

City of St. Helens
ORDINANCE NO. 3245

AN ORDINANCE TO ANNEX AND DESIGNATE THE ZONE OF CERTAIN
PROPERTY AT 58646 MCNULTY WAY

WHEREAS, applicant Columbia Community Mental Health has requested to annex to the City of St. Helens certain property at 58646 McNulty Way (formerly 2185 and 2195 Gable Road). This property is also described per **Exhibit A** and depicted per **Exhibit B**; and

WHEREAS, the applicant has consented in writing to the proposed annexation; and

WHEREAS, the applicant constitutes 1) all the owners of the property to be annexed, and 2) more than half of the owners of the property to be annexed own more than half of such property representing more than half of the assessed value pursuant to ORS 222.170(1); and

WHEREAS, the City Council must determine the incorporated Comprehensive Plan Map designation and the Zone Map designation; and

WHEREAS, appropriate notice has been given and a public hearing was held October 16, 2019 on the annexation proposal; and

WHEREAS, the Council has considered findings of compliance with criteria and law applicable to the proposal.

NOW, THEREFORE, THE CITY OF ST. HELENS DOES ORDAIN AS FOLLOWS:

Section 1. The above recitations are true and correct and are incorporated herein by this reference.

Section 2. The property described in **Exhibit A** and depicted in **Exhibit B** is hereby accepted for annexation to the City of St. Helens.

Section 3. The St. Helens Zoning Ordinance Map is hereby amended to reflect that the property described herein shall be zoned Light Industrial, LI.

Section 4. The St. Helens Comprehensive Plan Map is hereby amended to reflect that the property described herein shall be designated as Light Industrial, LI.

Section 5. In support of the above annexation and amendments described herein, the Council hereby adopts the Annexation A.2.19 Findings of Fact and Conclusions of Law, attached hereto as **Exhibit C** and made part of this reference.


Section 6. The effective date of this Ordinance shall be 30 days after approval, in accordance with the City Charter and other applicable laws.

Read the first time: November 6, 2019
Read the second time: November 20, 2019

APPROVED AND ADOPTED this 20th day of November, 2019 by the following vote:

Ayes: Locke, Carlson, Topaz, Morten, Scholl

Nays: None


Rick Scholl, Mayor

ATTEST:


Kathy Payne, City Recorder

EXHIBIT A
LEGAL DESCRIPTION

A parcel of land located in the NW ¼ of the NW ¼ of Section 9, Township 4 N., Range 1 W., Willamette Meridian, Columbia County, Oregon, more specifically described as follows:

Beginning at a point, the **True Point of Beginning**, where the Southerly right-of-way line of Gable Road and the Easterly right-of-way line of McNulty Way intersect;

Thence East along the Southerly right-of-way of Gable Road a distance of 833.45 feet;

Thence leaving said road, South 12°42' West a distance of 400 feet;

Thence North 77°18' West a distance of 351.94 feet;

Thence North 53°56' East a distance of 78.83 feet;

Thence North 55°07' West a distance of 324 feet:

Thence North 60°39' West a distance of 244.2 feet;

Thence North along the Easterly right-of-way line of McNulty Way to the **True Point of Beginning**.

N.W. 1/4 N.W. 1/4 SEC. 9 T.4N. R.1W. W.M.

