

**LEGISLATIVE/QUASI-JUDICIAL WORK SESSION – NEWBERG CITY COUNCIL
JANUARY 9, 2019**

Presenters: Truman Stone, Doug Rux

1. Preliminary

1.1. First step in reviewing agenda item or staff report is to determine if:

- Legislative
- Judicial

The staff report under the Process section tells you which realm you are in, so you don't need to guess.

** Land use is mix of State and Local Law*

2. Outline

Doug?

- Video Understanding Oregon's Land Use Planning Program (review prior to Work Shop)
- Reminder of Judicial Role
- Conduct of Hearing
- Criteria
- Evidence
- Findings
- Doug will work through examples and you will have time for questions

3. JUDICIAL ROLE

- Acting like a judge
- Apply preexisting law (policies/criteria) to specific facts
- Mainly comes in form of land use proceedings,
- Basic outline of process:
 - Determine Law
 - Determine Facts
 - Apply law to Facts
- Quasi-judicial decisions require the most procedure. The procedural requirements include:
 - (a) Notification of pending decision. This may include publication, mailing and/or posting. There are detailed requirements for the content of the notice;
 - (b) Providing public access to application materials and staff reports prior to the hearing;
 - (c) Reading of a script at the beginning of the hearing describing participants' rights at the hearing and the procedures to be used;
 - (d) Providing an opportunity for the applicant and general public to be heard. This includes the opportunity for the applicant to rebut evidence;
 - (e) Providing an impartial decision-maker whose impartiality is ensured through rules addressing conflict of interest, ex parte contacts and bias;
 - (f) In certain circumstances, allowing a continuance of the hearing, or leaving the record open for more evidence or argument;

- (g) Adopting a decision that includes findings;
- (h) Keeping a record of the hearing; and
- (i) Notification of final decision.

4. DUE PROCESS

- 2 kinds – substantive and procedural
- Mainly need to be concerned about procedural
- This means that the participants are entitled to a fair hearing
- This means:
 - Can't base on opinion
 - Can't be arbitrary
 - Can't add or subtract to the criteria
 - Can't change the law (policies/criteria) during the hearing
- If they don't get a fair hearing, likely overturned on appeal
- At a minimum, will need to do it again

5. CONDUCT OF HEARING

- Model Hearing Format

6. CRITERIA — *Jury Duty Instructions*

- There will ALWAYS be criteria
- Important to Understand
- Staff will provide the criteria to you
- Ask questions if you do not understand
- You will at times be asked to interpret the criteria or the terms used in the criteria
 - Example: Compatibility. Doug will take you through this in the Examples at the end.

7. EVIDENCE

- **ORS 197.763 Conduct of Local Quasi-judicial Land Use Hearings; Notice Requirements; Hearing Procedures**

(9) For purposes of this section:

(a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.

(b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.

- Here, proponent is of the evidence, not who you usually think of as the proponent of the application
- ORS uses phrase “Evidence, Argument and Testimony”, but Testimony really is either evidence or argument and is curiously undefined
- Evidence MUST BE RELEVANT
- Weighing Evidence – Need Substantial Evidence
- Substantial Evidence = what a reasonable person would rely on for important business affairs or decisions
- Deference to the Commission
- If conflicting evidence – need to choose between evidence and explain why
- Example:

Criteria: Will not create traffic hazard or congestion.

Relevant Testimony: street conditions, widths, number of lanes, traffic capacity, accident rates, sight distances, etc.

Irrelevant Testimony: Property values, noise, air pollution. → if these should be criteria → change legislation

Relevant or Not? A petition is received where 300 people ask you not to approve the application.

