



MARION COUNTY BOARD OF COMMISSIONERS

# Board Session Agenda Review Form

Meeting date: January 23, 2019

Department: Public Works      Agenda Planning Date: January 17, 2019      Time required: 15 min.

Audio/Visual aids

Contact: Joe Fennimore      Phone: 503-566-4177

Department Head Signature:

**TITLE** Public hearing for Zone Change/Comprehensive Plan (ZC/CP) Case 18-003/Perez.

**Issue, Description & Background** Ismael and Angela Perez, submitted an application to amend the comprehensive plan designation from Rural Residential to Commercial, and change the zone from AR (ACREAGE RESIDENTIAL) to CC (COMMUNITY COMMERCIAL) on a 0.75 acre parcel at 9160 Portland Road NE, Salem. The hearings officer conducted a public hearing on September 26, 2018, and on December 13, 2018, issued a recommendation that the request be granted subject to meeting certain conditions. The hearings officer found that the proposal satisfied all the comprehensive and zone criteria.

**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:** The Marion County Hearings Officer recommends the request be approved.

**List of attachments:** Hearings officer's recommendation

**Presenter:** Joe Fennimore

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

**Copies to:** Joe Fennimore - gfennimore@co.marion.or.us

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the ) Case No. ZC/CP 18-003  
Application of: ) Clerk's File No.  
ISMAEL AND ANGELA PEREZ ) **Zone Change/Comprehensive  
Plan Amendment**

RECOMMENDATION

**I. Nature of the Application**

This matter comes before the Marion County Hearings Officer on the application of Ismael and Angela Perez to amend the comprehensive plan designation from Rural Residential to Commercial, and change the zone from AR (ACREAGE RESIDENTIAL) to CC (COMMUNITY COMMERCIAL) on a 0.75 acre parcel at 9160 Portland Road NE, Salem, Marion County, Oregon (T6S, R2W, S17AD, tax lot 500).

**II. Relevant Criteria**

The standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP), including the Brooks-Hopmire Community Plan (BHCP), and the Marion County Code (MCC) title 17, especially chapters 17.123 and 17.143.

**III. Public Hearing**

A hearing on this matter was held on September 26, 2018. The Planning Division file was made part of the record. The following persons appeared at hearing:

- |    |                |  |
|----|----------------|--|
| 1. | Brandon Reich  | Marion County Planning Division              |
| 2. | John Rasmussen | Marion County Public Works Department (MCPW) |
| 3. | Max Hepburn    | MCPW   |
| 4. | John Brosy     | For applicant                                |

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

**IV. 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 0.75 acre property is designated Rural Residential in the MCCP and zoned AR. The property is in the MCCP's Brooks-Hopmire urban unincorporated community (UUC).

2. The subject property is at 9160 Portland Road NE, Salem, on the east side of Portland Road and north side of Ramp Street. The property contains a dwelling, detached garage, and well. Sewer service is provided by the Brooks Community Sewer District.
3. Surrounding properties are zoned AR and CC and developed with a mixture of residential and commercial uses.
4. Applicants ask to change the MCCP designation from Rural Residential to Community Commercial and the zoning from AR to CC.
5. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

Oregon Department of Transportation (ODOT) commented:

- As a land use matter only, ODOT has no objection to the proposed comprehensive plan amendment and zone change.
- The property currently has an access to OR 99E which is presumed permitted consistent with OAR 734-051.
- If frontage improvements are required by the county, the applicant/future developer will be required to obtain appropriate permits from ODOT from construction within state highway right-of-way. Information on the permitting process may be obtained from Robert Earl, District 3 Senior Permit Specialist at [503-986-2902](tel:503-986-2902) ([robert.earl@odot.state.or.us](mailto:robert.earl@odot.state.or.us))
- The application does not currently propose any development consistent with the revised comprehensive plan and zoning designations. It is likely that any development consistent with the CC zoning district will result in a "change of use" as that term is used in OAR 734-051. In that case, the applicant/future developer will be required to apply for and obtain a new or amended approach road permit for access to OR 99E. To support that application, ODOT will require preparation of a transportation impact analysis (TIA) to determine potential impacts of the future development and any improvements that would be necessary.