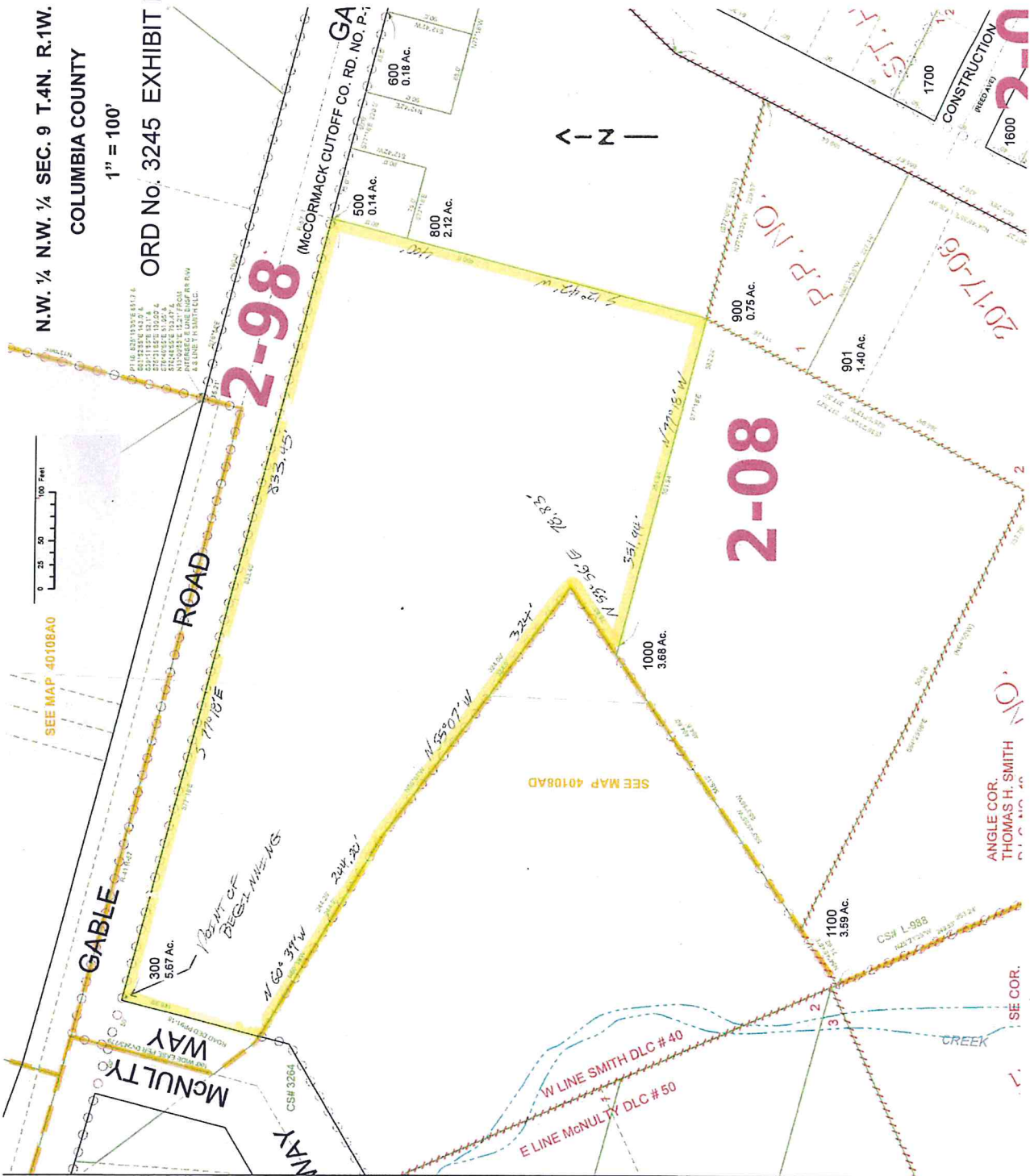
COLUMBIA COUNTY

ORD No. 3245 EXHIBIT B

1" = 100'



SEE MAP 40108A0



2-98

2-08

2017-06

P.P. NO.

CONSTRUCTION
1600
1700

ANGLE COR.
THOMAS H. SMITH

SE COR.

POINT OF BEGINNING
BY DEEDS
N 60° 31' W 244.20'
N 58° 07' W 322.4'
E 79° 18' W 551.94'
N 77° 18' W 1770.18'
W 333.45'

W LINE SMITH DLC # 40
E LINE McNULTY DLC # 50

300 5.67 AC.

500 0.14 AC.

800 2.12 AC.

600 0.18 AC.

1000 3.68 AC.

900 0.75 AC.

901 1.40 AC.

1100 3.59 AC.

CSH L-988

CREEK

(McCORMACK CUTOFF CO. RD. NO. P.)

McNULTY WAY

GABLE ROAD

GA

ST. K.