- Opinion Evidence
 - Is a type of evidence
 - Need to examine the basis for the opinion
 - Is the opinion based on facts
 - Is the opinion from an expert in an specific field of study
 - Just because someone is an expert, you do not need to accept that testimony if you find it not credible, but to do so you need some contrary fact, not just a feeling

8. FINDINGS

- Staff or Applicant will provide proposed or draft findings
- Those draft findings will (again) list the criteria
- There will be 4 options in response to any criteria:
 - Evidence that Criteria is Met
 - Evidence that Criteria can be Met with Conditions
 - means criteria can be met with future action
 - Evidence that Criteria not Met
 - Insufficient Evidence exists to make findings

Examples – next page

Example: Design Review Application Appeal

Applicant (appellant) – Contests the requirement to screen rooftop mechanical equipment because it is cost prohibitive.

The criteria and findings are:

15.220.050 Criteria for design review (Type II process).

B. Type II. The following criteria are required to be met in order to approve a Type II design review request:

1. Design Compatibility. The proposed design review request incorporates an architectural design which is compatible with and/or superior to existing or proposed uses and structures in the surrounding area. This shall include, but not be limited to, building architecture, materials, colors, roof design, landscape design, and signage.

Finding: Buildings within the vicinity were constructed in the 1970's incorporating an architectural style of wood siding, earth tone colors and flat roofs. All of the buildings have provided screening for the rooftop mechanical units by utilization of parapet walls, mechanical screen walls or screens affixed to the mechanical units including the building to which the applicant proposes to expand. The applicant's building elevations for the addition identify no parapet walls, mechanical screen walls or screens attached to the mechanical units. There are no NMC criteria that address cost as a factor to not design a building to be compatible with surrounding structures. Because the applicant has not provided a method to screen the rooftop mechanical units with a method used by similar development within the vicinity the proposed design is not compatible with surrounding structures in the surrounding area. To meet the requirement of 15.220.050B1. the applicant shall submit revised building elevations showing the method of screening the rooftop mechanical units to include one of the following three methods:

1. Parapet walls
2. Mechanical screen walls, or
3. Screens affixed to the mechanical units

Appellant - The development will be detrimental to the quality of life of the surrounding neighborhood.

The criteria and findings are:

Finding: The applicant alleges the proposed development will be detrimental to the quality of life of the surrounding neighborhood but cites no specific criteria on the quality of life. There are no criteria in Chapter 15 related to quality of life to the surrounding neighborhood. Staff has identified though in 15.220.010 Purpose, the following: "These provisions provide for the review

and approval process of the design of certain developments and improvements in order to promote functional, safe and innovative site development compatible with the natural and manmade environment. The following provisions are intended to discourage unsightly development, improve the quality of new development in the city, coordinate the site planning process with existing and proposed development, and provide a pleasant working and living environment in the city. Furthermore, these provisions are intended to coordinate the site development process through review of the architecture of the structure(s), signs, landscaping, and other design elements on the site. [Ord. 2451, 12-2-96. Code 2001 § 151.190.]".

This section though is not a criteria but a purpose statement that established the parameters for design of developments. Because it is not a criterion it is not applicable to the issue raised by the appellant.

* Annexation Example
- criteria

**THEFT IN THE SECOND DEGREE
OF LOST OR MISLAID PROPERTY**

Oregon law provides that a person commits the crime of theft in the second degree of lost or mislaid property if, having come into control of another's property that the person knows or believes to have been A/B/C , the person fails to take reasonable measures to restore the property to the owner, with the intent to deprive the owner of the property.

In this case, to establish the crime of theft in the second degree of lost or mislaid property, the state must prove beyond a reasonable doubt the following elements:

- (1) The act occurred on or about _____, 20____;
- (2) [*Defendant's name*] came into control of certain property [*describe property*], owned by [*owner's name*];
- (3) The total value of the property in a single or aggregate transaction is \$100 or more and less than \$1,000;
- (4) [*Defendant's name*] knew or believed that the property had been A/B/C ; and
- (5) [*Defendant's name*], with the intent to deprive the owner of the property, failed to take reasonable measures to restore it to the owner.

