

AN ORDINANCE AFFIRMING THE CITY )  
OF LEBANON'S LAND USE DECISION )  
IN ORDINANCE BILL NO. 8 FOR 2003, )  
ORDINANCE 2344, (SCHWINDT) )  
AND MAKING FURTHER )  
FINDINGS IN SUPPORT OF SUCH )  
DECISION )

ORDINANCE BILL NO. 1  
For 2005

ORDINANCE NO. 2370

**WHEREAS;** the City Council for the City of Lebanon passed Ordinance Bill Number 8 for 2003, Ordinance 2344, on April 9, 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 2003-066; 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, A112519*; 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  
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 a public hearing after said remand on the 26<sup>th</sup> day of January, 2005, 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. 2003-066, 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.

**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 8 for 2003, Ordinance Number 2344 is hereby affirmed and the subject property is zoned as indicated in accordance with the Lebanon Zoning Ordinance No. 1773, assigned the zoning of Residential Mixed Density (RM).

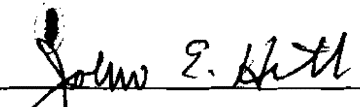
**Section 3 Record.** The City Recorder shall submit to the Oregon Secretary of State a copy of this Ordinance. The City Recorder is further ordered to send a description by metes and bounds, or legal subdivision, and a map depicting the new boundaries of the City of Lebanon within ten (10) days of the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

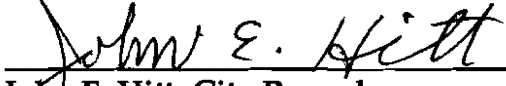
Passed by the Lebanon City Council by a vote of 6 for and 0 against and approved by the Mayor this 9<sup>th</sup> day of February, 2005.