CITY OF ST. HELENS PLANNING DEPARTMENT
FINDINGS OF FACT AND CONCLUSIONS OF LAW
Annexation A.2.19

APPLICANT: Columbia Community Mental Health

OWNERS: Same

ZONING: Columbia County's Light Manufacturing, M-2

LOCATION: *2185 & 2195 Gable Road, 4N1W-9BB-300

*These addresses were in place at the time of the annexation request, but have since been abandoned as part of CCMH's development in favor of one address for the entire complex: 58646 McNulty Way. This issue is addressed via Columbia County file DR 18-07.

PROPOSAL: The property owner filed consent to annex because it was a condition of approval for a Type I Design Review (DR 18-07) for two new modular office structures given connection to City of St. Helens water.

SITE INFORMATION / BACKGROUND

The subject property is an irregular-shaped corner lot at approximately 5.67 acres. It is made up of two parcels which have a restrictive covenant that ties them together via Inst. No. 2016-010344. The property abuts Gable Road and McNulty Way. It is accessed by Gable Road with one semi-paved asphalt driveway. Gable Road is a developed minor arterial-classified street without frontage improvements (sidewalks, curb, and landscape strip) on either side. McNulty Way is a collector-classified developed street, with frontage improvements abutting the property to be developed by December 2019. Frontage improvements are included in County file DR 18-07.

The property is just north of the main Columbia Community Mental Health building (58646 McNulty Way). It is currently developed with five structures, one of which is addressed at 2195 Gable Road. This former detached single-family dwelling was converted to a Youth and Family Counseling Center in 2017 with Columbia County file DR 17-03. DR 17-03 also authorized the installation of a 2,505 sq. ft. modular office structure. DR 18-07 was conditionally approved for the development of two new modular office structures at 1,440 sq. ft. and 560 sq. ft. which have already been placed on the site, but not yet occupied. One of the County's conditions for County file DR 18-07 was to apply for annexation into the City. The site's remaining (former) detached single-family dwelling, addressed at 2185 Gable Road, is planned for demolition with DR 18-07. The parcel is relatively flat with numerous mature trees near the undeveloped portion of the property along McNulty Way.

The main reason behind this annexation is connection to City water. This was not the original proposal and was discovered by CCMH staff around January of 2019. The City investigated and confirmed. In January of this year, AKAAN Architecture and Design, LLC created a map utility map showing connections on the site for CCMH. This was at the request of the City for both the City and CCMH to understand what had been done, as the project had a tumultuous history. Staff spoke to Al Petersen with AKAAN who said he researched a well and personally knew of

its location, but relied on Mark Comfort of Comfort Construction for other information. That map did not show a connection to City water, despite the connection being made. Comfort was a private contractor hired by CCMH to help with the project but CCMH staff took over around this time. The point of this is to highlight the numerous questionable actions by Comfort for this project. In this case, misleading AKAAN, CCMH and the City about this connection; and for creation of an incorrect utility map created as the expense of CCMH.

The first incident of Comfort's tendency to mislead was a discussion between Comfort and staff around September 2015. The history of this between 2015 and 2018 was documented in a 15 page "CCMH Violation" memo from February 28, 2018—attached to the staff report provided to the Planning Commission and City Council for their public hearings for this annexation.

Abutting Zoning

North - City's Light Industrial (LI) and County's Light Manufacturing (M-2)

East - County's Light Manufacturing (M-2)

South - City's Light Industrial (LI) and County's Light Manufacturing (M-2)

West - City's General Commercial (GC)

PUBLIC HEARING & NOTICE

Hearing dates are as follows: October 8, 2019 before the Planning Commission and October 16, 2019 before the City Council.

Notice of this proposal was sent to surrounding property owners within 300 feet of the subject properties on September 18, 2019 via first class mail. Notice was sent to agencies by mail or e-mail on the same date. Notice was published in the The Chronicle on September 25, 2019. Notice was sent to the Oregon Department of Land Conservation and Development on September 6, 2019 via e-mail.

