

AN ORDINANCE AFFIRMING THE CITY )  
OF LEBANON'S LAND USE DECISION )  
IN ORDINANCE BILL NO. 2 FOR 2003, )  
ORDINANCE 2338, (GILBERT LIMITED )  
PARTNERSHIP) AND MAKING FURTHER )  
FINDINGS IN SUPPORT OF SUCH )  
DECISION )

ORDINANCE BILL NO. 6  
For 2004  
ORDINANCE NO. 2359

WHEREAS; the City Council for the City of Lebanon passed Ordinance Bill Number 2 for 2003, Ordinance 2338, on February 26, 2003 which approved the annexation of that certain property described herein in Exhibit "A", which is incorporated here by this reference, assigning said property certain zoning; and

WHEREAS, said decision of the City Council was appealed to the Land Use Board of Appeals for the State of Oregon by James Just, LUBA Case Number 2003-043; and

WHEREAS, LUBA issued its opinion remanding the case to the City Council for further consideration; and

WHEREAS, the decision rendered by LUBA was appealed to the Oregon Court of Appeals as *Just v. City of Lebanon and Gilbert Limited Partnership, A122516*; and

WHEREAS, the Oregon Court of Appeals affirmed the decision from LUBA on April 21, 2004; and

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

✓  
After Recording Please Return To:  
City of Lebanon  
Community Development Department  
853 Main Street, Lebanon, OR 97355

**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 recommendations of the Lebanon Planning Commission, the issues raised in the appeal of this matter in LUBA Case No. 2003-043 and in the opinion of the Oregon Court of Appeals, 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:

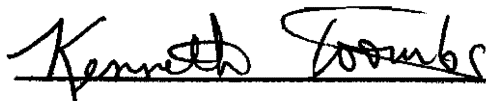
**Section 1. Findings.** In addition to the findings referred to above, the City Council further adopts and finds those matters contained in Exhibit "B", the findings of the Lebanon Planning Commission, which is incorporated herein by this reference as if fully set forth at this point. In addition thereto, the City Council also adopts and finds those matters contained in Exhibit "C", entitled "Gilbert Limited Partnership Additional Proposed Findings" attached hereto and incorporated by this reference.

**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, again, to be annexed to the City of Lebanon, Ordinance Bill Number 2 for 2003, Ordinance Number 2338 is hereby affirmed and the subject property is zoned as indicated in accordance with the Lebanon Zoning Ordinance No. 1773, assigned the zoning of Limited Industrial (ML).

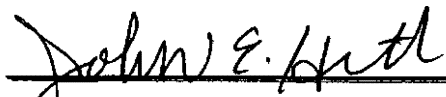
**Section 3 Record.** The City Recorder shall submit to the Oregon Secretary of State a

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, if required by said agencies as a result of this ordinance affirming the Council's prior decision. A copy of this ordinance shall also be filed with the Land Use Board of Appeals.

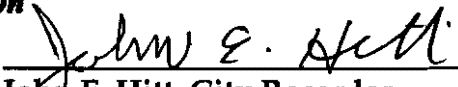
Passed by the Lebanon City Council by a vote of 5 for and 0 against and approved by the Mayor this 27<sup>th</sup> day of October, 2004.

