



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 1, 2021

Department: Public Works Agenda Planning Date: November 22, 2021 Time required: 30 min.

☐ Audio/Visual aids

Contact: Lindsey King Phone: 503-566-4162

Department Head Signature:
for Brandon Mich

TITLE

Public Hearing for Zone Change/Comprehensive Plan Amendment (ZC/CP) Case 21-007/Deep Lake Investments, LLC.

Issue, Description & Background

Deep Lake Investments, LLC, submitted an application to change the Comprehensive Plan designation from Rural Residential to Commercial and change the zone from Acreage Residential (AR) to Community Commercial (CC) on a parcel of .16-acres located at 4965 Brooklake Road NE, Salem. (T6S, R2W, Section 17DB, Tax Lot 2600).

The hearings officer conducted a public hearing on the application on September 2, 2021, and on October 25, 2021, issued a recommendation that the board approve the request. The hearings officer found that the applicant satisfied all the relevant approval criteria for a comprehensive plan and a zone change.

Financial Impacts: None

Impacts to Department & External Agencies: None

Options for Consideration:

1. Continue the public hearing.
2. Close the public hearing and leave the record open.
3. Close the public hearing and approve, modify, or deny the request.
4. Remand the matter back to the hearings officer.

Recommendation: Hearings officer recommends the request be approved.

List of attachments: Hearings officer's recommendation.

Presenter: Lindsey King

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Alyssa Schrems - Aschrems@co.marion.or.us
Brandon Reich - Breich@co.marion.or.us
Lindsey King - Lking@co.marion.or.us

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the)	Case No. ZC/CP 21-007
)	
Application of)	COMPREHENSIVE PLAN
)	AMENDMENT / ZONE CHANGE
DEEP LAKE INVESTMENTS, LLC,)	
)	

I. Nature of the Application

This matter came before the Marion County Hearings Officer on the Application of Deep Lake Investments, LLC to change the comprehensive zone designation from Rural Residential to Commercial, and to change the zoning designation from Acreage Residential (AR) to Community Commercial ("CC") within the Brooks-Hopmere community planning area of Marion County on a .16 acres parcel located at 4965 Brooklake Road NE, Brooks, Marion County, Oregon. (Tax Lot No. 2600, 06-02W-17DB).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code (MCC) Chapter 17, Oregon Administrative Rule (OAR) 660-022, and the zone change process is subject to Oregon Revised Statute (ORS) 197.610-197.625.

III. Public Hearing

A public hearing was held on this matter on September 2, 2021. The planning division file was made a part of the record. The following persons appeared and provided testimony on the application:

1. Alyssa Schrems	Marion County Planning Division
2. Raymond A. Reid	Attorney for Applicant
3. Matthew and Destinee Schuster	Applicant Members
4. Cipriano Cedillo	General Comment

No documents were presented, marked, or entered into the record as exhibits. No objections were raised as to notice, jurisdiction, conflicts of interest, or two evidence or testimony presented at the hearing.

IV. Executive Summary

The Applicant requests a comprehensive zone designation change from Rural Residential to Commercial and to change the zoning designation from Acreage Residential (AR) to Community Commercial ("CC") within the Brooks-Hopmere community planning area of Marion County on a .16 acres parcel located at 4965 Brooklake Road NE, Brooks, Marion County, Oregon. The Applicant has satisfied the relevant standards and criteria, and the hearings officer recommends **APPROVAL** of the application.

V. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property consists of 0.16 acres designated Rural Residential in the Marion County Comprehensive Plan (MCCP) and zoned AR (Acreage Residential) in Chapter 17.128 of the Marion County Code (MCC). The property is within the urban unincorporated community of Brooks-Hopmere.

2. The property is located at 4965 Brooklake Road NE, Salem, on the north side of Brooklake Road NE, approximately 230 feet southeast of the intersection of Pueblo Ave NE and Brooklake Road NE. The property contains a dwelling and three accessory structures. Sewer service is provided by the Brooks Community Sewer District.

3. Surrounding properties are zoned AR (Acreage Residential) and CC (Community Commercial) and developed with a mixture of residential and commercial uses. Properties to the south with frontage on Brooklake Road are zoned Public and are used as educational facilities.