APPLICABLE CRITERIA, ANALYSIS & FINDINGS

SHMC 17.08.040 (1) – Quasi-judicial amendment and standards criteria

- (a) A recommendation or a decision to approve, approve with conditions, or to deny an application for a quasi-judicial amendment shall be based on all of the following standards:
 - (i) The applicable comprehensive plan policies and map designation; and that the change will not adversely affect the health, safety, and welfare of the community; and
 - (ii) The applicable Oregon Statewide Planning Goals adopted under ORS Chapter 197, until acknowledgment of the comprehensive plan and ordinances; and
 - (iii) The standards applicable of any provision of this code or other applicable implementing ordinance.
- (b) Consideration may also be given to:
 - (i) Any applicable evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application.

Discussion: (a)(i) The Comprehensive Plan designation for the subject property is Unincorporated Light Industrial (ULI). Applicable designation and zoning district for annexation are discussed later.

There is no known conflict with the general Comprehensive Plan policies identified in Chapter 19.08 SHMC. Note that SHMC 19.08.030 discusses public services and facilities and includes utility provisions (e.g., water and sewer) as well as services such as police and library. In sum, all services are intertwined; the consent to annexation allows connection to City sewer to support existing and future development on the subject property, and, once annexed, all other City services/facilities. By this process, the proposal complies with this aspect of the Comprehensive Plan.

There is no known conflict with the specific Comprehensive Plan policies identified in Chapter 19.12 SHMC.

There is no known conflict with the addendums to the Comprehensive Plan which includes Economic Opportunities Analysis (Ord. No. 3101), Waterfront Prioritization Plan (Ord. No. 3148), the Transportation Systems Plan (Ord. No. 3150), the Corridor Master Plan (Ord. No. 3181), and the Parks & Trails Master Plan (Ord. No. 3191), and the Riverfront Connector Plan (Ord. No. 3241).

Finally, there is no evidence that this proposal will be contrary to the health, safety and welfare of the community.

(a)(ii) The City's Comprehensive Plan has been adopted by the State, thus, the applicable Oregon Statewide Planning Goals adopted under ORS Chapter 197 do not need to be analyzed per this section.

(a)(iii) In addition, Section 3 of the City's Charter states that "annexation, delayed or otherwise, to the City of St. Helens, may only be approved by a prior majority vote among the electorate." However, during the 2016 Legislative Assembly, Senate Bill 1578 was passed. It states that a City shall annex the territory without submitting the proposal to the electors if certain criteria are met:

1. Property is within the UGB
2. Property will be subject to the City's Comprehensive Plan
3. Property is contiguous to the City limits or is separated by only a public right of way or body of water
4. Property conforms to all other City requirements

As this proposal meets these criteria, this property will not be subject to a majority vote among the electorate.

Other provisions applicable to this proposal are discussed elsewhere herein.

(b) There is no evidence of a change in neighborhood, or mistake or inconstancy in the Comprehensive Plan or Zoning Map.

Finding: The quasi-judicial amendment and standards criteria are met.

SHMC 17.08.060 – Transportation planning rule compliance

- (1) Review of Applications for Effect on Transportation Facilities. A proposed comprehensive plan amendment, zone change or land use regulation change, whether initiated by the city or by a private interest, shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-012-0060 (the Transportation Planning Rule (“TPR”). “Significant” means the proposal 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) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (i) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (ii) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP; or
 - (iii) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.
- (2) Amendments That Affect Transportation Facilities. Comprehensive plan amendments, zone changes or land use regulations that significantly affect a transportation facility shall ensure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the TSP. This shall be accomplished by one or a combination of the following:
 - (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
 - (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of OAR 660-012-0060.
 - (c) Altering land use designations, densities, or design requirements to reduce demand for vehicle travel and meet travel needs through other modes of transportation.
 - (d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
- (3) Traffic Impact Analysis. A traffic impact analysis shall be submitted with a plan amendment or zone change application, as applicable, pursuant to Chapter 17.156 SHMC.

Discussion: This section reflects State law regarding the Transportation Planning Rule (TPR): Transportation Planning Rule (TPR), OAR 660, Division 12. The TPR requires that where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures to assure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility. **Current zoning of the property is Columbia County’s Light Manufacturing, M-2 and the City zoning option given annexation is Light Industrial.**

Generally, when comparing potential land use impact on transportation facilities, the *reasonable worst case scenario* for the existing and proposed designation/zone are considered. The potential land uses are very similar for both the City and County. The City’s zoning is comparable to the

County with regards to the possible intensity of uses allowed and potential vehicular trips generated. Thus, this proposal will not affect an existing or planned transportation facility.

