



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 22, 2023

Department: Public Works Agenda Planning Date: March 9, 2023 Time required: 30 min

Audio/Visual aids: None

Contact: Lindsey King Phone: 503-566-4162

Department Head Signature: [Handwritten Signature]

TITLE: Public Hearing for Zone Change/Comprehensive Plan Amendment (ZC/CP) Case 22-004/Rafael Hernandez Mercado

Issue, Description & Background: Rafael Hernandez Mercado submitted an application to change the Comprehensive Plan designation from Rural Residential to Community Commercial and change the zone from Acreage Residential (AR) to Community Commercial (CC) on a parcel of 0.69-acres located at 8792 Portland Road NE, Salem. (T6S, R2W, Section 17DC, Tax Lot 200). The hearings officer conducted a public hearing on the application on January 5, 2023, and on January 30, 2023, 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 that the request to change the Comprehensive Plan designation from Rural Residential to Community Commercial and change the zone from Acreage Residential to Community Commercial be approved.

List of attachments: Hearings officer's recommendation.

Presenter: Jared Bradford

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

Copies to: Jared Bradford - JBradford@co.marion.or.us Lindsey King - LKing@co.marion.or.us Brandon Reich - BReich@co.marion.or.us

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the) Case No. ZC/CP 22-004
Application of:) **COMPREHENSIVE PLAN**
RAFAEL HERNANDEZ MERCADO) **AMENDMENT / ZONE CHANGE**

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the Application of Christopher B. Matheny on behalf of Rafael Hernandez Mercado to change the comprehensive plan designation from Rural Residential to Community Commercial with an exception to Goal 3 and to change the zone from AR (Acreage Residential) to CC (Community Commercial), on a 0.69-acre parcel located at 8792 Portland Road NE, Salem. (T6S, R2W, Section 17DC, Tax Lot 200).

II. Relevant Criteria

The standards and criteria relevant to this Application are found in the Marion County Comprehensive Plan (Rural Development Policies and Rural Commercial Policies), and the Marion County Code (MCC) Title 17, especially MCC 17.123 (Zone Change Procedure), MCC 17.128 (Acreage Residential), MCC 17.143 (Community Commercial). Policies relevant to this Application are also found in the Brooks-Hopmere Community Plan Policies.

III. Public Hearing

A public hearing was held on this matter on January 5, 2022. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the Application:

- | | | |
|----|--------------------------|--------------------------------------|
| 1. | Jarrold Bradford | Marion County Planning Division |
| 2. | Nicholas A. Rhoten | Attorney for Applicant (Matheny Law) |
| 3. | Rafael Hernandez Mercado | Applicant |
| 4. | John Rasmussen, PE | Marion County Public Works |

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

IV. Executive Summary

The Application of Rafael Hernandez Mercado seeks to change the comprehensive plan designation from Rural Residential to Community Commercial with an exception to Goal 3 and to change the zone from AR (Acreage Residential) to CC (Community Commercial), on a 0.69-acre parcel located at 8792 Portland Road NE, Salem. The Applicant proposes and intends to use the subject property as an administrative office for his business, in addition to using it for parking and storage of business equipment. The Applicant has established compliance with all applicable 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 finding of fact:

1. The subject property consists of 0.69 acres designated as 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 8792 Portland Road NE, Salem, approximately 745 feet south of the intersection of Portland Road 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.
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 commented:

ENGINEERING CONDITIONS

Condition A – Prior to issuance of building permits for the commercial change-in-occupancy, design and permit urban frontage improvements along the subject property Portland Road frontage to MCPW and ODOT Standards. Prior to issuance of a Certificate of Occupancy, construct the improvements. Improvements are anticipated to include curb/gutter, sidewalk, and closed system drainage.

Brooks-Hopmere is designated as an Unincorporated Community. Nexus for the above Condition is the proposed commercial use of the subject property and the need for urbanization of the surrounding Community area.