4. The Applicant is requesting to change the Comprehensive Plan designation from Rural Residential to Community Commercial and change the zoning from AR to CC.

5. The Planning Division requested comments from various governmental agencies:

Marion County Public Works Land Development and Engineering Permits requests that the following conditions, be included in the land use case, if approved.

Condition A – Prior to establishment of a commercial use, and/or in the event building permits are required, prior to issuance of a Certificate of Occupancy, obtain an Access Permit, and under the Permit widen the concrete driveway approach to provide between 14 to 16 feet of width not including transition panels, and pave the gravel driveway portion back with hot mix asphalt for a minimum distance of 15 feet measured from the north edge of sidewalk.

Nexus is to meet PW Engineering driveway approach standards for commercial usage.

LDEP also commented on requirements that are not part of the land use decision and available for review in the planning file.

Brooks Community Service District commented that the Service District requires any change in use to be approved through a review process and that the system may need to be upgraded depending on type and change in flow. Parking is not allowed over the septic tank. Water services are not available to this property at this time.

All other contacted agencies contacted either failed to respond or stated no objection to the proposal.

VI. Additional Findings of Fact and Conclusions of Law

1. This is a recommendation to the Marion County Board of Commissioners. The Board of Commissioners has the final decision-making authority.
2. Applicant has the burden of proving all applicable standards are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Applicant must prove, by substantial evidence in the whole record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, Applicant has not met its burden and the application must be denied. If the evidence for every criterion is in Applicant’s favor, then the burden of proof is met and the application must be approved.

3. The property is within the urban unincorporated community of Brooke-Hopmere, a community identified in 2000 under the provisions in Oregon Administrative Rule 660-022. As such, the entire community is rural exception land to which the Agricultural and Forestry goals (Goals 3 and 4) no longer apply. The criteria for a zone change are considered below.
4. The Applicant intends to use the subject property as an office for the owner’s business, Patient Support Services USA, which provides services to assist clientele in obtaining Social Security, Disability, and Medicare benefits. The use of the subject property in this manner is consistent with other businesses within the Brooks Commercial Center.
5. While OAR 660-022 establishes the standards for planning and zoning of unincorporated communities, it doesn’t provide specific criteria for changing the zone of a property within a community. In this case, the Applicant proposes to change the zone from AR to CC. Both zones have been acknowledged by DLCD as complying with the rural community rule and either is able to be applied to the property under the rule. The zone change process is subject to ORS 197.610-197.625, the post-acknowledgement amendment process. While that is the process being followed, there are no specific criteria for this zone change in that statute.

COMPREHENSIVE PLAN AMENDMENT

6. The subject property is located in a rural community and is part of the Brooks-Hopmere Community Plan. According to the MCPP, the rural communities should retain their rural characteristics by allowing those activities that are consistent with a low-density rural community and the unincorporated communities rule.
7. The proposed use, any uses allowed in the CC zone, is consistent with the Brooks-Hopmere Community Plan land use planning considerations and development standards:

A. Land Use and Transportation

1. *County plans and land use regulations shall ensure that new uses authorized within the Brooks-Hopmere Community do not adversely affect agricultural uses in the surrounding EFU areas.*

The CC zone was acknowledged by DLCD as a zone appropriate to be applied in an urban unincorporated community. The uses in the CC zone are limited to small scale uses that have minimal impact on surrounding resource land. The intended use of the subject parcel as an office for professional services is not anticipated to have any adverse effect on agricultural uses in the surrounding area. The subject property is not located adjacent to any parcels in agricultural use. This policy is satisfied by the proposal.

2. *New development shall be reviewed to ensure that it will not result in the capacity of the transportation system within the community being exceeded.*

The Applicant's intended use is as an office for professional services. The Applicant states that fewer than 10 vehicles per day will visit the property for business and that this will not exceed the capacity of Brooklake Road. This policy can be satisfied by the proposal.

3. *New development shall be limited to prevent excess demand on the Brooks Community Sewer System.*

Commercial uses allowed in the CC zone are likely to require water or sewer services at the same or a lower rate than the existing dwelling. In addition, the CC zone itself implements this policy because it contains standards for development to ensure a proposed use in the zone undergoes a review of sewer capacity before it is able to be established. This policy can be satisfied by requiring a review of sewer capacity before establishment of any commercial activities on the property as a condition of any approval.