Finding: No transportation facility will be significantly affected by this proposal. No traffic impact analysis is warranted.

SHMC 17.28.030 (1) – Annexation criteria

- (a) Adequate public facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area; and
- (b) Comply with comprehensive plan amendment standards and zoning ordinance amendment standards and not be in conflict with applicable comprehensive plan policies and implementing ordinances; and
- (c) Complies with state laws; and
- (d) Abutting roads must meet city standards or property owner will be required to sign and record an irrevocable consent to local improvement district; and
- (e) Property exceeding 10 acres in gross size must show a need on the part of the city for such land if it is designated residential (e.g., less than five years' supply of like designated lands in current city limits).

Discussion: (a) Water - The site is already connected to City water. The City's current water capacity is 6 million gallons/day and the peak flow, usually in the summer, is 3 to 4 million gallons/day. Additionally, the City has the capacity of approximately 10 million gallons to meet future demands. Any additional uses that occur on the subject property can be accommodated by the City's municipal water system as infrastructure has substantial capacity available.

Sewer - The site is not currently connected to City sewer. The closest City sewer is approximately 300 feet away in the Gable Road right-of-way. With regards to capacity, the City's waste water treatment plant currently has the capacity (physically and as permitted by DEQ) to handle 50,000 pounds of Biochemical Oxygen Demand (BOD), which is the "loading" or potency of the wastewater received by the plant. The average daily BOD is well below this at only 1,500 pounds. Thus, any potential uses that occur on the subject property can be accommodated by the City's sanitary sewer system as infrastructure is in place or can be upgraded and there is substantial capacity available.

Transportation - As described above, this proposal poses no significant impact on a transportation facility.

Adequate public facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area.

(b) The land uses of the subject property are considered Public Facilities, Major. The remaining (former) single-family dwelling is proposed for demolition. Public Facilities, Major are a conditionally allowed use in the Light Industrial zone.

There is no known conflict with the Comprehensive Plan and implementing ordinances.

(c) With regards to Oregon Revised Statutes (ORS), city annexations of territory must be undertaken consistent with ORS 222.111 to 222.183.

Pursuant to ORS 222.111(1), a City may only annex territory that is not within another City, and the territory must either be contiguous to the annexing City or be separated from the City only by a body of water or public right-of-way. The subject property is not within another City's jurisdiction and City of St. Helens corporate limits lies on two sides of the subject property.

Although undertaking an annexation is authorized by state law, the manner in which a city proceeds with annexation is also dictated in the city charter. ORS 222.111(1) references a city's charter as well as other ORS. St. Helens' Charter requirements pertaining to annexations are noted above.

Per ORS 222.111(2) an annexation may be initiated by the owner of real property or the city council. This annexation request was initiated by the property owner. Further, ORS 222.125 requires that that all property owners of the subject property to be annexed and at least half of the electors residing on the property consent in writing to the annexation. These documents were submitted with the annexation application.

ORS 197.175(1) suggests that all annexations are subject to the statewide planning goals. The statewide planning goals that could technically apply or relate to this proposal are Goals 1, 2, 11 and 12.

- ***Statewide Planning Goal 1: Citizen Involvement.***
Goal 1 requires the development of a citizen involvement program that is widespread, allows two-way communication, provides for citizen involvement through all planning phases, and is understandable, responsive, and funded.

Generally, Goal 1 is satisfied when a local government follows the public involvement procedures set out in the statutes and in its acknowledged comprehensive plan and land use regulations.

The City's Development Code is consistent with State law with regards to notification requirements. Pursuant to SHMC 17.20.080 at least one public hearing before the Planning Commission and City Council is required. Legal notice in a newspaper of general circulation is also required. The City has met these requirements and notified DLCD of the proposal.

- ***Statewide Planning Goal 2: Land Use Planning.***
This goal requires that a land use planning process and policy framework be established as a basis for all decisions and actions relating to the use of land. All local governments and state agencies involved in the land use action must coordinate with each other. City, county, state and federal agency and special districts plans and actions related to land use must be consistent with the comprehensive plans of cities and counties and regional plans adopted under Oregon Revised Statutes (ORS) Chapter 268.