***Condition B** – Prior to issuance of a Certificate of Occupancy for the commercial change-in-occupancy, contribute a proportional share financial contribution toward identified ramp upgrades at the I-5 interchange including Huff Avenue / Brooklake Road intersection improvements, based upon a confirmed traffic generation estimate net increase, if any, above and beyond strictly residential usage.*

Nexus for this Condition is the contribution of proposed development traffic to the ramps and adjacent intersection, with said ramps exceeding both Marion County and ODOT operating standards. A discussion of these intersections is included in a sub-area plan in the Marion County Rural Transportation System Plan (RTSP). The land use application narrative noted anticipated visiting traffic. However, the narrative did not disclose the number of employees, nor number and types of vehicles used in the operation of the business that may originate from the property, which may result in a higher total number of Average Daily Trips. The foregoing information will be required in the form of a Traffic Statement as part of the evaluation process.

ENGINEERING REQUIREMENTS

- C. Prior to or at the time of application for building change-in-occupancy, and / or any planned redevelopment, submit a civil engineered site plan to MCPW Engineering for review and approval. The land use application site plan indicates currently vegetated areas to become driveway and parking.
- D. Development and/or redevelopment of the property may trigger MCPW Engineering stormwater detention requirements for a total of 0.5-acre plus of development.
- E. The subject property is within unincorporated Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building change-in-occupancy.
- F. Applicant shall meet ODOT requirements.

ENGINEERING ADVISORIES

- G. Portland Road is under the jurisdiction of ODOT.
- H. ODOT may have more stringent stormwater detention standards, including water quality treatment requirements for further development of this property that may discharge directly to Portland Road.
- I. Sanitary service to the subject property is provided by the Brooks Sewer District. Shane Ottosen, MCPW Engineering Capital Projects, is District Engineer.

J. PW Engineering has no action items for approval of the proposed Zone Change itself.

Marion County Building Division commented:

If the property and/or business will be open to the public, a change of occupancy permit would be required IF they will be accessing a building for business needs. Any other future development and/or utilities on private property may require separate permits as well.

Brooks Service District commented:

The property owner will need to apply to the district to evaluate proposed use and existing sewer capacity.

Oregon Department of Transportation commented:

No comments regarding the zone change/comprehensive plan change. If the county requires frontage improvements or a right-of-way dedication, the applicant will need to work with ODOT for approval. See file for full comments.

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

6. The subject property includes manufactured home and one garage connected to a workshop. No one resides in the manufactured home or on the subject property. Behind the garage and shop is an open field. There is a gravel driveway with access to Portland Road. The subject property is essentially flat.
7. The adjacent property to the north is utilized for the storage of vehicles and other equipment. The parcel further north is used car lot. Properties across Portland Road to the west include businesses such as car dealerships, contractors, auto repair and restoration, a gas station, hardware store and a glove company.
8. Rafael Hernandez Mercado testified that he is the owner of the land located at 8792Portland Road, and the owner of Oregon Portable Toilets, LLC, which serves Marion County and the Brooks Community, primarily in agricultural operations.
9. Mr. Mercado stated that there will be fewer than five vehicles accessing the property, which is no more than residential use of the property.
10. Applicant's representative requested that proposed conditions of approval F and G not be included as imposition of the conditions would be outside the scope of authority with respect to this Application. Mr. Rhoten stated although it is understandable why conditions of approval F and G would be stated, the conditions are not necessary for consideration of a comprehensive plan amendment and/or consideration of a zone change.

11. John Rasmussen, PE, is a civil engineer with the Marion County Public Works. Mr. Rasmussen stated that he prepared the internal memo that includes advisory information which form the basis of proposed conditions F and G. Mr. Rasmussen stated that ODOT has already widened Portland Road, and that the improvements will include curb, gutter, and sidewalks. Mr. Rasmussen suggested that the proposed conditions F and G be included as advisories as the considerations in proposed conditions F and G are not required for the comprehensive plan amendment and zone change analysis, and are related to the issuance of building permits and change in occupancy that will be considered with the application of the conditional use permit

VI. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving compliance with all applicable standards and criteria.

