Policy #3 (page 4-P-2). Furthermore, the conceptual development strategy or plan for the development of the subject property shall be subject to the development standards and further development requirements, which may include appropriate public input.

Criteria 9:

Public Facilities and Services Element of the Comprehensive Plan, General Policy #2 (page 8-P-1): States that *the City shall consider impacts on community facilities before...annexation requests are approved.*

Finding #9:

The proposed annexation complies with Comprehensive Plan Public Facilities and Services Element, General Policy #2, (page 8-P-1) in that the annexation in and of itself will not result in an adverse impact on community facilities. Furthermore, the conceptual use proposed for this property would impose minimal new additional burdens on the infrastructure and services in the immediate vicinity, and almost no new burdens on the overall infrastructure and services of the City simply because this is a relocation of an already existing community facility. Opponents to this annexation request have presented no credible evidence that this annexation, in and of itself, would result in an adverse impact on community facilities, specifically any issues which will not be reasonably addressed by the development standards of the City.

Criteria 10:

Zoning Ordinance Section 3.050 – Zoning of Annexed Areas: *All areas annexed to the City shall be placed in a zoning classification in accordance with the adopted Comprehensive Plan. If a zoning designation other than one in accordance with the Comprehensive Plan is requested by an applicant, the zoning requested shall not be granted until the plan is amended to reflect concurrence.*

Finding #10:

This proposed Annexation is in compliance with Zoning Ordinance Section 3.050. Currently, the subject property does not have a City zoning designation because it is not within the City limits. However, since the property is within the City's Urban Growth Boundary, the current Comprehensive Plan designation on the subject property is Mixed

Density Residential. The corresponding City zoning designation for a Comprehensive Plan designation of Mixed Density Residential is Residential Mixed Density (RM). The applicant is requesting a zoning designation for the subject property of Residential Mixed Density (RM).

The City further finds that the criteria addressed in the process for annexation has been considered, with appropriate opportunity for public input, in assigning a zone to this subject property. Because the subject property was outside of the City limits prior to annexation, there has been no City zone attached to said property. Therefore, under the authority of the City's agreement with Linn County, the process of assigning a city zoning designation of Residential Mixed Density does not require a zone change or further process. The process followed in this matter is in compliance with the City process for assigning a zone. The City also finds that an "assigning" is not the same as "changing" a zone for purposes of the City process. Having a separate process for a zone change, pursuant to Zoning Ordinance Section 9.010 et sec., is not required in this case and would provide nothing for the public benefit if such process should be required. Zoning Ordinance Section 3.050 specifically applies to annexations and is the appropriate process in this case.

Moreover, opponents to this annexation have not presented any evidence, nor have they made any argument that the proposed zone is in any way inconsistent with the Comprehensive Plan designation of Mixed Density Residential. Therefore, the City finds that the process required by the Lebanon Municipal Code has been followed and that the designation of this property as Residential Mixed Density (RM) is appropriate. The provisions of Lebanon Zoning Ordinance Sections 9.010 and 9.020, contrary to the argument of opponents, are not relevant to the annexation process.

Criteria 11 and 12:

City of Lebanon/Linn County – Urban Growth Management Agreement

11. Section 2: Delineation of Authority in the Urban Growth Area (UGA), 2nd paragraph:

The Lebanon Comprehensive Plan designates the future zoning UGA lands will receive upon annexation to the City.

12. Section 5: Annexations

The UGA identifies land that may be subject to future City annexation. The City may annex land using its own procedures in accordance with state law. Only land within UGA will be considered for a annexation. The City will notify the County of any proposed annexations. Upon annexation, the City assumes all jurisdiction for land use actions.

Finding #11:

The City's annexation review procedures on annexation request File #A-03-03 have complied with the City of Lebanon/Linn County Urban Growth Management Agreement, Sections 2 and 5 regarding city authority to annex lands within the urban growth area and assign city zoning in accordance with the Lebanon Comprehensive Plan Map. The applicant has followed the procedure set forth in the Lebanon Zoning Code 3.050 and the UGA (Urban Growth Agreement) which the City finds is the appropriate method of assigning zoning to areas of land outside of the city limits, but within the Urban Growth Boundary and therefore subject to the UGA. The City finds that the proposal has complied with state law because the requisite parties and sufficient majority of parties have filed their consent to this annexation and, therefore, the City has dispensed with an election and proceeded under the authority of ORS 222.120 and ORS 222.170 in reaching a decision on this application.

STATE OF OREGON
County of Linn

I hereby certify that the attached
was received and duly recorded
by me in Linn County records.

STEVE DRUCKENMILLER
Linn County Clerk

M
R 145
S 20
A 21
O

8:30 O'clock a.m. *86*

AUG 01 2003

MF 1463

By *[Signature]* Deputy PAGE 932