Generally, Goal 2 requires that actions related to land use be consistent with acknowledged Comprehensive Plans and coordination with affected governments and agencies and be based on an adequate factual base. The City has an adopted Comprehensive Plan, compliance of this proposal which is addressed herein. Moreover, explanation and proof of coordination with affected agencies and factual base are described herein, as well, including inventory, needs, etc.

- ***Statewide Planning Goal 11: Public Facilities and Services.***

Goal 11 requires cities and counties to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. The goal requires that urban and rural development be "guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable and rural areas to be served."

City water and sewer capacities are adequate to serve the subject property. This is explained above. Moreover, there is no evidence that adequate infrastructure cannot be made available to serve the annexed area if redeveloped. The existing development is adequately served.

- ***Statewide Planning Goal 12: Transportation.***

Goal 12 requires cities, counties, metropolitan planning organizations, and ODOT to provide and encourage a "safe, convenient and economic transportation system." This is accomplished through development of Transportation System Plans based on inventories of local, regional and state transportation needs. Goal 12 is implemented through OAR 660, Division 12, also known as the Transportation Planning Rule ("TPR"). The TPR contains numerous requirements governing transportation planning and project development.

Traffic impacts and the City's provisions that address the TPR are explained above. This proposal will not significantly affect an existing or planned transportation facility.

(d) The subject property abuts two streets: Gable Road and McNulty Way.

McNulty Way is a collector-classified developed street with abutting frontage to be developed by December 2019 per County file DR 18-07. Gable Road is a developed minor arterial-classified street without frontage improvements (sidewalks, curb, and landscape strip) on either side. City standards require such improvements.

However, this property is not the subject of a current development land use review, which provides the legal nexus and proportionality to require such improvements. As such, the only option is for the property owner to be required to sign and record an irrevocable consent to local improvement district, though, the applicant could improve the frontages if desired.

The existing right-of-way widths for both Gable Road and McNulty Way is sufficient for their corresponding street classification. Therefore, right-of-way dedication is not necessary.

(e) The subject property is not designated residential. Thus a needs analysis is not necessary.

Finding: The annexation approval criteria are met for this proposal.

SHMC 17.28.030 (2) – Annexation criteria

The plan designation and the zoning designation placed on the property shall be the city's zoning district which most closely implements the city's comprehensive plan map designation.

Discussion: The Comprehensive Plan designation is currently Unincorporated Light Industrial (ULI). Upon annexation, the Comprehensive Plan designation would thus be Light Industrial (Incorporated).

Finding: The subject property shall be designated Light Industrial (Incorporated), LI and zoned Light Industrial (LI) upon annexation depending on the determinations of the Commission and Council.

SHMC 17.112.020 – Established & Developed Area Classification criteria

- (1) Established Area.
 - (a) An "established area" is an area where the land is not classified as buildable land under OAR 660-08-0005;
 - (b) An established area may include some small tracts of vacant land (tracts less than an acre in size) provided the tracts are surrounded by land which is not classified as buildable land; and
 - (c) An area shown on a zone map or overlay map as an established area.
- (2) Developing Area. A "developing area" is an area which is included in the city's buildable land inventory under the provisions of OAR except as provided by subsection (1)(b) of this section.

Discussion: OAR 660-008-0005 generally defines "Buildable Land" as vacant residential property not constrained by natural hazards or resources, and typically not publicly owned. The subject property is not zoned residential. This provision does not apply.

Finding: This provision is not applicable.

CONCLUSION & DECISION

Based upon the facts and findings herein, the City Council approves this annexation and that upon annexation, the subject property have a Comprehensive Plan designation of Light Industrial (incorporated), LI, and be zoned Light Industrial, LI, with the condition that:

Gable Road frontage abutting the subject property shall be brought into compliance with City street standards (or) property owner(s) shall sign and record an irrevocable consent to a local improvement district.

*This annexation will **not** be subject to voter approval subsequent to this land use process.*



Rick Scholl, Mayor

11-20-19

Date