  
\_\_\_\_\_  
Ken Toombs, Mayor

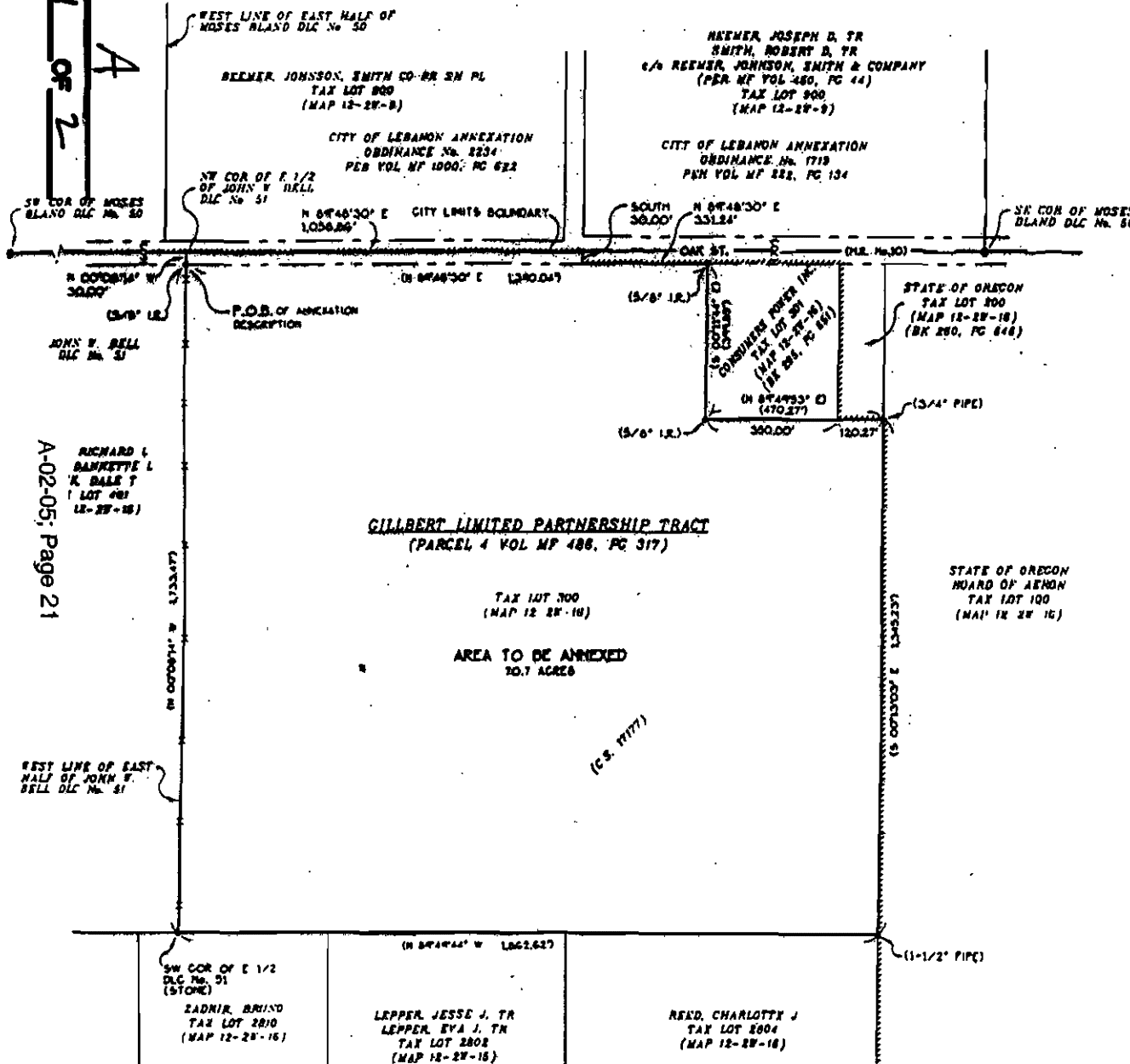
ATTEST:

  
\_\_\_\_\_  
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 Ken Toombs, whose signature appears on the original document, was at the time of signing the Mayor of the City of Lebanon.

  
\_\_\_\_\_  
John E. Hitt, City Recorder

ANNEXATION MAP  
FOR  
GILBERT LIMITED PARTNERSHIP  
LOCATED IN  
SOUTH 1/2 OF SEC. 9, AND NORTH 1/2 OF SEC. 16  
T. 12 S., R. 2 W., W.M.  
CITY OF LEBANON, Linn County, Oregon  
NOVEMBER 1, 2002



SCALE: 1" = 200'

- LEGEND**
- RECORD MONUMENT PER GS 17177
  - D.L.G. CORNER
  - ( ) RECORD DATA PER GS 17177
  - P.O.B. POINT OF BEGINNING
  - I.R. IRON ROD
  - CITY LIMITS BOUNDARY

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Jack R. Burrell*  
JACK R. BURRELL

RENEWAL DATE 12/31/03

Jack R. Burrell  
1234 5th Street, NE  
Lebanon, Oregon 97036  
(503) 235-1234

ANNEXATION MAP VOL. 1642 PAGE 833  
 T12S-R2W-16, TAX LOT 300  
 FILE # A-02-05

A-02-05; Page 21

ANNEXATION DESCRIPTION

(For Tax Lot 300 [Map 12-2W-16] and a portion of Oak Street)

A portion of Oak Street AND all that Gilbert Limited Partnership Tract identified as Parcel 4 in deed recorded in Volume MF 486, Page 317 of the Linn County Deed Records on November 15, 1988 and being located in Sections 9 and 16, Township 12 South, Range 2 West, Willamette Meridian, Linn County, Oregon, said property being more particularly described as follows:

Beginning at a 5/8 inch iron rod at the intersection of the west line of said Gilbert Limited Partnership Tract with the south right-of-way line of Oak Street, said intersection point bearing South 00°08'14" East 30.00 feet from the northwest corner of the East Half of the John W. Bell Donation Land Claim No. 51 in said township and range; thence North 00°08'14" West 30.00 feet to said northwest corner of the East Half of Bell Claim; thence North 89°48'30" East, along the said north line of said claim, 1058.86 feet, more or less, to the west line of that City of Lebanon Annexation by Ordinance No. 1719 recorded in Volume MF 222, Page 134 of the Linn County Deed Records on January 3, 1979, which point being the southwest corner of that Beemer, Johnson and Smith Company Tract described by deed recorded in Volume MF 450, Page 44 of said deed records on August 3, 1987; thence SOUTH, along the southerly extension of last west line, 30.00 feet to the said south right-of-way line of Oak Street; thence North 89°48'30" East, along said south right-of-way line, a distance of 331.24 feet to the northwest corner of that Consumers Power, Inc. Tract described by deed recorded in Book 295, Page 651 of the Linn County Deed Records on July 11, 1963; thence South 00°11'44" East 399.85 feet to the southwest corner of said Consumers Power, Inc. Tract; thence North 89°49'53" East 350.00 feet to the southeast corner of said Consumers Power Tract, which point being the southwest corner of that State of Oregon Tract described by deed recorded in Book 260, Page 846 of said Linn County Deed Records on August 18, 1958; thence North 89°49'53" East 120.27 feet to the southeast corner of said State of Oregon Tract, which point being on the east line of said Gilbert Limited Partnership Tract; thence South 00°13'03" East 1345.23 feet to the southeast corner of said Gilbert Limited Partnership Tract; thence North 89°49'44" West 1862.62 feet to the southwest corner of said Gilbert Limited Partnership Tract; thence North 00°08'14" West 1733.47 feet to the Point of Beginning. Containing 70.7 acres of land, more or less.

EXHIBIT     A      
PAGE     2     OF     2    

November 1, 2002  
Gilbert Limited Partnership  
ANNEXATION DESCRIPTION  
(97-120-B) JRB:ls  
File Ref: *slm/my shared documents/legal* A-02-05; Page 22

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*Jack R. Bussell*  
JACK R. BUSSELL  
1992  
RENEWAL DATE 12/31/03

**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.

**Planning Commission Finding # 1:**

The proposed annexation complies with City Annexation Policy, Section 1, in that some services can be made available to serve the property. Water and sanitary service can be extended west to the subject property along Oak Street from the Airway/Oak Street intersection area. The land uses identified in the preliminary development plan represent minimal or limited demand on infrastructure capacity.

**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.*

**Planning Commission Finding # 2:**

The proposed annexation complies with City Annexation Policy, Section 2, in that appropriate public right-of-way will be provided as the property actually develops. Recent case law dictates that public right-of-way shall be dedicated at the time or juncture when the nexus or need is established by an actual development proposal.

**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.*

**Planning Commission Finding # 3:**

The proposed annexation complies with City Annexation Policy, Section 3, in that public infrastructure improvements will be provided as the property actually develops. Recent case law dictates that such 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.

**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.*

**Planning Commission 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 east portion the subject property is proposed for airport related development as allowed by the state's Airport Planning Rule. Given the fact that this area is adjacent to the airport and is within a Transition area of the Aircraft Control Subzone (AC - Zoning Ordinance Section 4.510), these are uses that are appropriate. The western portion of the property is proposed for warehouse and freight related development and uses. This is an appropriate use near an airport. These would be appropriate neighboring uses for an area that caters to airport related development. In addition, such a light industrial use would be suited to this site on a direct transportation route from the I-5 corridor. Furthermore, by being located on the perimeter of the City, much truck and freight related traffic would be diverted from the community's core areas. This would in turn minimize traffic impacts on both the current and future truck routes and the community's transportation system.

**Criteria 5:**

**City Annexation Policy, Section 5:** States that *it shall be the 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.*

**Planning Commission Finding # 5:**

The proposed annexation complies with City Annexation Policy, Section 5, in that a public need exists to expand the Lebanon State Airport and other airport-related development. As noted in a Lebanon Express article of September 4, 2002 (see Attachment B-2) and in a letter (see Attachment B-1), the Oregon Department of Aviation views the upgrading and expansion of the airport facility and related adjacent uses as essential to the long-term interests of this local transportation facility.

**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.*

**Planning Commission 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 areas immediately to the east, north and northwest of the subject property are within the City limits.