BROOKS-HOPMERE COMMUNITY PLAN

2. The property is within the urban unincorporated community of Brooks-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. For the purposes of this application, the criteria for comprehensive plan and zone change will be considered, below.
3. 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.
4. Any uses allowed in the CC zone, are consistent with the Brooks-Hopmere Community Plan land use planning considerations and development standards. There are a number of comprehensive plan policies in the Brooks-Hopmere Community Plan that apply to a zone change:

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 subject parcel abuts a single parcel that is zoned for farm use, specifically Exclusive Farm Use (EFU) zone. The proposed zone change from AR to CC would still require setbacks for any structure in the CC zone from the abutting EFU zoned parcel. The

require minimum setbacks for any proposed structure in the CC zone would be at least a 30-foot setback. The intended use of this property will not impact the agricultural use as the property is intended to be for low impact administrative work and equipment storage.

Surrounding uses and zoning will be consistent with the proposed zone change. Specifically, the subject property's location is surrounded by dwellings, properties used for storage, and other community and commercial uses that do not interfere with agricultural activities.

The proposed use for this parcel is for an administrative office for the applicant's business, Oregon Portable Toilets, Inc., while also using it for the storage of portable toilets, and other business equipment. This proposed use would require a conditional use permit that would incorporate conditions for the proposed use in the changed zone.

Specifically, the rental of portable toilets falls under Standard Industrial Classification (SIC) 73. According to Marion County Code (MCC) 17.143.030, this is considered a conditional use which would require a conditional use permit. The potential conditions for a conditional use permit would require that the proposed development and use adhere to the Approval Standards for Conditional Uses, Property Development Standards, Landscaping, and Traffic Impact Analysis criteria found in MCC 17.143.040 and MCC 17.143.060 – 080. As result of the conditional use criteria, it would be unlikely to impact agricultural uses in the surrounding area because the parcel would be used for office space and storage of equipment. This policy can be satisfied.

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 is proposing to use the parcel as a site for an office for his business and as storage for portable toilets and for other business equipment. The applicant states that fewer than 5 vehicles per day will visit the property for business and that this will not exceed the capacity of Portland Road NE. The proposed use for this parcel will require a conditional use permit and a sufficient review will be completed at that time. Therefore, this policy is satisfied.

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

The applicant's representative has stated that the limitations of the building size and allowed use in the CC zone coupled with the relatively small size of the property will prevent excess demand on the existing sewer system. 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. *No parcels will be rezoned to multifamily in the Brooks-Hopmere Community unless the applicant can demonstrate there will be no unacceptable adverse impact to the transportation system.*

The application does not request rezoning to multifamily. Therefore, this policy is not applicable.

5. *Marion County will adopt performance-based criteria and procedures to create trip allocation bank to provide flexibility in the development of the Norpac site, while still ensuring adequate performance of the transportation system.*

The Norpac site is not involved in this application. Therefore, this policy is not applicable.

6. *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.*

As stated above, 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 can 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.

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.

DEVELOPMENT POLICIES OF THE COMPREHENSIVE PLAN

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

A. General Policies

1. *All land divisions should be reviewed by Marion County of their compatibility with County goals and policies.*

This application does not involve a land division, and therefore this policy is not applicable.

2. *“Strip-type” commercial and residential development along roads in rural areas shall be discouraged.*

This application does not seek a “strip-type” development on the subject property. The structures on the property will be utilized to create an office and storage for the owner's business. This policy is satisfied.

3. *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.

B. 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 will be limited to the commercial uses allowed in the CC zone. The property is located in the Brooks unincorporated community. This policy is met.

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 property being proposed to be zone changed is already located within the Brooks Community Sewer District. The use being proposed is for an administrative office for the applicant's business and storage of equipment and toilets, related to the business. The proposed use is allowed within the CC which is a zone in the Brooks Community Sewer District. The proposed zone change, and use would not differ from already existing uses and would be considered a small-scale, low impact use intended to service rural areas which would not encourage urbanization, which is defined as urban development stemming from urban areas that development in a scattered and unorderly manner. Therefore, 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 proposed zone change is to change an AR zoned parcel to CC zoned parcel. Therefore, 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 community's 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.