Marion County Public Works (MCPW) Land Development and Engineering Permits (LDEP) asked to include A through D below as conditions of the land use decision:

*Condition A – Prior to application for building permits for redevelopment of the property, prepare and submit a Traffic Impact Analysis (TIA) for review and approval, as determined by MCPW Engineering, that addresses traffic impacts for the specific development.*

As required per MCC 17.143.080. MCPW Transportation Planner, Janelle Shanahan, should be contacted at (503) 373-4147 or [JShanahan@co.marion.or.us](mailto:JShanahan@co.marion.or.us) for scoping requirements.

*Condition B – Prior to building permit issuance or establishment of a commercial use on the subject property, contribute a proportional share financial contribution toward identified ramp improvements at the I-5 interchange, based on the proposed increase in traffic generated by the zone change to commercial use to be confirmed in a TIA.*

Nexus for this Condition is the proposed development will add traffic to the I-5 Interchange ramps, which exceed 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).

*Condition C – Prior to building permit issuance or establishment of a commercial use, dedicate a 30-foot corner radius at the SW property corner.*

Nexus is to satisfy MCC 17.110.790.

*Condition D – Prior to building permit issuance or establishment of a commercial use, design, permit and construct urban frontage improvements along the subject property Ramp Street and Portland Road frontages to Marion County Public Works and ODOT Standards, respectively, including pavement widening, tapers, striping, curb/gutter, sidewalk including ADA corner ramp, closed system drainage, and landscape strip.*

Nexus for the above Condition is the commercial intensification of use to the subject property and the need for urbanization of the surrounding area as well as the safety of any visitors to the proposed commercial activity on the property. Neither Ramp Street nor Portland Road have sidewalks for safe travel by pedestrians; the potential for added vehicular and pedestrian traffic to the area justifies these improvements.

#### ENGINEERING REQUIREMENTS

- E. Driveways must meet sight distance, design, spacing, and safety standards [MCC 11.20]. The following numbered sub-requirements apply to access:
- 1) Prior to establishment of a commercial use or in conjunction with application for building permits, whichever occurs first, obtain an Access Permit, and under the Permit relocate the Ramp Street access adjacent to the eastern property line.
  - 2) The relocated Ramp Street access shall be paved for a minimum of 50 feet measured from the edge of pavement, or as incorporated into overall onsite parking with redevelopment.
  - 3) The Portland Road access shall be permanently closed once Ramp Street access is relocated and paved.
- F. Prior to application for building permits, change-in-use, or any planned redevelopment, submit a civil engineered site plan to MCPW Engineering for review and approval.
- G. Development and/or redevelopment of the property will trigger MCPW Engineering stormwater detention requirements.

- H. The subject property is within unincorporated Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits and/or change-in-use, per Marion County Ordinance #00-10R.
- I. Applicant shall meet all of ODOT's requirements.

#### ENGINEERING ADVISORIES

- J. Portland Road is under the jurisdiction of ODOT.
- K. Applicant is advised of a 70-foot Special (centerline/half-width) Setback on Portland Road that may impact future building plans and available space for parking [MCC 17.112.020(F)(2)(a)]. However, ODOT has responded that they will only require 50 feet. Marion County Planning is reportedly in the process of amending the zone code to reflect ODOT's newly clarified stance.
- L. ODOT may have stormwater Water Quality Treatment requirements for further development of this property that may discharge directly to Portland Road.
- M. Sanitary service to the subject property is provided by the Brooks Sewer District. Please contact Bob Pankratz, District Engineer, at MCPW Engineering at (503) 373-4307 or [BPankratz@co.marion.or.us](mailto:BPankratz@co.marion.or.us) for more information.
- N. There is no public water system in Brooks serving this property.

Marion County On-site Wastewater Management Group commented that septic permits may be required and to contact Marion County to discuss any changes to occupancy or use.

Other contacted agencies failed to respond or stated no objection to the proposal.

#### V. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving by a preponderance of the evidence that all applicable standards and criteria 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, 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.

2. Under MCCP plan amendment policy 2, plan changes directly involving five or fewer properties are quasi-judicial amendments. Comprehensive plan amendments are reviewed by zone change procedures established in MCC title 17. A plan amendment application may be processed simultaneously with a zone change request.