**Criteria 7:**

**Urbanization Element of the Comprehensive Plan, Annexation Policy #1 (page 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.*

**Planning Commission Finding # 7:**

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

- First, the proposed Annexation is within the City's Urban Growth Boundary.
- Second, the need for additional developable land is noted in a Lebanon Express article of September 4, 2002 (see Attachment B-2) and in a letter from Oregon Department of Aviation (see Attachment B-1). This article establishes that the Oregon Department of Aviation views the upgrading of the local airport facility as a very important move. With the shortage of FAA investment dollars, private development on this adjacent property can go a long way towards meeting the needs for the enhancement of this significant community and County transportation facility.
- Third, the proposed Annexation promotes an orderly, compact growth pattern in that the areas immediately to the east, north and northwest of the subject property are already within the City limits.
- Fourth, as noted in the comments of the City Engineer, this annexation and subsequent development of the subject property are well within the City's service capability.

**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.

**Planning Commission Finding # 8:**

The proposed annexation complies with Urbanization Element of the Comprehensive Plan, Annexation Policy #3 (page 4-P-2). The applicant has provided a specific conceptual development plan for the development of subject property. According to this conceptual development plan, the east portion the subject property is proposed for airport related development as per airport portions of State's Transportation Plan Requirements (TPR). Given the fact that this area is adjacent to the airport and lies under the Approach and Transition areas of the Aircraft Control Subzone (AC – Zoning Ordinance Section 4.510) these are uses that are appropriate. The western portion of the property is proposed for warehouse and freight related development and uses. These would be appropriate neighboring uses for an area that caters to airport related development. In addition, such a light industrial use would be suited to this site on a direct transportation route from the I-5 corridor.

**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.

**Planning Commission Finding # 9:**

The proposed annexation complies with Comp. Plan Public Facilities and Services Element, General Policy #2, (page 8-P-1) in that the annexation will not result in an adverse impact on community facilities.

**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.

**Planning Commission 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 Light Industrial. The corresponding City zoning designation for a Comprehensive Plan designation of Light Industrial is Limited Industrial (ML). The applicant is requesting a Limited Industrial (ML) zoning designation for the subject property.



Criteria 11 and 12:

**City of Lebanon/Linn County -- Urban Growth Management Agreement**

8. Section 2: Delineation of Authority in the Urban Growth Area (UGA) , 2<sup>nd</sup> paragraph:

*The Lebanon Comprehensive Plan designates the future city 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 the UGA will be considered for 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-02-05 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.

**NOTE: Finding #11 immediately above was a new finding that was not reviewed or adopted by the Lebanon Planning Commission. However, this added finding was part of the subsequent City Council Record.**

**Gilbert Limited Partnership  
Additional Proposed Findings**

For each criterion, the City relies on the findings made by the city council when this annexation was approved in February, 2003, which are considered part of the record in this proceeding.

**Criterion 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.

**Findings # 1:**

The proposed annexation complies with City Annexation Policy, Section 1, in that all urban services can be made available to serve the property, as shown in the Service Provider Summary Matrix contained in the staff report and the engineering documents submitted into the record. Applicant has submitted a non-binding specific development plan, as required by LUBA, which shows maximum development of the subject property, and the ability to provide urban services was determined pursuant to that plan.

The annexation criteria do not require the City to project water, sanitary, transportation or any other demands on urban services from future development of the subject property. The City continues to find that the act of annexation itself does not result in any impacts on city services and that it must only determine that there is an ability to provide such services when the subject property is developed. The criteria do not require that the City or property owner provide infrastructure to the property prior to actual development.

**Criterion 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.

**Findings # 2:**

The proposed annexation complies with City Annexation Policy, Section 2, in that appropriate public right-of-way will be provided as the property actually develops. Case law dictates that public right-of-way shall be dedicated at the time or juncture when the nexus or need is established by an actual development proposal. A non-binding development plan does not establish such a nexus.

No evidence was presented and no argument made that this criterion was not met. Based on the substantial evidence in the record, the City finds this criterion was met.

**Criterion 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

**Findings # 3:**

The proposed annexation complies with City Annexation Policy, Section 3, in that public infrastructure improvements will be provided as the property actually develops. Case law dictates that public right-of-way shall be dedicated 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. No program is needed at this time to upgrade urban services for non-existent demand.

After annexation, when the applicant submits their final site plan, the City building and land development ordinances will require the applicant to initiate any program to upgrade any urban services and/or public facilities that otherwise cannot accommodate the planned development. Consequently, the City ordinances and Comprehensive Plan create a "program" to ensure that any development after annexation will not overburden City services.