7. *Multi-family use shall not be permitted in Rural Communities or Rural Service Centers.*

Multi-family use is not anticipated or proposed, and is not allowed in the proposed CC zone. This policy is met.

8. Policy 8 relates to several "Interchange Districts." Brooks is not one of them. This policy is not applicable.

9. Policy 9 relates to consideration of expansion of the Interchange Districts. This policy is not applicable.

STATEWIDE PLANNING GOALS

6. 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. Additionally, the proposed zone change can be appealed. This ensures that the public can participate in the process of deciding whether or not to grant the proposed zone change.

Goal 2: Land Use Planning. The subject application would change the zoning within an urban unincorporated community, an acknowledged exception area. The process of potentially changing the Marion County Comprehensive Plan and zoning, is part of an established land use planning process. This process also includes involving the citizens of Marion County who may have the potential to be affected by the land use decision, agencies within Marion County, and various state agencies by notifying those stakeholders of the decision and giving them a chance to comment and or appeal.

Goal 3: Agricultural Lands. Since the property is within an urban incorporated community, this goal no longer applies. The subject site is part of the Brooks-Hopmere exception area and is therefore exempt from the requirements of Goal 3. Much of the adjacent land is zoned for commercial and residential uses. In fact, the only parcel that is in active farm use and is adjacent to the subject parcel is one to the east. The development standards will help preserve any current or future farm use.

Goal 4: Forest Lands. Since the property is within an urban incorporated community, this goal no longer applies. The subject parcel is located in the Brooks-Hopmere unincorporated community. Most of the surrounding land is either in farm use or is a mix of residential, commercial, public, and industrial uses. There are no forest uses in the immediate area and none that are adjacent to the subject parcel.

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. As a result, the subject parcel is not near nor adjacent to any of these designated areas.

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. Furthermore, the proposed use for the property is for an office for the applicant's business. This goal does not apply.

Goal 7: Areas Subject to Natural Disasters and Hazards. The subject property is not within an identified floodplain or geologic hazards area. Areas that are designated as being in a floodplain or as a geological hazard are not near the subject parcel. In fact, there are no known floodplain or geologic hazards area within the Brooks-Hopmere area.

Goal 8: Recreation Needs. No recreational uses of the property are proposed in conjunction with this application. The applicant is proposing to use the property as a base of operations for his business and for storage for his business. This goal does not apply.

Goal 9: Economic Development. Because this goal focuses on commercial development, primarily within an urban growth boundary, it does not apply to this proposal. However, the proposal would provide a service to the local community and businesses.

Goal 10: Housing. This goal applies to housing within an urban growth boundary and, thus, does not apply to this proposal. Brooks-Hopmere is an unincorporated community that is just north of the Salem-Keizer Urban Growth Boundary and is not in any other urban growth boundary.

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. Additionally, the Brooks Community Service District has stated that the applicant will need to apply to the district to evaluate the proposed use and existing sewer capacity. This goal is met.

Goal 12: Transportation. The applicant anticipates that the proposed use would generate approximately 5 vehicle visits per day and would generate a minimal amount of additional traffic onto Portland Road NE. Additionally, the property is served in the area by an adequate roadway network in the area and frontage improvements may need. This goal is met.

Goal 13: Energy Conservation. The energy use of the property will be minimal with the proposed use. The applicant is proposing to use the parcel as a site for an administrative office and storage for portable toilets and other equipment related to the applicant's business. The applicant's representative has indicated that the energy use will be minimal and that allowing the business to operate in a geographically convenient location could conserve energy. This goal is met.

Goal 14: Urbanization. The Brooks-Hopmere Urban Unincorporated Community is rural exception land not subject to the urbanization goal. Additionally, the subject parcel is currently zoned for residential and is being proposed to be changed to a commercial zoning. The proposed zone change will not convert rural or farm or forest land to an urban zoning. This goal does not apply.

