

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of) Case No. ZC 25-002
)
CREATIVE ELECTRIC, LLC) **ZONE CHANGE**

ORDER

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the Application of Creative Electric, LLC, Nestor Zarkoff and Feodor Zharkoff, to change the zone from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre parcel located in the 900 block of S Pacific Hwy 99E, Woodburn T5S; R1W, Section 19A; Tax Lot 1800).

The hearing notice states that the Application was brought by of Grigory Melkomukov RLT c/o Creative Electric, LLC. However, the Application itself references Creative Electric, LLC, Nestor Zarkoff and Feodor Zharkoff as the property owner(s) and applicants.

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code, especially Marion County Urban Zone Code: Chapter 16.07 (Commercial General zone), Chapter 16.19 (Urban Transition zone), Chapter 16.39 (Zone Changes), Oregon Statewide Land Use Planning Goals (particularly Goal 14); City of Woodburn/Marion County Urban Growth Coordination Agreement; Woodburn Comprehensive Plan Policies (Marion County Coordination Goals and Policies, Commercial Lands and Goals and Policies, Workforce and Target Industry Development, Growth Management Goals and Policies)

III. Public Hearing

A public hearing was held on this matter on May 15, 2025. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

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|----|-------------------|---|
| 1. | John Speckman | Marion County Planning Division |
| 2. | Wendie Kellington | Attorney for Applicant |
| 3. | Brittany Randall | Representative of Applicant |
| 4. | Chris Kerr | Woodburn Community Development Director |
| 5. | Chris Killmer | City of Woodburn, Assistant City Attorney |

No objections were raised as to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing.

The following exhibits were offered and admitted:

Exhibit 1: Update to TIA (Christopher M. Clemow, PE, PTOE)

Exhibit 2: Email Communications between City of Woodburn Planning and Wendie Kellington from April 15, 2025 through April 18, 2025.

An open record period was allowed for interested parties to submit additional written material. The first open record period extended until May 22, 2025, the second open record period extended until May 29, 2025, and the final open record period extended until June 5, 2025. The following submissions were received:

May 22, 2025: City of Woodburn request to supplement the record (hyperlinks). A hard copy of the letter and documents were also sent on May 22, 2025.

May 27, 2025: Applicant's Motion to Strike and challenge to "rebuttal" material

May 29, 2025: City of Woodburn Rebuttal Testimony

June 5, 2025: Applicant's Final Written Submission

IV. Executive Summary

Applicant seeks to rezone property from Urban Transition (UT) to Commercial General (CG) to develop the property with an office and storage facility for its electric business. Applicant argues that the proposal is limited to a conditional zone change, and does not seek approval for any "use" or "development." Applicant posits that because no particular development is proposed, the standards that apply to "development" or "use" are inapplicable.

The property cannot yet be annexed. Applicant does not seek annexation and has not sought access to City services because it states that the property can be adequately developed with onsite septic, onsite water well, and onsite stormwater control.

Applicant's position is that a zone change is expressly allowed under the Marion County Code (MCC) if it meets county zone change criteria, and Applicant argues that the proposal meets MCC criteria. The City of Woodburn opposes the application and argues that conversion of the property from UT to CG is not permitted by the Urban Growth Coordination Agreement (UGCA), as well as the Marion County Code, Woodburn Comprehensive Plan, and the Marion County Comprehensive Plan.

In 2015, the City of Woodburn expanded its Urban Growth Boundary (UGB) to include various residential, commercial, and industrial lands. The subject property is included in the UGB. On December 23, 2015, the City of Woodburn and Marion County entered into an Urban Growth Coordination Agreement (UGCA). The City of Woodburn argues that approval of ZC 25-002, without express consent from the City of Woodburn, would violate the UGCA.

The Staff Report and the City of Woodburn suggest that the proposed zone change cannot occur in the Urban Growth Boundary because the zone change would be an impermissible "urban" use. Applicant argues that the proposal does not propose development and that there is no standard in the code

that defines “urban use.” However, it is the zoning code itself that identifies the uses allowed in the designated zone.

The property, located on Highway 99, is surrounded by an auto wrecking yard, a cemetery, a construction company, and commercial farming. Applicant argues that the proposed zone change would not affect or change the site’s setting (except positively). Applicant presents strong arguments that the impact of denial does not protect urbanization goals. It is acknowledged that approval would allow the City of Woodburn to secure right of way designation and ensure future annexation and service extension agreements are in place. The proposed use by one specialty trade contractor is a reasonable proposal consistent with the area. Applicant describes the proposal as a “conditional zone change” limiting the use to those “now allowed in the UT zone plus one specialty trade contractor and associated warehousing.” However, such use requires a zone change that is not permitted by the applicable standards and criteria by which the hearings officer is bound.