The proposed comprehensive plan amendment involves one ownership, is a quasi-judicial plan amendment request and is being processed with a zone change application.

3. The Oregon Department of Land Conservation and Development (DLCD) must be notified of any comprehensive plan amendment. DLCD acknowledged receipt of notice but provided no comments on the proposal.
4. An exception to statewide planning goal 3, Agricultural Lands, was taken for the subject property when the MCCP was approved in the early 1980s as part of the Brooks exception area (MCCP Appendix A, Area 16.4). In 2000, the Brooks, Brooks interchange, and Hopmere exception areas were, with some additional parcels, merged into the Brooks-Hopmere UUC. Residential designation and zoning were applied to the subject property. Applicant now asks to re-designate and rezone the property for commercial use.

#### OAR 660-004-0018

5. OAR 660-004-0018 contains requirements for plan designation and zoning in exception areas:
  - (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.
  - (2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d):
    - (a) That are the same as the existing land uses on the exception site;
    - (b) That meet the following requirements:

- (A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements;
  - (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and
  - (C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;
- (c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22;
  - (d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.
- (3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section (4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands, OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 with regard to urban development on rural land.
- (4) "Reasons" Exceptions:
- (a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.
  - (b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required.
  - (c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.

The 2000 Brooks-Hopmere exception to goal 3 recognized, justified and authorized commercial and residential uses in the exception area. Because commercial designation and zoning are allowed under the current exception, the proposed commercial use of the subject property allows continuation of existing types of development in the Brooks-Hopmere exception area. OAR 660-004-0018(a) is met.

## STATEWIDE PLANNING GOALS

6. Under the M CCP plan amendments section, comprehensive plan amendments must be consistent with statewide planning goals.

*Goal 1: Citizen Involvement.* To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Notice and the hearings process before the hearings officer and BOC provide an opportunity for citizen involvement. Goal 1 is satisfied.

*Goal 2: Land Use Planning.* To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.

Under this goal, each plan and related implementation measure shall be coordinated with the plans of affected governmental units. Affected governmental units are those local governments, state and federal agencies and special districts that have programs, land ownerships, or responsibilities within the area included in the plan. Implementation measures can be site-specific, and applicant proposes a site-specific M CCP amendment. The Planning Division notified Marion County Fire District 1, Gervais School District, the Brooks Sewer District, Marion County departments, DLCD and ODOT of the proposed comprehensive plan amendment. No concerns were expressed but MCPW requested roadway radius dedication as a condition of approval. The BOC will consider all comments in evaluating this application. Goal 2 is satisfied.

*Goal 3: Agricultural Lands.* To preserve and maintain agricultural lands.

The subject property is in an existing exception area. Goal 3 does not apply.

*Goal 4: Forest Lands.* To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

The subject and surrounding properties are not identified as forest lands and no forest use is apparent in the area. Goal 4 is not applicable.

*Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources.* To protect natural resources and conserve scenic and historic areas and open spaces.

No M CCP-identified goal 5 resources are on or near the subject property. Goal 5 is not applicable.

*Goal 6: Air, Water and Land Resources Quality.* To maintain and improve the quality of the air, water and land resources of the state.

The subject property is currently zoned AR and served by the Brooks Community Sewer District. Some commercial uses, such as offices, produce a lower load on the sewer system than residential uses. And, the BHCP requires the sewer district to confirm adequate system capacity before any specific use is allowed. The property contains a well that will provide water service to the site. The low impact uses allowed under the Commercial designation and CC zoning are unlikely to result in significant air emissions. Under established regulations, applicants' proposal will not result in air, water and land resource quality issues. Goal 6 is satisfied.

*Goal 7: Areas Subject to Natural Disasters and Hazards.* To protect people and property from natural hazards.

The subject property is not in an M CCP identified geologic hazard or floodplain area. Goal 7 is not applicable.

*Goal 8: Recreational Needs.* To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

No goal 8 resources are identified on the subject site or implicated by this application. This goal is not applicable.