4. *Parcels subject to a Limited Use overlay zone designation that was based on a reasons exception to statewide Goal 3 prior to adoption of the Brooks-Hopmere Community Plan shall continue to be subject to the limitations of the overlay zone.*

This property was not subject to a Limited Use Overlay Zone designation upon the adoption of the Brooks-Hopmere Community Plan based on a reasons exception to statewide Goal 3. This policy does not apply.

B. Utilities

1. *New uses or expansion of existing uses requiring land use approval in Brooks-Hopmere shall be approved only upon confirmation from the Brooks Community Sewer District that it can provide sewer services to the property, unless an on-site system has been approved by Marion County or the Oregon Department of Environmental Quality.*

Commercial uses allowed in the CC zone are likely to require water or sewer services at the same or a lower rate than the existing dwelling. In addition, the CC zone itself implements this policy because it contains standards for development to ensure a proposed use in the zone undergoes a review of sewer capacity before it is able to be established. The property is currently serviced by the Brooks Community Sewer District. This policy can be satisfied by requiring a review of sewer capacity before establishment of any commercial activities on the property as a condition of any approval.

2. *Industrial uses that require water as part of their industrial or manufacturing processes shall be required to demonstrate a capability for on-site sewage disposal.*

If any industrial uses allowed in the CC zone are proposed, the proposal can be reviewed for compliance with this policy. In addition, the CC zone itself implements this policy because it contains standards for development to ensure a proposed use in the zone undergoes a review of sewer capacity before it is able to be established. This policy can be satisfied by requiring a review of sewer capacity before establishment of any industrial activities on the property as a condition of any approval.

8. In addition to the policies in the Brooks-Hopmere Community Plan, policies in the Rural Development element of the Marion County Comprehensive Plan apply:

General Policies

Rural industrial, commercial and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.

Brooks-Hopmere is an urban unincorporated community recognized by OAR 660-022. The community, and the zoning that applies in the community, ensure that the industrial, commercial and public uses are suited to the location of the community and compatible with existing rural developments and agricultural goals and policies. This policy is satisfied.

Rural Development Policies

1. *Where there is a demonstrated need for additional commercial uses in rural Marion County they should be located in designated unincorporated communities.*

The use of the property is proposed to be limited to the commercial uses allowed in the CC zone. The property is located in the Brooks unincorporated community. The proposal complies with this policy.

2. *The boundaries of identified unincorporated communities shall not be expanded to accommodate additional development.*

The boundaries of the community are not being expanded by this proposal. This policy does not apply.

3. *Service districts within unincorporated communities may be created and expanded to serve the entire designated rural community; however, services shall not be extended outside of the community unless necessary to correct a health hazard.*

The boundaries of the service district community are not being changed or expanded by this proposal. This policy does not apply.

4. *Public facilities in rural communities and rural service centers should be designed to service low density rural development and not encourage urbanization.*

The proposed use will be served by the existing well on the property and limited by the available capacity of the Brooks Sewer District. This policy is satisfied.

5. *Additional residential development should be discouraged within Interchange District zones at rural service centers. Only rural service businesses and related uses should be located at these centers.*

The property is in an unincorporated community - not a rural service center. This policy does not apply.

6. *Zoning ordinance provisions shall ensure that new uses permitted in unincorporated communities will not adversely affect agricultural and forestry uses.*

The CC zone was acknowledged to be appropriate to implement the rural communities rule in the urban unincorporated community of Brooks-Hopmere. It contains a set of uses limited in size and nature to ensure the property remains rural and compatible with surrounding uses. The zoning proposed to be applied to the property ensures that this policy is satisfied.