7. 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.

8. 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.
9. Comprehensive plan amendment approval is recommended.

ZONE CHANGE

10. 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*

As described above, the CC zone implements the Commercial designation in an unincorporated community. The proposal is consistent with applicable goals in the Brooks-Hopmere Community Plan and the Marion County Comprehensive Plan.

- B. *The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*

The proposed change is appropriate considering the surrounding land uses, the density, and pattern of development in the area. Along Portland Road NE in the Brooks-Hopmere area, the majority of the zoning is CC; these include a variety of businesses. Additionally, the general vicinity of the subject parcel consists of a variety of commercial uses.

- 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*

The subject parcel is located on Portland Road NE, which is classified as an arterial road. According to the applicant, the proposed use of the subject parcel will not increase the traffic significantly and not to a level Portland Road NE cannot sustain. Additionally, the property has sanitary services from the Brooks-Hopmere Service District and contains a private well. It is also served by the Marion County Fire District #1 and the Gervais School District. Therefore, the subject property has the public facilities, services, and transportation networks to accommodate the proposed use.

- 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*

Applicant states that there is very little or no land available for commercial in the Brooks-Hopmere area and since the adoption of the Brooks-Hopmere Plan in 2000, only 0.47 acres were available for commercial use. The applicant also states that there is existing commercial properties being underutilized, but those already contain businesses. Staff has concluded that there is one parcel that consists of 1.26 acres. As a result of the lack of available commercial land in the Brooks-Hopmere area, this criterion is satisfied.

- 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.*

Most of properties in the Brooks-Hopmere unincorporated community along Portland Road consist of parcels zoned CC. The uses also consist of commercial uses. The proposed comprehensive plan and zone change will not create a parcel that is inconsistent or more intensive use with the surrounding uses. As proposed, the subject parcel will contain an office for the applicant's business and storage of business materials.

11. 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."

For the proposed zone change and use, staff does not believe it is necessary to apply a limited use overlay to the subject property because 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 community's rule for scale and size of use. Further, 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. The zone also contains

property development standards in MCC 17.143.060 which must be considered regarding height, setbacks, lot area, parcel coverage, parking, and access to state highways before uses can be established. These standards are applied at the time of development of the property through the building permit process:

"A. Height. The maximum height of any structure shall be 35 feet.

B. Setbacks.

1. Front Yard. No structure other than a fence, wall, or sign shall be located closer than 20 feet from a public right-of-way. When by ordinance a greater setback or a front yard of greater depth is required than specified in this section, then such greater setback line or front yard depth shall apply (see Chapter 17.112 MCC).

2. Side and Rear Yard. No side or rear yard setback is required where abutting property is zoned for commercial or industrial use. Where not abutting a commercial or industrial zone, structures other than fences, walls, and signs shall comply with the following setbacks:

a. Residential or public zone: 10 feet;

b. Farm or forest zone: 30 feet.

3. Parking. Parking spaces may abut public rights-of-way and side and rear property lines adjacent to commercial, industrial, or public zones, subject to the landscaping requirements in MCC 17.143.070. Parking spaces shall be set back a minimum of 10 feet from residential, agricultural, and forest zones.

C. Lot Area.

1. Rural Communities. The building site shall be of sufficient size to accommodate on-site sewage disposal and water systems unless these services are provided by a public or community source or can be accessed by easement, required parking, landscaping, and yard areas.

2. Urban Communities. The minimum size of any new lot or parcel shall be one acre.

D. Parcel Coverage.

1. Rural Communities. No more than 60 percent of a lot or parcel shall be covered by all buildings located thereon.

2. Urban Communities. No more than 75 percent of a lot or parcel shall be covered by all buildings located thereon.

E. Parking. The off-street parking and loading requirements of Chapter 17.118 MCC apply.

F. Access to State Highways. Any new or expanded use with frontage on a state highway shall demonstrate that the property has access approved by the Oregon Department of Transportation or approved access to an alternative public right-of-way."