-
- A lost
B mislaid
C delivered under a mistake regarding the (nature of the property / amount of the property / identity of the recipient)
-

COMMENT: ORS 164.045, ORS 164.065. See **with intent**, defined in UCrJI 1035; **knowingly**, defined in UCrJI 1036; **appropriate property**, **deprive another of property**, **owner**, **property**, **lost property**, and **mislaid property**, defined in UCrJI 1800.

Newberg City Council

***QUASI-JUDICIAL LAND-USE
PUBLIC HEARING PROCEDURE
(Land Use)***

1. OPEN THE PUBLIC HEARING, ANNOUNCE THE PURPOSE, DISCUSS TESTIMONY PROCEDURE, AND TIME ALLOTMENTS
2. CALL FOR ABSTENTIONS, BIAS, EX-PARTE CONTACT, AND OBJECTIONS TO JURISDICTION

CITY ATTORNEY LEGAL ANNOUNCEMENTS:
READ "Quasi-Judicial Announcements" Sheet
3. STAFF REPORT
4. PUBLIC TESTIMONY

Time Limits: A. Mayor sets time limits
B. Citizen goes to witness table, states name & presents testimony

 - A. PROPONENTS (Principle Proponent/s first, then others or undecided)
 - B. OPPONENTS AND UNDECIDED
 - C. PRINCIPAL PROPONENT REBUTTAL
5. QUESTIONS OF PROPONENTS AND OPPONENTS FROM THE FLOOR OR THE CITY COUNCIL DIRECTED THROUGH THE CHAIR
6. PUBLIC AGENCY LETTERS OR COMMENTS
7. CLOSE OF PUBLIC TESTIMONY PORTION OF HEARING

CITY ATTORNEY LEGAL ANNOUNCEMENTS
8. FINAL COMMENTS FROM STAFF AND RECOMMENDATION
9. DELIBERATION OF COMMISSION INCLUDING DISCUSSION OF CRITERIA WITH FINDINGS OF FACT
10. ACTION BY THE CITY COUNCIL
 - A. ORDER – Usually requires passage of order.
 - B. VOTE – Voice vote is permitted.
 - C. MAJORITY OF A QUORUM – Requires majority of the quorum for passage.
 - D. COMBINATION – Can be combined with other council action; separate vote on each action is required.



PLANNING COMMISSION RESOLUTION 2016-317

A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL APPROVE AN ANNEXATION OF 10.37 ACRES OF PROPERTY, PLUS THE AREA OF THE ADJACENT RIGHTS-OF-WAY, INTO THE CITY OF NEWBERG AND CHANGE THE ZONING FROM YAMHILL COUNTY AF-10 TO NEWBERG R-1, FOR PROPERTY LOCATED AT 24950 NE NORTH VALLEY ROAD, TAX LOT 3207-00900


RECITALS

1. The Newberg First Baptist Church submitted an application to annex 10.37 acres of property, plus the area of the adjacent rights-of-way, into the City of Newberg and change the zoning from Yamhill County AF-10 to Newberg R-1. The property is located directly north of the current Newberg city limits at the southeast corner of the Chehalem Drive/North Valley Road intersection, Tax Lot 3207-00900.
2. After proper notice, the Newberg Planning Commission held a hearing on May 12, 2016, to consider the application. The Commission considered testimony, and deliberated.
3. The Newberg Planning Commission finds that the application meets the applicable Newberg Development Code criteria as shown in the findings in Exhibit "C".
4. State law recently changed with the passage and adoption of Oregon Senate Bill 1573, which added language to ORS 222.111 that preempts Newberg's requirement that annexations go to a public vote, and instead directs the legislative body of a city to annex property without a public vote when the property meets certain requirements, including: being within the urban growth boundary; subject to the Comprehensive Plan of the city; contiguous to city limits; and meeting the city's adopted Development Code criteria for annexation. This property meets those criteria.