*Goal 9: Economic Development.* To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

OAR chapter 660, Division 009 does not require or restrict planning for industrial and other employment uses outside an urban growth boundary (UGB), but counties must comply with the division requirements within UGBs. The subject property is not within a UGB. Goal 9 is not applicable.

*Goal 10: Housing.* To provide for the housing needs of citizens of this state.

OAR 660-008 defines standards for compliance with Goal 10 regarding adequate numbers of needed housing units and efficient use of buildable land within urban growth boundaries. The subject property is not within a UGB. Goal 10 does not apply.

*Goal 11: Public Facilities and Services.* 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 Brooks-Hopmere plan has been acknowledged to comply with goal 11. Compliance with the BHCP ensures that Goal 11 is satisfied.

*Goal 12: Transportation.* To provide and encourage a safe, convenient and economic transportation system.

Under OAR 660-012-0060(1), if an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, the local government must put in place measures as provided in the rule, unless the amendment is allowed under other sections of the rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- (b) Change standards implementing a functional classification system; or
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP [transportation system plan]. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.
  - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
  - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
  - (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

The subject property fronts Portland Road NE, an ODOT facility, and Ramp Street, a Marion County Rural Transportation System Plan (RTSP) identified local road. The BHCP transportation planning section refers to a 1999 update of the Brooklake Interchange Management Plan (BIMP) recognizing that full build out of the BHCP area, including the Brooks interchange and the large NORPAC property east of the freeway could make major

intersections within the plan area function poorly by 2015. The BHCP then notes that intensifying the use of any parcels should be approached with caution, and adds a requirement that land use changes resulting in more than minimal added traffic trips require submission of a TIA and mitigation improvements. Applicant submitted a letter from a transportation engineer that states Highway 99E has adequate capacity to handle CC zone uses generated by re-designation and rezoning the subject site. The MCPW representative stated at hearing that he did not dispute the capacity finding, but noted frontage improvements would be required. MCPW requested a condition requiring a TIA and mitigation improvements at time of development. ODOT also commented that a TIA would be required for access improvements. Applicants do not object to TIA and frontage improvement requirements upon development as conditions of approval.

The 2013 RSTP appendix B inventory update (not yet adopted), shows Ramp Street is a local Marion County road with two 4' gravel shoulders and an 18' paved travel surface, within a 60' right-of-way. The road is in good condition and operates at level of service (LOS) A. In rural areas, the county considers LOS E or better as acceptable for unsignalized intersections. However, the county asks applicants to dedicate a 30' right-of-way radius at the corner of the Portland Road-Ramp Street intersection to accommodate frontage improvements and utilities, and to relieve a pinch point at the intersection. Applicants do not object to the proposed condition of approval.

MCPW also noted that the proposed development will add traffic to I-5 Interchange ramps, that exceed both Marion County and ODOT operating standards. MCPW asks, as a condition of any approval, that applicants contribute a proportional share financial contribution toward identified ramp improvements at the I-5 interchange, based on the proposed increase in traffic generated by the zone change to commercial use to be confirmed in a TIA, prior to building permit issuance or establishment of a commercial use on the subject property. Applicants do not object to the proposed condition of approval.

Evidence in the record shows no concern that the proposal would significantly affect Portland Road's or Ramp Street's functional classifications or standards implementing the functional classification of the roads. Nor do comments show concern about significant degradation of the performance of the roads with the proposed conditions of approval accepted at hearing by applicants. It is more likely than not that the proposal will not significantly affect existing transportation facilities by allowing uses or levels of development inconsistent with roadway functional classifications that would degrade the roadways' performance standards, worsen their performance, or otherwise not meet performance standards. Goal 12 is satisfied.

*Goal 13: Energy Conservation.* To conserve energy.

Commercial uses in the BHCP area are kept small by the 8,000 square-foot building limitation. The limit helps ensure low energy commercial uses in the plan area. Goal 13 is satisfied.

*Goal 14: Urbanization.* To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

The Brooks-Hopmere community plan was developed under OAR 660, division 22 that interprets goals 11 and 14 in unincorporated communities. The BHCP was acknowledged to comply with goal 14. Goal 14 is satisfied.

*Goals 15-19, Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.* The subject site is not within the Willamette River Greenway, or near any ocean or coastal related resources. These goals do not apply.