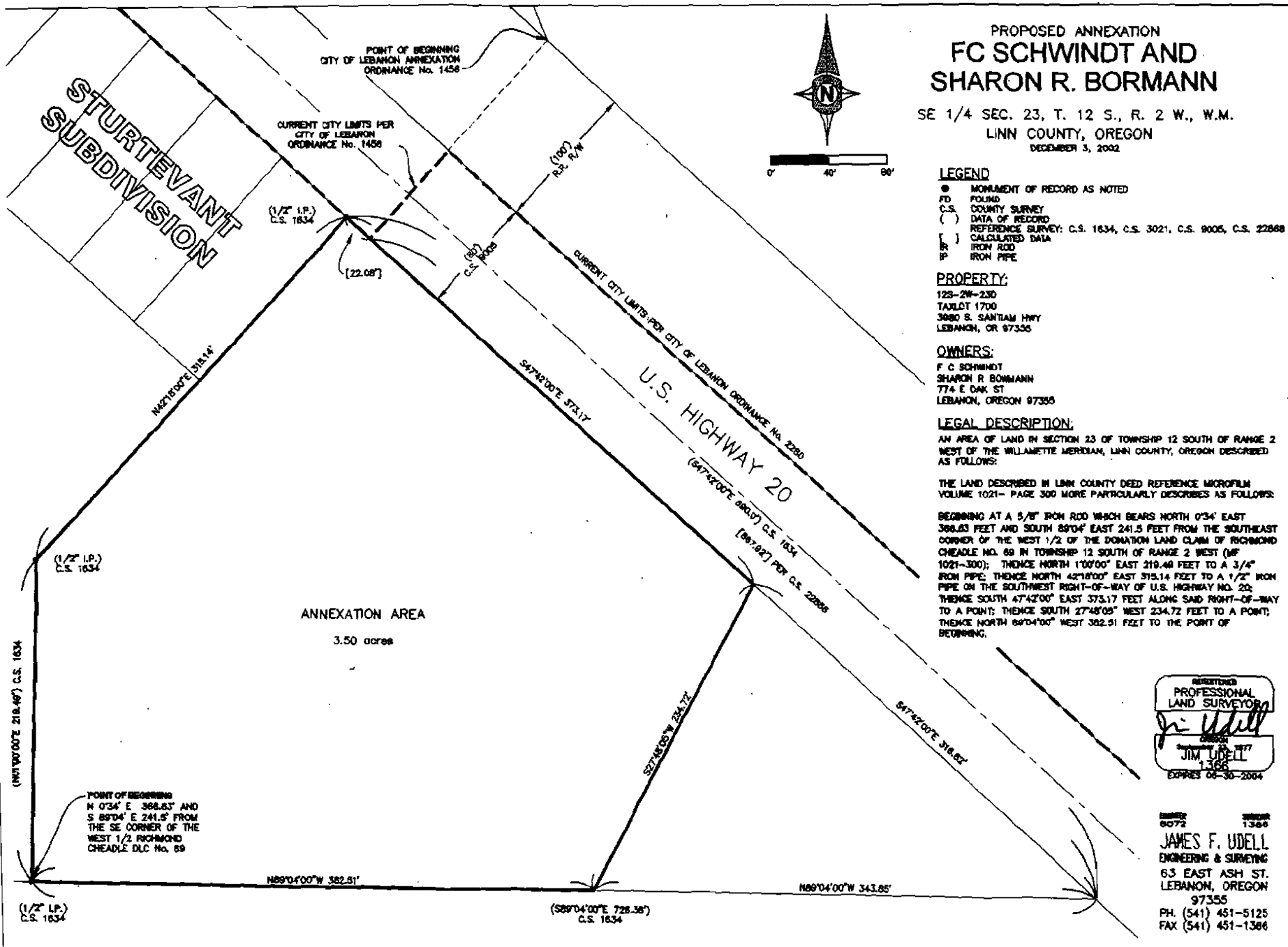
  
\_\_\_\_\_  
Ken Toombs, Mayor

ATTEST:

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

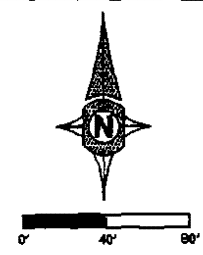
I hereby certify that I am the City Recorder for the City of Lebanon, State of Oregon; that the foregoing is a full, true, correct copy of the original; and the Ken Toombs, whose signature appears on the original document, was at the time of signing the Mayor of the City of Lebanon.

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



PROPOSED ANNEXATION  
**FC SCHWINDT AND  
 SHARON R. BORMANN**

SE 1/4 SEC. 23, T. 12 S., R. 2 W., W.M.  
 LINN COUNTY, OREGON  
 DECEMBER 3, 2002



**LEGEND**

- MONUMENT OF RECORD AS NOTED
- FD FOUND
- (S) COUNTY SURVEY
- ( ) DATA OF RECORD
- REFERENCE SURVEY: C.S. 1634, C.S. 3021, C.S. 9006, C.S. 22868
- [ ] CALCULATED DATA
- IR IRON ROD
- IP IRON PIPE

**PROPERTY:**

125-2W-230  
 TAXLOT 1700  
 3880 S. SANTIAM HWY  
 LEBANON, OR 97355

**OWNERS:**

F C SCHWINDT  
 SHARON R BORMANN  
 77A E OAK ST  
 LEBANON, OREGON 97355

**LEGAL DESCRIPTION:**

AN AREA OF LAND IN SECTION 23 OF TOWNSHIP 12 SOUTH OF RANGE 2 WEST OF THE WILLAMETTE MERIDIAN, LINN COUNTY, OREGON DESCRIBED AS FOLLOWS:

THE LAND DESCRIBED IN LINN COUNTY DEED REFERENCE MICROFILM VOLUME 1021- PAGE 300 MORE PARTICULARLY DESCRIBES AS FOLLOWS:

BEGINNING AT A 5/8" IRON ROD WHICH BEARS NORTH 0°34' EAST 368.83 FEET AND SOUTH 89°04' EAST 241.5 FEET FROM THE SOUTHEAST CORNER OF THE WEST 1/2 OF THE DONATION LAND CLAIM OF RICHMOND CHEADLE No. 69 IN TOWNSHIP 12 SOUTH OF RANGE 2 WEST (MF 1021-300); THENCE NORTH 1°00'00" EAST 219.48 FEET TO A 3/4" IRON PIPE; THENCE NORTH 42°18'00" EAST 313.14 FEET TO A 1/2" IRON PIPE ON THE SOUTHWEST RIGHT-OF-WAY OF U.S. HIGHWAY NO. 20; THENCE SOUTH 47°42'00" EAST 373.17 FEET ALONG SAID RIGHT-OF-WAY TO A POINT; THENCE SOUTH 27°48'09" WEST 234.72 FEET TO A POINT; THENCE NORTH 89°04'00" WEST 382.51 FEET TO THE POINT OF BEGINNING.



**JAMES F. UDELL**  
 ENGINEERING & SURVEYING  
 63 EAST ASH ST.  
 LEBANON, OREGON  
 97355  
 PH. (541) 451-5125  
 FAX (541) 451-1386

ANNEXATION MAP AND LEGAL DESCRIPTION

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EXHIBIT "A"  
 LEBANON FILE: A-02-07  
 T12S-R2W-23D,  
 TAX LOT 1700

**Findings for A-02-07 -- Schwindt**

**City Policy and State Law:**

The Lebanon Comprehensive Plan (1980) and Annexation Ordinance (1982), as well as the Lebanon/Linn County Urban Growth Management Agreement (1995), were in effect when A-02-07 was originally submitted to the City. These codes have been interpreted by LUBA and others as necessitating the concurrent submittal of a specific development proposal. In accordance with LUBA's ruling on this issue, the applicant now submits the following specific development proposal for concurrent review with this annexation request. This review is for the purpose of determining that the proposed annexation is consistent with the Goals and Policies of the existing (1980) City of Lebanon Comprehensive Plan. For purposes of this review, the City finds that the specific proposal before it provides sufficient information with which the City may determine the sufficiency of urban services, compact growth and other material elements of the criteria identified herein.

The City also notes that there is no mechanism in either City ordinances or in State law that requires the applicant to implement this specific development proposal should this annexation request be approved. The City has a separate development application and review process for development proposals. The applicant must submit the appropriate application(s) to initiate a development review process when the applicant desires to develop this property. Such an application cannot be submitted by the applicant and reviewed by the City until the subject property has been annexed into the City.

**Criteria 1:**

**1982 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 urban services can be made available to serve the property without overburdening such services. Design is currently underway to construct a new 12" public sewer line along the northwest property line for the Lebanon Community Foundation's Cheadle Lake Project across Highway 20 directly east of the subject property. This line is adequate to provide sewer service to the subject property. Water can be made available by extending an existing 16" line along the highway from near Market Street. This water extension is consistent with the City's Master Plan for the water system. Storm drainage is also available via the ODOT system in Highway 20 adjacent to the property. It is ODOT's policy to allow property fronting the Highway to drain into their system with onsite detention and water quality provided.

**Criteria 2:**

**1982 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 currently adequate existing right-of-way is provided by the Highway 20 right-of-way that runs along the eastern side of the property. The current ODOT Highway 20 right-of-way is adequate for safe and efficient movement of vehicular traffic, bicycles, and pedestrians adjacent to the subject property. Since the current proposal is an annexation proposal and not a proposal of development, additional public right-of-way may 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:**

**1982 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 public infrastructure improvements are currently being designed (new public sewer line that will be extended through the subject property to serve the Cheadle Lake properties to the east) and additional public improvements will be provided as the property actually develops. Recent case law dictates that such public infrastructure improvements cannot be required prior to 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:**

**1982 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 property currently has a Comprehensive Plan designation of 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 Residential Mixed Density zoning designation for the subject property. Duplexes are an administrative review approved use in the RM zone.