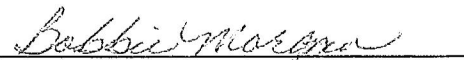
The Newberg Planning Commission resolves as follows:

1. The Planning Commission recommends that the City Council annex the property shown in Exhibit "A" and described in Exhibit "B", along with a zone change to R-1, and withdraw the property from the Newberg Rural Fire Protection District. Exhibits "A" and "B" are hereby adopted and by this reference incorporated.
2. This recommendation is based on the findings shown in Exhibit "C". Exhibit "C" is hereby adopted and by this reference incorporated.

Adopted by the Newberg Planning Commission this 10th day of March, 2016.


Planning Commission Chair

ATTEST: 


Planning Commission Secretary

**Exhibit "A" to Planning Commission Resolution No. 2016-317
Property Map – First Baptist Annexation**

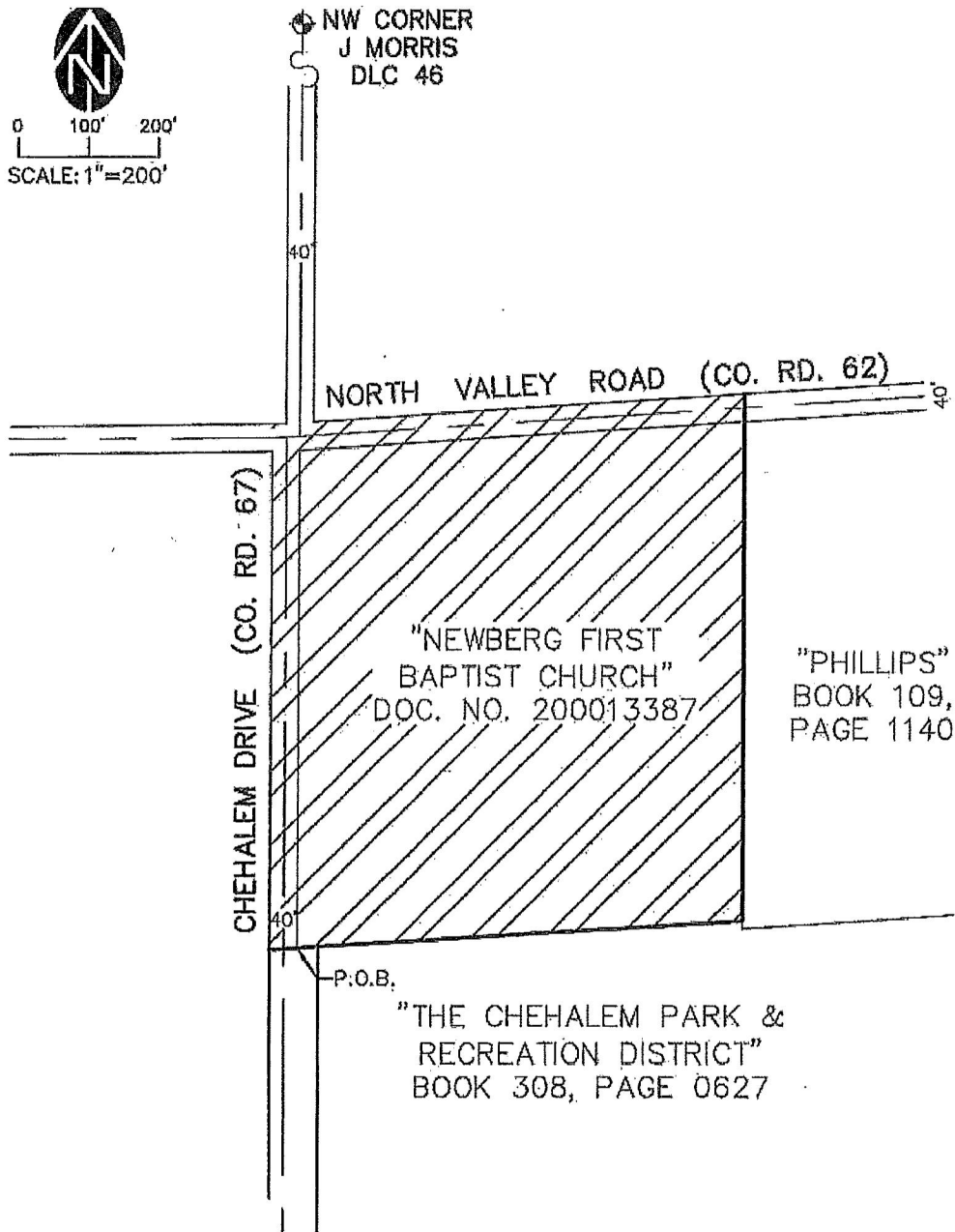


EXHIBIT B
PROPOSED ANNEXATION
LOCATED IN THE NORTH 1/2 OF SECTION 7
TOWNSHIP 3 SOUTH, RANGE 2 WEST, W.M.
YAMHILL COUNTY, OREGON

DATE	3/2/16
DRAWN BY	GRA
CHECKED BY	KLS
REVISION	0
JOB NO.	D131-042

WESTLAKE CONSULTANTS INC.	
ENGINEERING + SURVEYING + PLANNING	
PACIFIC CORPORATE CENTER 15116 S.W. SEQUOIA PARKWAY, SUITE 150 TIGARD, OREGON 97224	(503) 684-0552 FAX (503) 684-0157

**Exhibit "B" to Planning Commission Resolution No. 2016-317
Legal Description – First Baptist Annexation**

Newberg First Baptist Church
Proposed Annexation
February 2, 2016
Project P131-042

PROPERTY DESCRIPTION

A tract of land; situated in the North 1/2 of Section 7, T 3 S., R 2 W., W.M. Yamhill County, Oregon; being more particularly described as follows:

Beginning at a point along the West line of the J. Morris DLC # 46, which point bears South 1,467.16 feet from the northwest corner thereof, said point also being at the intersection of the north line extended to the west of that tract conveyed to "The Chehalam Park & Recreation District" as recorded in Book 308, Page 0627, Yamhill County Deed Records and the east right of way line of Chehalam Drive [Co. Rd. 67];