Applicants' proposal is consistent with statewide planning goals.

#### MCCP AMENDMENT

7. The MCCP contains no specific plan amendment review criteria, but an amendment must be consistent with applicable MCCP policies. The BHCP (an adopted part of the MCCP) also contains policies that must be considered.
8. BHCP land use and transportation policies:
  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 property is well-insulated from farm properties in all directions, with the closest farm parcel an EFU-zoned property about 250' to the northeast. The proposal will not interfere with farm uses in the area. This policy is met.

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 findings under statewide planning goal 12 in V(6) above are adopted here by reference. With these findings, this policy is met.

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

Commercial designation and CC zoning allow only low impact commercial uses. The site is currently zoned AR and served by the Brooks Sewer District. It was noted that certain commercial uses, such as offices, would produce a lower load on the sewer system than single family residential use. And, the BHCP requires the Brooks Sewer District to confirm sewer system capacity before any specific use is allowed. With the requirement to have new uses to be reviewed for sewer capacity before establishment, this policy is met.

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.

No multifamily designation or zoning is proposed and none is allowed in the CC zone. This policy is met.

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

The subject property is not in or near the NORPAC site. This policy does not apply.

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 when excepted from farm use. This policy does not apply.

#### 9. BHCP utilities policies

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 designation and CC zoning allow only low impact commercial uses. The site is currently zoned AR and served by the Brooks Sewer District. It was noted that certain commercial uses, such as offices, would produce a lower load on the sewer system than single family residential use. And, the BHCP requires the Brooks Sewer District to confirm sewer system capacity before any specific use is allowed. With the requirement to have new uses to be reviewed for sewer capacity before establishment, this policy is met.

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.

Industrial and manufacturing uses are not allowed or conditionally permitted in the CC zone. This policy is not applicable.

3. Marion County will encourage and support the development of a community water system serving all or a portion of the Brooks-Hopmere community.

This policy is directed to Marion County and is not applicable.

#### 10. MCCP policies:

*General Rural Development Policy 2.* "Strip-type" commercial or residential development along roads in rural areas shall be discouraged.

The subject property is in the Brooks-Hopmere UUC and development was provided for in the BHCP. General rural development policy 2 is satisfied.

*General Rural Development Policy 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.

The Brooks-Hopmere UUC is acknowledged under OAR 660-022. The zoning that applies in the community ensures industrial, commercial and public uses are suited to the location of the community, compatible with existing rural developments and agricultural goals and policies. General rural development policy 3 is satisfied.

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

The proposed property use is commercial and is proposed for the Brooks-Hopmere UUC. Rural development policy 1 is met.

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

This proposal does not expand the Brooks-Hopmere UUC boundaries. Rural development policy 2 does not apply.

*Rural development policy 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 Brooks sewer service district boundaries are not being changed or expanded by this proposal. Rural development policy 3 does not apply.

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

The BHCP is acknowledged as allowing low impact uses by limiting square footage of buildings and percentage of lot coverage. The subject parcel contains a functioning well to supply water for its commercial uses. The subject property is currently served by the Brooks Community Sewer District and, as noted above, some commercial uses will contribute a lesser volume to the sewer facility than the current residential zoning. And, applicant must gain certification from the sewer district that capacity exists to handle

sewage discharge for any proposed use. With current in-place requirements, rural development policy 4 is met.

*Rural development policy 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 subject property is not within the Brooks Interchange area. Rural development policy 5 does not apply.

*Rural development policy 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 as appropriate to implement the rural communities rule in the Brooks-Hopmere UUC. It contains a set of uses limited in size and nature to ensure the property remains compatible with surrounding uses. There are no known forestry uses in the area, and the nearest farmland is insulated from the subject property by a distance of about 250'. Policy 6 is satisfied.

The remaining rural development policies address multifamily housing and interchange issues and are not applicable.

*Rural Services Policy 1:* The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.

The proposed plan designation and zone change will not require water services. Applicant has accepted proposed conditions of approval that will help ensure roadway capacity and safety are preserved. The property is currently served by the Brooks Sewer District and any proposed use will require certification of capacity from the district. Sheriff and fire/life safety services are in place. Electric and telephone services are available in the area. Rural services policy 1 is met.