**Criteria 5:**

**1982 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.*

**Finding # 5:**

The proposed annexation complies with City Annexation Policy, Section 5, in that a public need exists for lots that can be developed to support new housing creation, especially for the housing option that duplexes represent. It is in the public interest to use this land efficiently, as would be the case if allowable housing densities are increased on the subject property by annexation and city zoning options. Annexation of this property allows for infill and redevelopment potential. It is in the best interest of the public to annex such areas to allow for increased tax base revenue and consistent development of city services.

**Criteria 7:**

**Urbanization Element of the 1980 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.*

**Finding # 7:**

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

The proposed Annexation is within the City's Urban Growth Boundary.

A public need exists for lots that can be developed to support new housing creation, especially duplex rental opportunities.

A public need exists to provide areas for housing of greater density that create less impact on the availability of land.

Annexation of this property allows for infill and redevelopment potential.

It is in the public interest to use this land efficiently, as would be the case if allowable housing densities are increased (through city zoning assignment) on the subject property.

It is in the best interest of the public to annex such areas to allow for increased tax base revenue and consistent development of city services.

Since potable water, sanitary sewer and storm drainage services (via extensions from existing services) are available and are adequately sized to provide for the subject property this annexation would be within City service capabilities.

Furthermore, since the annexation area is very miniscule in comparison with the size of the City and its infrastructure capacities, this will have a minimal to negligible impact upon City services.

Currently adequate existing right of way is provided by the Highway 20 right of way that runs along the eastern side of the property. This ODOT right of way provides for safe and efficient movement of vehicular traffic, bicycles, and pedestrians.

**Criteria 8:**

**Urbanization Element of the 1980 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 proposed annexation complies with Urbanization Element of the Comprehensive Plan, Annexation Policy #3 (page 4-P-2) in that the applicant has submitted a conceptual development plan indicating how the property can be and is intended to be developed with duplex housing units. Any subsequent developments or redevelopment of this property will be subject to the requirements of the Mixed-Density Residential zone and other applicable provisions of the Lebanon Land Development Code and Comprehensive Plan.

**Criteria 9:**

**Public Facilities and Services Element of the 1980 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 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. Since the annexation area is very miniscule in comparison with the size of the City and its infrastructure capacities, this will have a minimal to negligible impact upon City services.

**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 Residential Mixed Density zoning designation for the subject property.

**Assessment of Ability to Provide Urban Services:**

- 2.3.1 **Public Providers of Public Services:** As part of the review process, and for inclusion in this annexation Staff Report for the City Council, the City sent out on January 13, 2005, evaluation forms to ten different providers of urban services and requested an assessment of their organization's, company's, or agency's ability to provide services should the 12 duplexes (24 dwelling units)

indicated on the plat actually be built. The following urban services were assessed at this time:

- a. City of Lebanon Provided Services: Waste Water (Sanitary Sewer), Water (potable & fire flow), Storm Drainage, Access (Roads, etc.), Police Protection, Parks, Library, and Senior Services;
- b. Other Public Agencies: Fire/Emergency Medical (Lebanon Fire District), Public Schools Lebanon Community School District;

All ten of these urban service providers responded in time for the results to be included in this Staff Report. Eight indicated that they could meet the service demands that could be generated by the specific proposed development. The results of these assessments are summarized in the *January 13, 2005 Annexation Remands Service Provider Summary Matrix* following the applicant's specific proposed development.

Private Sector Vendors – Solid Waste (Albany-Lebanon Sanitation), Electricity (Consumers Power or Pacific Power), NW Natural Gas, Phone Service (CenturyTel). All providers of all urban services (public & private) were surveyed during the summer and fall of 2004 while the City updated its Comprehensive Plan, and were asked to indicate if they could provide services for the projected growth of the City to the year 2025: a population of 19, 597 (an increase of 6,457 from 2003), with 2,716 new dwelling units (including 598 multi-family dwellings). All vendors (private included) replied in the affirmative

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  Deputy MF 1679  
PAGE 264

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