thence, along said north line and its westerly extension, North 86°32'30" East 642.35 feet, more or less, to the west line of that tract of land conveyed to "Robert Edward Phillips, Jr. and Barbara Jean Phillips" as recorded in Book 109, Page 1140, Yamhill County Deed Records;

thence, along last said west line, North 758.91 feet, more or less, to the northerly right of way line of North Valley Road [Co. Rd. 62];

thence, along said northerly right of way line, South 86°20'00" West 682.58 feet, more or less, to the west right of way line of said Chehalam Drive;

thence, along said west right of way line, South 756.42 feet, more or less, to its intersection with said north line extended to the west of said tract conveyed to "The Chehalam Park & Recreation District";

thence, along said westerly extension, North 86°32'30" East 40.07 feet to the Point of Beginning.

Containing 11.848 acres or 516,106 square feet, more or less.

Bearings are based upon Yamhill County Survey #8020.



RENEWES: 12/31/17

\\P:\pplm\p131-042-10 Acres Annexation\Work in Progress\FINAL\ANNEXATION.docx

**Exhibit "C" to Planning Commission Resolution No. 2016-317
Findings –File ANX-16-001 – First Baptist Annexation**

A. 15.250.020 Conditions for annexation.

The following conditions must be met prior to or concurrent with city processing of any annexation request:

A. The subject site must be located within the Newberg urban growth boundary or Newberg urban reserve areas.

B. The subject site must be contiguous to the existing city limits.

Finding: The First Baptist property, located at 24950 NE North Valley Road, Tax Lot 3207-00900, is located within the urban growth boundary and is contiguous to the Newberg city limits along its southern boundary. The legal description of area to be annexed includes the adjacent Chehalem Drive and North Valley Road rights-of-way, which provides for future continuity of the city limits. This criterion is met.