9. **Proposals to amend the Comprehensive Plan must be consistent with the Statewide Planning Goals:**

- **Goal 1: Citizen Involvement.** The notice and hearings process provides an opportunity for citizen involvement.
- **Goal 2: Land use Planning.** The subject application would change the zoning within an urban unincorporated community, an acknowledged exception area.
- **Goal 3: Agricultural Lands.** Since the property is within an urban incorporated community, this goal no longer applies.
- **Goal 4: Forest Lands.** Since the property is within an urban incorporated community, this goal no longer applies.
- **Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources.** The Marion County Comprehensive Plan does not identify any significant open spaces, scenic and historic areas and natural resources on the subject property.
- **Goal 6: Air, Water and Land Resources Quality.** The subject property is not within an identified air quality area. The property is not in the sensitive groundwater overlay zone.
- **Goal 7: Areas Subject to Natural Disasters and Hazards.** The subject property is not within an identified floodplain or geologic hazards area. This goal is not applicable.
- **Goal 8: Recreation Needs.** No recreational uses of the property are proposed in conjunction with this application. This goal does not apply.
- **Goal 9: Economic Development.** Because this goal focuses on commercial and industrial development, primarily within an urban growth boundary, it does not apply to this proposal. However, the proposal would provide an economic service to area residents and businesses.
- **Goal 10: Housing.** This goal applies to housing within an urban growth boundary and, thus, does not apply to this proposal.
- **Goal 11: Public Facilities and Services.** The subject parcel can be served by the usual rural facilities, such as a roadway, telephone and electrical service. While water and sewer service area available to the property, the proposed use does not require it. This goal is met.
- **Goal 12: Transportation.** The Applicant describes how the property would generate a minimal amount of additional traffic onto Brooklake Road. Additionally, the property is served in the area by an adequate roadway network in the area. This goal is met.
- **Goal 13: Energy Conservation.** The energy use of the property will be minimal with the proposed use. This goal is met.
- **Goal 14: Urbanization.** The Brooks-Hopmire Urban Unincorporated Community is rural exception land not subject to the urbanization goal.

10. **All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). DLCD was notified as required by State Law and did not comment prior to this report being prepared.**

11. The MCCP establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer properties will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established in Marion County Code Chapter 17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 123 of the MCRZO.
12. Approval of the Comprehensive Plan Amendment is recommended.

ZONE CHANGE

The criteria for a zone change are found in the Marion County Code Chapter 17.123.060:

- A. *The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and*
 - B. *The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*
 - C. *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and*
 - D. *The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and*
 - E. *If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*
13. As described above, the CC zone implements the Commercial designation in an unincorporated community. The proposal is consistent with applicable goals in the Brooks-Hopmore Community Plan and the Marion County Comprehensive Plan. The Applicant describes how the zone change is consistent with surrounding uses and the density and pattern of development in the area. Based on the information submitted, it appears there are adequate public facilities, services, and transportation networks in place to serve the proposed use. The CC zone is only permitted in urban communities; so, the proposed use is limited to a very small amount of rural land in the county. The Applicant describes how this location is well suited for the use as other neighboring properties are in a mix of commercial or public uses. The CC is the only zone that implements the Commercial land use designation in an unincorporated community. It appears the use satisfies the criteria for a zone change.

14. Marion County Code 17.176 provides a means to apply a limited use overlay when a new zoning is applied to the property. The purpose of the overlay is described in MCC 17.176.010:

"The purpose of the LU (limited use overlay) zone is to reduce the list of permitted or conditional uses in a zone to those that are suitable for a particular location. Zones permit a number of uses without notification or opportunity for a hearing, because the uses are considered generally acceptable, although type and intensity of activity may vary. Zones also include conditional uses which may be permitted if certain criteria are met. However, on a particular property certain of these uses may conflict with adjacent land uses or may not be considered suitable for a particular site. Rather than deny a zone change because the proposed zone would allow an objectionable permitted or conditional use, the limited use overlay can be used to identify the appropriate uses and either require a conditional use permit for other uses normally permitted in the zone or delete objectionable permitted or conditional uses from the zone."

In this case, it is not necessary to apply a limited use overlay to the subject property. The intensity of the activity in the CC zone is inherently limited due to the nature of the zone being a rural zone that complies with the rural communities rule for scale and size of use. In addition, the zone itself contains conditions which can be applied when the zone abuts a residential zone to ensure the use is compatible with that zoning, which will be considered below. Finally, the zone also contains property development standards in MCC 17.164.060 which must be considered regarding traffic and sewage disposal before uses can be established. These standards are applied at the time of development of the property through the building permit process:

"G. Traffic. Any new or expanded use shall demonstrate that the new development will be consistent with the identified function, capacity, and level of service of transportation facilities serving the site. A transportation impact analysis approved by the Marion County department of public works may be required prior to building permit approval."