*Rural Services Policy 2:* It is the intent of Marion County to maintain the rural character of the areas outside of urban growth boundaries by only allowing those uses that do not increase the potential for urban services.

The boundaries and development intensity of the Brooks-Hopmere UUC were planned for and set by the county with adoption of the BHCP. Rural services policy 2 is met.

*Rural Services Policy 3:* Only those facilities and services that are necessary to accommodate planned rural land uses should be provided unless it can be shown that the proposed service will not encourage development inconsistent with maintaining the rural density and character of the area.

The Brooks-Hopmere UUC boundaries and MCC chapter 17.143 for the CC zone were acknowledged as appropriate. Service levels were considered and provisions applied that

ensure appropriate levels of development will not result in an urban density. Rural services policy 3 is met.

*Rural Services Policy 4:* The sizing of public or private service facilities shall be based on maintaining the rural character of the area. Systems that cannot be cost effective without exceeding the rural densities specified in this Plan shall not be approved. The County shall coordinate with private utilities to ensure that rural development can be serviced efficiently.

The proposed comprehensive plan amendment and zone change will not result in a new need for water services, and the subject property is already served by the Brooks Sewer District. The sewer district will have to certify available capacity prior to approval of any change in use. Rural services policy 4 is met.

## ZONE CHANGE

11. Under MCC 17.123.060, approval of a zone change application or initiated zone change shall include findings that the change meets the following criteria:
  - 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.
12. Applicable MCCC (including BHCP) policies were evaluated above and found to be met. If the MCCC amendment re-designating the property from Rural Residential to Commercial is approved, the proposed CC zone will be consistent with the Commercial plan designation and MCC 17.123.060(A) will be satisfied.
13. Surrounding lands are all within the Brooks-Hopmore UCC, adopted with designations and zoning acknowledged as appropriate for the area. According to the Marion County Rural Unincorporated Communities Findings and Analysis adopted December 13, 2000, commercial uses permitted in unincorporated communities were selected to be consistent

with existing uses, the rule, and the desires of the property owners in the community. CC zoning currently exists south across Ramp Street and southeast across Portland Road. Property to the west across Portland Road is zoned AR but contains a church building and parking. Property directly north and east are zoned AR and contain rural residential development. Under MCC 17.143.050, in any zone change to a CC zone where the territory proposed to be changed abuts upon a residential zone, conditions to preserve neighborhood qualities may be imposed by the governing body. These requirements act to help ensure the proposed zone change is appropriate considering the surrounding land uses and the density and pattern of development in the area. As found in V(19) below and incorporated here, MCC 17.143.050 conditions will be imposed. If the comprehensive plan amendment is approved, and with MCC 17.143.050 conditions imposed below, CC zoning of the subject property would be appropriate considering area uses, density and development in the area. As conditioned, MCC 17.123.060(B) will be satisfied.

14. The proposed zone change will not require water services. Applicant has accepted proposed conditions of approval that will help ensure roadway capacity and safety are preserved. The property is currently served by the Brooks Community Sewer District and any new use will require certification of capacity from the district. Sheriff and fire/life safety services are in place. Electric and telephone services are already available in the area. Zone changes may be conditioned under MCC 17.123.070. With the conditions discussed above, public facilities and services are available or will be put in place. MCC 17.123.060(C) is satisfied.
15. The CC zone is only allowed in MCCP identified unincorporated communities. Rural unincorporated communities are Butteville, Labish Village, McLeay, Mehema, Marion, Monitor, Quinaby and Shaw. Brooks is the only urban unincorporated community. Fargo and Turner interchanges are rural service centers, and have no CC zoning. CC zoning in rural communities was applied mostly to existing uses (see Marion County Rural Unincorporated Communities Findings and Analysis adopted December 13, 2000), most are fairly distant from Brooks, and none are urban unincorporated communities, which has a higher allowed floor space limits. No other suitable properties are within a reasonable distance from the subject property, and none are reasonably available alternatives. With an MCCP amendment approval, MCC 17.123.060(D) will be satisfied.
16. The CC zone is the only zone allowed under the Commercial designation in the Brooks-Hopmore UUC and is the least intensive commercial zone. MCC 17.123.060(E) is not applicable.
17. The zone change is recommended.