B. 15.250.030 Quasi-judicial annexation criteria.

The following criteria shall apply to all annexation requests:

A. The proposed use for the site complies with the Newberg comprehensive plan and with the designation on the Newberg comprehensive plan map. If a redesignation of the plan map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the Newberg comprehensive plan.

Finding: The property has a Comprehensive Plan designation of PQ (Public/Quasi-Public), which corresponds with the requested zoning of R-1 (Low Density Residential). Section 15.250.080 of the Newberg Development Code says that any zoning designation is consistent with the PQ Comprehensive Plan designation. The PQ designation is typically used to indicate the location of public/quasi-public uses such as schools and churches; these uses are typically permitted in any zone, which is why any zone can be applied under a PQ designation. The PQ designation was likely applied at the time of the urban growth boundary expansion in consultation with the property owners to pave the way for a future church on the site; however, the property owners would be permitted to develop the property with any permitted or conditionally permitted use in the R-1 zone and not held to only a PQ type of development. This criterion is met.

*B. An adequate level of urban services must be available, or made available, within three years' time of annexation, except as noted in subsection (E) of this section.
An adequate level of urban services shall be defined as:*

1. Municipal wastewater and water service meeting the requirements enumerated in the Newberg comprehensive plan for provision of these services.

2. Roads with an adequate design capacity for the proposed use and projected future uses. Where construction of the road is not deemed necessary within the three-year time period, the city shall note requirements such as dedication of right-of-way, waiver of remonstrance against assessment for road improvement costs, or participation in other traffic improvement costs, for application at the appropriate level of the planning process. The city shall also consider public costs for improvement and the ability of the city to provide for those costs.

Finding: City water, sanitary sewer and stormwater lines are not located adjacent to this property. The nearest services are located at the intersection of Foothills Drive and Chehalem Drive, but there is adequate capacity for the utilities to be extended to the property within three years. At the time of development, services could be extended to the north along Chehalem Drive to serve the property. Downstream of the property, the sanitary sewer flows to the Chehalem Pump Station. At the time of development, an analysis of the pump station is required, and any necessary upgrades to the pump station would be completed by the developer.

There appears to be wetlands located at the southern end of the property. At the time of development, a wetland delineation/determination will be required, along with all associated permits.

The property has road frontage along Chehalem Drive and North Valley Road. Future development of this property will necessitate roadway frontage improvements, along all property frontages, to City standards. Due to limited sight distance at the intersection of North Valley Road and Chehalem Drive, improvements to this intersection will be necessary to meet engineering sight distance standards. Additionally, a pedestrian sidewalk will be required to be installed from the property south along Chehalem Drive to Foothills Drive.

C. Findings documenting the availability of police, fire, parks, and school facilities and services shall be made to allow for conclusionary findings either for or against the proposed annexation. The adequacy of these services shall be considered in relation to annexation proposals.

Finding: The city sends the application information out to the Police and Fire Departments, Chehalem Parks and Recreation District (CPRD), and the Newberg School District, among other agencies, for comments prior to the staff report. In addition, the applicants indicate that they contacted the Newberg School District and the Police and Fire Departments, and verified that there were no issues with serving future development on this site. The School District did comment that a future pedestrian path from the development to the adjacent park would be critical due to the unsafe pedestrian conditions on Chehalem Drive. There is no information to suggest that city services could not support the addition of the 10.37 acres of property, plus the area of the adjacent rights-of-way, to the city limits, and in fact future development of the site helps fund these city services and other System Development Charge or permit fee funded services such as the School District and CPRD. It should be noted that the City of Newberg does not do future planning for the Parks District or the School District; however, the city coordinates with those agencies on a regular basis in regards to future planning efforts. This type of coordination is typically done at the time of urban growth

boundary expansion, when properties are added to serve as the future 20-year urbanizable area, or areas where the city limits is expected to expand to meet growth needs.