H. Sewage Disposal. Any new or expanded use shall demonstrate that the new development will not exceed the existing carrying capacity of the community sewage disposal system or has an on-site sewage disposal site approved by Marion County or the Department of Environmental Quality. "

15. MCC 17.143.050 provides conditions that may be imposed where the zone change to CC zone abuts a residential zone:

"In any zone change or reclassification of property to an CC zone where the territory proposed to be changed abuts upon a residential zone, or abuts upon a street or alley which would be the boundary line between the proposed CC zone and the residential zone, conditions to preserve neighborhood qualities may be imposed by the governing body relating to:

- A. Size and location of signs;*
- B. Size, type and location of outdoor lighting;*
- C. Landscaped areas;*
- D. Screening;*
- E. Building setbacks;*
- F. Ingress and egress for industrial uses."*

The subject property abuts residential properties to the north and west. The Applicant states that any sign on the property would be on Brooklake Road, not visible to the neighboring residential property. Lighting will be designed to avoid reflection on the residential property. Landscaping will be maintained adjacent to the residential property and provide adequate screening. A building on the CC property will maintain the required setback of 10 feet. Access to the property will be from Brooklake Road and not affect the residential property to the north or west. Parking must be accommodated onsite as no business parking may occur within the public right-of-way on Brooklake Road. No parking over the existing septic tank is allowed.

16. The proposed zone change zone is recommended.

VII. Recommendation

It is hereby found that the Applicant has met the burden of proving the applicable standards and criteria for approval of a comprehensive plan amendment from Rural Residential to Commercial, and has met the burden of proving the applicable standards and criteria for a zone change from Acreage Residential (AR) to Community Commercial ("CC") within the Brooks-Hopmere community planning area of Marion County on a .16 acres parcel located at 4965 Brooklake Road NE, Brooks, Marion County, Oregon, (Tax Lot No. 2600 of Marion County Assessor's Map 06-02W-17DB).

Therefore, the hearings officer recommends that the Marion County Board of Commissioners GRANT the comprehensive plan amendment and the zone change applications, subject to the conditions set forth below. The conditions are necessary for the public health, safety, and welfare.

- A. Any sign on the property shall be placed so that it is visible from the Brooklake Road frontage.
- B. Lighting shall be directed away from the neighing residential property.
- C. Landscaping shall be maintained or provided adjacent to the residential property adequate to provide screening from any industrial use (a six foot fence, wall or hedge).
- D. Prior to establishing any industrial uses and prior to application for building permits, apply for review of onsite sewage treatment capacity.

- E. Prior to establishing any commercial uses and prior to application for building permits, review sewer capacity and submit evidence that Brooks Community Sewer System will serve the new use.

VIII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED this 25th day of October, 2021.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing recommendation on the following persons:

Christopher B. Matheny
Fetherston Matheny LLC
PO Box 2206
Salem, OR 97308-2206

Ray Reid – Attorney
Deep Lake Investments LLC
960 Liberty ST SE Ste 110
Salem, OR 97302

Deep Lake Investments LLC
4965 Brooklake RD NE
Salem, OR 97305

Destiny Schuster
PO Box 9245
Salem, OR 9305

Matt Schuster
PO Box 9245
Salem, OR 97305

Cipriano Cedillo
1544 Ferry ST SE
Salem, OR 97301

Agencies Notified:

Planning Division

(via email: Planning@co.marion.or.us)

(via email: BReich@co.marion.or.us)

(via email: Lking@co.marion.or.us)

(via email: aSchrems@co.marion.or.us)

Code Enforcement

(via email: lrobinson@co.marion.or.us)

Building Inspection

(via email: deubanks@co.marion.or.us)

(via email: kaldrich@co.marion.or.us)

PW Engineering

(via email: jrasmussen@co.marion.or.us)

Planning@cityofsalem.net


Hornerd@keizer.org

Andrew@Friends.or

Brooks Community Service District

(via e-mail: service_districts@co.marion.or.us)

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 26 day of October, 2021 and that the postage thereon was prepaid.


Sandy Benninger
Administrative Assistant to the
Hearings Officer