12. 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 south. The applicant has not proposed any signs on the property but will be subject to the conditions of approval. Lighting will be designed to avoid reflection on the residential property. Landscaping will be maintained adjacent to the residential property and provide adequate screening. Any building on the CC property will maintain the required setback of 10 feet from the north, south, and east property lines and 20 feet from the west property line. Access to the property will be from Portland Road NE and not affect the residential property to the north or south. Parking must be accommodated onsite as no business parking may occur within the public right-of-way on Portland Road NE. No parking over the existing septic tank is allowed. This criterion will be addressed during the Conditional Use permitting.

13. The proposed zone change is recommended.

VII. Recommendation

It is hereby found that Applicant has met the burden of proving the applicable standards and criteria for approval of the amendment of a comprehensive plan designation from Rural Residential to Community Commercial with an exception to Goal 3 and to change the zone from AR (Acreage Residential) to CC (Community Commercial) are met. Therefore, the Hearings Officer recommends that the Marion County Board of Commissioners **GRANT** the comprehensive plan amendment and zone change applications, subject to the conditions set forth below (A-E). The conditions (A-E) 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 Portland Road NE frontage.
- B. Lighting shall be directed away from the neighboring residential property.
- C. Landscaping shall be maintained or provided adjacent to the residential property adequate to provide screening from any commercial use (a six-foot fence, wall or hedge).
- D. Prior to establishing any commercial 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.


Proposed conditions of approval F and G are NOT recommended to be included as conditions of approval by the Board of Commissioners because the proposed conditions would be considered with respect to an application for a Conditional Use Permit.

- 1. Prior to issuance of building permits for the commercial change-in-occupancy, design and permit urban frontage improvements along the subject property Portland Road frontage to MCPW and ODOT Standards. Prior to issuance of a Certificate of Occupancy, construct the improvements. Improvements are anticipated to include curb/gutter, sidewalk, and closed system drainage.
- 2. Prior to issuance of a Certificate of Occupancy for the commercial change-in-occupancy, contribute a proportional share financial contribution toward identified ramp upgrades at the I-5 interchange including Huff Avenue/Brooklake Road intersection improvements, based upon a confirmed traffic generation estimate net increase, if any, above and beyond strictly residential usage.

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 at Salem, Oregon, this 30th day of January, 2023.



 Jill F. Foster
 Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Rafael Hernandez Mercado
3092 Hammel Street NE
Salem, OR 97301

Christopher B. Matheny
1644 Liberty Street SE
Salem, OR 97302

Neighborhood Associations:

Roger Kaye
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

Pudding River Watershed Council
(via email: cleanpuddingriver@gmail.com)
(via email: anna@puddingriverwatershed.org)

County Agencies Notified:

Assessor's Office
(via email: assessor@co.marion.or.us)

Tax Collector
(via email: Rweisher@co.marion.or.us)
(via email: NMcFey@co.marion.or.us)
(via email: ADhillon@co.marion.or.us)

Surveyor's Office
(via email: Klnman@co.marion.or.us)

Fire District: Marion County No.
(via email: PaulaS@mcfd.com)

Planning Division
(via email: king@co.marion.or.us)
(via email: JBradford@co.marion.or.us)
(via email: D.hansen@co.marion.or.us)


Building Inspection:
(via email: breich@co.marion.or.us)
(via email: pwoltermara@co.marion.or.us)
(via email: Kaldrich@co.marion.or.us)
(via email: ABammes@co.marion.or.us)
(via email: Ctate@co.marion.or.us)

Public Works LDEP Section
(via email: jrasmussen@co.marion.or.us)
(via email: mcldep@co.marion.or.us)
(via email: JShanahan@co.marion.or.us)

Salem Keizer School District
(via email: sandra_segura@gervais.k12.or.us)

Code Enforcement
(via email: C.Goffin@co.marion.or.us)
(via email: JTaylor@co.marion.or.us)
(via email: rgoe@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 30th day of January, 2023 and that the postage thereon was prepaid.


Kellie Whiting
Administrative Assistant to the
Hearings Officer