D. The burden for providing the findings for subsections (A), (B) and (C) of this section is placed upon the applicant.

Finding: The applicant submitted adequate information to allow the city to make findings to the applicable criteria.

E. The city council may annex properties where urban services are not and cannot practically be made available within the three-year time frame noted in subsection (B) of this section, but where annexation is needed to address a health hazard, to annex an island, to address wastewater or water connection issues for existing development, to address specific legal or contract issues, to annex property where the timing and provision of adequate services in relation to development is or will be addressed through legislatively adopted specific area plans or similar plans, or to address similar situations. In these cases, absent a specific legal or contractual constraint, the city council shall apply an interim zone, such as a limited-use overlay, that would limit development of the property until such time as the services become available.

Finding: This criterion is not applicable because adequate urban services are found to be available within the three year time frame.

C. 15.302.030-Procedures for comprehensive plan map and zoning map amendments.
A.3. Amendment Criteria. The owner must demonstrate compliance with the following criteria:

a. The proposed change is consistent with and promotes the goals and policies of the Newberg comprehensive plan and this code;

Finding: The property has a Comprehensive Plan designation of PQ (Public/Quasi-Public), which corresponds with the requested zoning of R-1 (Low Density Residential) as section 15.250.080 of the Newberg Development Code says that any zoning designation is consistent with the PQ Comprehensive Plan designation. The Comprehensive Plan Housing Goal says "To provide for diversity in the type, density and location of housing within the City to ensure there is an adequate supply of affordable housing units to meet the needs of City residents of various income levels." Annexations meet the intent of the Goal because they provide land to meet the needs of City residents. The buildable land data in the Comprehensive Plan is rather outdated, but the most recent analysis done for a recent zone change showed a need for 37 acres of LDR land. Annexation of this property would help the city meet this deficiency. This criterion is met.

b. Public facilities and services are or can be reasonably made available to support the uses allowed by the proposed change;

Finding: As demonstrated in the finding to 15.250.030.B. above, the applicant has demonstrated that adequate public facilities and services can be reasonably made available to support future development of the property at R-1 permitted densities.

*c. Compliance with the State Transportation Planning Rule (OAR 660-012-0060)
for proposals that significantly affect transportation facilities.*

Finding: Annexation of the property complies with the State Transportation Planning Rule (TPR) (OAR 660-012-0060) because it meets the requirements for an amendment to a zoning map that does not significantly affect an existing or planned transportation facility as permitted by Subsection (9) of the TPR: the proposed zoning of R-1 is consistent with the existing comprehensive plan map designation of PQ; the City of Newberg has an acknowledged TSP which included this area in the urban reserve as planned future urbanizable land; this property was brought into the urban growth boundary in 2006 as part of a larger urban growth boundary amendment that included a full report with adequate justifications for transportation and other public facilities.

OAR 660-012-0060(9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.

(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;

(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and

(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.

[Subsection (1) of OAR 660-012-0060]

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified

in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

- D. Conclusion:** Based on the above-mentioned findings, the application meets the criteria of the Newberg Development Code.

Training Video on Quasi-judicial hearings

From: Doug Rux
Sent: Thursday, January 10, 2019 5:24 PM
To: Rick Rogers; Elise Yarnell Hollamon; Elizabeth Curtis Gemeroy; Stephanie Findley
Cc: Truman Stone; Joe Hannan; Sue Ryan; DawnKaren Bevill
Subject: Training Video on Quasi-judicial hearings

Mayor and Councilors,

Thank you for attending the quasi-judicial training on wednesday. Truman and I noted we would send you a link to a training video. That link is:

https://www.oregonlandusetraining.info/data/4_index.html

Chapter 4 is the information that is relevant to our training session.

Thanks

Doug Rux, AICP
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