No evidence was presented and no argument made that this criterion was not met. Based on the substantial evidence in the record, the City finds this criterion was met.

**Criterion 4:**

States that no annexation shall be considered that does not conform with the Lebanon Comprehensive Plan and its goals and policies.

**Findings # 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. EUBA stated that if the other policy criteria are met, this criterion is also satisfied. No evidence was presented and no argument made that this criterion was not met. Based on the substantial evidence in the record, the City finds this criterion was met.

**Criterion 5:**

States that it shall be the 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.

**Findings # 5:**

The proposed annexation complies with City Annexation Policy, Section 5, in that a public need was previously proven and that need has been shown in relation to the specific development plan. When considering this criterion in February, 2003, there was a conceptual plan that was relied upon to determine need. The specific development plan submitted on remand is supported by the same need as the previous conceptual plan. No objection or argument was raised that the need, as previously determined, does not apply to the specific development plan.

**Criterion 6:**

States that... the City shall maintain a compact growth pattern that expands the City limits incrementally in an orderly and efficient manner within the services capabilities of the City.

**Findings # 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. LUBA left it to the City to determine if an annexation met this criterion. However, this criterion could only be met if the City defined the meaning of "compact growth pattern." A compact growth pattern is the expansion of city boundaries in a rational, incremental manner, which allows urban development within the limits of urban services that can be provided. No evidence was presented and no argument made that this criterion was not met. Based on the substantial evidence in the record, the City finds this criterion was met.

**Criterion 7:**

States that... the City shall annex land only within the Urban Growth Boundary (UGB) on the basis of findings that support the needs for additional developable land in order to maintain an orderly, compact growth pattern within the City's service capability.

**Findings # 7:**

The proposed annexation complies with Urbanization Element of the Comprehensive Plan, Annexation Policy #1 (Page 4-P-2) based upon the evidence and findings made in February of 2003. Compliance with this criterion is also supported by the findings under Criterion 5. No evidence was presented and no argument made that this criterion was not met. Based on the substantial evidence in the record, the City finds this criterion was met.

**Criterion 8:**

States that unless otherwise approved by the City, specific development proposals shall be required for annexation request on vacant land adjacent to the City to insure completion within a reasonable time limit in conformance with a plan approved by the City.

**Findings # 8:**

The proposed annexation complies with Urbanization Element of the Comprehensive Plan, Annexation Policy #3 (Page 4-P-2). Applicant has provided a specific development plan. There has been no argument or evidence submitted that the specific development plan submitted by applicant is inadequate.

As stated previously, the City continues to find that no specific development plan is required because no detailed determinations can be made until the property is developed. The requirement for a specific development plan applies only to delayed annexations, where development occurs prior to annexation. As a result of the two-step development process followed by the City, in which impacts and services are addressed at the development state when they can be measured, rather than the annexation state, as the testimony and evidence in the record show, there are no means or requirements to address capacity and impacts at the annexation stage.

**Criterion 9:**

States that the City shall consider impacts on community facilities before... annexation requests are approved.

**Findings # 9:**

The proposed annexation complies with Comprehensive Plan Public Facilities and Services Element, General Policy #2, (Page 8-P-1) in that the annexation will not result in an adverse impact on community facilities. No evidence was presented and no argument made that this criterion was not met. Based on the substantial evidence in the record, the City finds this criterion was met.

**Criterion 10:**

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.

**Findings # 10:**

This proposed annexation is compliance with Zoning Ordinance Section 3.050. LUBA has previously approved the process by which zoning of annexed property is applied in Just v. Cornell Family Trust, Or. LUBA No. 2003-044 (Just 1).

City of Lebanon/Linn County - Urban Growth Management Agreement

Section 2: Delineation of Authority in the Urban Growth Area (UGA), 2<sup>nd</sup> paragraph: The Lebanon Comprehensive Plan designates the future city zoning UGA lands will receive upon annexation of the City.

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 the UGA will be considered for annexation. The City will notify the County of any proposed annexations. Upon annexation, the City assumes all jurisdiction for land use actions.

**Findings # 11 & 12:**

As stated previously, the City relies on the previous findings under these criteria, as well as the findings under criterion 10. No evidence was presented and no argument made that this criterion was not met. Based on the substantial evidence in the record, the City finds this criterion was met.

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

By LAD Deputy MF 1642  
PAGE 830

M  
R  
S  
A  
O

8:30 O'clock a.m. <sup>91</sup>

NOV 5 2004