#### LIMITED USE OVERLAY

18. Once a comprehensive plan amendment and zone change are granted, use of a property is not restricted to the originally proposed use unless restrictions are imposed as part of the land use process. Here, the intensity of development is reasonably restricted by BHCP requirements, the size of the property, CC building coverage and other limitations. No limited use overlay zone is recommended in this instance.

MCC 17.143

19. Under MCC 17.143.050, 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 IUC 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 commercial uses.

The subject property abuts residential property north and east. Applicant accepted proposed MCC 17.143.050 conditions related to these and MCC 17.43 development standards. The conditions are reasonably related to development allowed in the IUC zone, will serve the public purpose of mitigating the negative impacts on the adjacent residential property north and east.

## VI. Recommendation

The hearings officer **RECOMMENDS THE BOC GRANT** the proposed comprehensive plan amendment to commercial and zone change to CC, subject to the following conditions 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 frontage.
- B. Lighting shall be directed away from the neighboring residential property.
- C. Landscaping shall be maintained or provided adjacent to residential property, adequate to provide screening from commercial uses, such as a 6' fence, wall or hedge.
- D. Prior to establishing any commercial uses and prior to application for building permits, submit evidence that Brooks Community Sewer System will serve the new use.
- E. Buildings on the subject property shall comply with the setback requirements and property development standards of the zone.

- F. Prior to application for building permits for redevelopment of the property, prepare and submit a Traffic Impact Analysis (TIA) for review and approval, as determined by MCPW Engineering that addresses traffic impacts for the specific development.
- G. Prior to building permit issuance or establishment of a commercial use on the subject property, contribute a proportional share financial contribution toward identified ramp improvements at the I-5 interchange, based on the proposed increase in traffic generated by the zone change to commercial use to be confirmed in a TIA
- H. Prior to building permit issuance or establishment of a commercial use, dedicate a 30-foot corner radius at the SW property corner.
- I. Prior to building permit issuance or establishment of a commercial use, design, permit and construct urban frontage improvements along the subject property Ramp Street and Portland Road frontages to Marion County Public Works and ODOT Standards, respectively, including pavement widening, tapers, striping, curb/gutter, sidewalk including ADA corner ramp, closed system drainage, and landscape strip.

#### VII. 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 13<sup>th</sup> day of December 2018.



Ann M. Gasser  
Marion County Hearings Officer

**CERTIFICATE OF MAILING**

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

Ismael and Angela Perez  
P.O. Box 7439  
Salem, OR 97301

John L. Brosy  
161 High Street S.E.  
Suite 224  
Salem, OR 97301

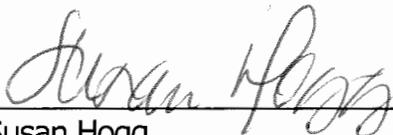
Roger Kaye  
Friends of Marion County  
P.O. Box 3274  
Salem, OR 97302

Meriel Darzen  
1000 Friends of Oregon  
133 SW 2<sup>nd</sup> Avenue, Suite 201  
Portland, OR 97204

**Agencies Notified**

Planning Division	(via email: gfennimore@co.marion.or.us) (via email: breich@co.marion.or.us) (via email: lmilliman@co.marion.or.us)
Code Enforcement Building Inspection	(via email: bdickson@co.marion.or.us) (via email: twheeler@co.marion.or.us) (via email: mpuntney@co.marion.or.us)
Assessor PW Engineering	(via email: assessor@co.marion.or.us) (via email: jrassmussen@co.marion.or.us) (via email: mhpeburn@co.marion.or.us)
DLCD ODOT	(via email: angela.camahan@state.or.us) (via email: odoctr2plnmgr@odot.state.or.us)
AAC Member No. 4 (no members)	

by mailing to them copies thereof, except as specified above for agency notifications. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon, on the 13<sup>th</sup> day of December 2018, and that the postage thereon was prepaid.

  
\_\_\_\_\_  
Susan Hogg  
Secretary to Hearings Officer