A zone change from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre parcel located in the 900 block of S Pacific Hwy 99E, Woodburn, Oregon, is not permitted by 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement, is not consistent with the policies of Woodburn’s Comprehensive Plan, and does not satisfy Statewide Land Use Planning Goal 14. The application is DENIED.

V. Applicant’s Motion to Strike

On May 22, 2025, during the open record period, the City of Woodburn submitted a letter requesting the County to supplement the record to include documents that were not physically provided but rather were a list of hyperlinks to external locations. The open record period closed at the end of May 22, 2025. On May 23, 2025, the City of Woodburn submitted hard copies of documents that appear to be the documents referenced by the hyperlinks included in the letter.

On May 27, 2025, Applicant filed a Motion to Strike seeking to strike from the record the documents reached by the referenced hyperlinks and to strike from the record the hard copies of documents submitted after the open record period closed. Applicant acknowledges that the letter itself is included in the record, but the referenced documents obtained via hyperlink or delivery on May 23, 2025, should be stricken from the record.

On May 28, 2025, City of Woodburn filed a Response to the Motion to Strike. The City argues that the linked documents were submitted timely, and the hard copies were sent on May 22, 2025, while during the open record period.

On May 29, 2025, Applicant filed a Response to the City of Woodburn’s Response to Motion to Strike and Second Motion to Strike. Applicant’s Second Motion to Strike seeks to strike the City of Woodburn’s May 29, 2025 submittal as improper rebuttal argument to issues presented in the hearing.

With respect to the Motions to Strike, the first issue is whether the Marion County Hearings Officer has the authority to strike submitted evidence or materials from the record.

Marion County Code 16.44 addresses general hearing procedures. MCC 16.44 provides that hearings should be conducted “consistent with the requirements of this title and state law.” While authority

to manage the record is not explicitly addressed by the MCC, the hearings officer has the general administrative authority to ensure hearings follow established rules and procedures. Under the authority of MCC 16.44, the hearings officer may rule to strike or exclude from consideration any improper, irrelevant, or untimely evidence submitted by a party.

Applicant's first motion to strike the hyperlinked documents is granted.

A Memorandum dated June 10, 2021 from the Planning Division provides that Planning Division staff does not accept links to the internet which requires staff to download documents or other material. This policy was occasioned by the potential for error, and limitations for staff resources and technology. In addition to the Planning Division policy, the argument against hyperlinks being used to put documents into the record is reasonable. A link may produce a document that is not an official one and there is no way to distinguish one from the other. Links can also change over time or can connect to websites with pages that have been modified. Applicant states that the first link submitted by the City of Woodburn in its May 22, 2025 letter, "City of Woodburn UGB and Zoning Maps" (plural) goes to a single map, not maps. The link to "Marion County Comprehensive Plan" links to the title page, as opposed to a specific code provision. The reference to the hyperlinks are broad and include "Marion County Comprehensive Code." Oregon caselaw supports a determination that hyperlinked materials are not submitted exhibits. See, *MacDonald v. Oregon Health & Science University*, No. 3:22-cv-01942-IM (D. Or. July 5, 2024), *Conte v. City of Eugene*, LUBA No. 2021-092, January 14, 2022).

Applicant's second motion to strike the City's May 29, 2025 submittal is denied.

ORS 197.763(6)(c) ensures procedural fairness by requiring that if one party is allowed to submit new evidence or argument, the other party must be allowed to respond. Applicant cites *LandWatch Lane County v. Lane County*, 75 Or LUBA 302 (2017) in support of its position that the second open record period is limited to responses to new evidence or argument from the first open record period.

The parties engaged in a discussion of the timeframe for submittals. The City of Woodburn sought a 14 day response period, but County staff expressed concern with the timeline. Based upon this discussion, the City of Woodburn understood that it had until May 29, 2025 (the end of the second open record period) to submit its argument. The City's May 29, 2025 does not include new evidence or argument. Applicant had an opportunity to respond in its final written submission, and is not prejudiced or subjected to procedural unfairness by the City of Woodburn's submission of May 29, 2025.

VI. Findings of Fact

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

1. Creative Electric LLC proposes to change the zone from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre property located in the 900 block of S Pacific Hwy 99E, Woodburn, (T5S; R1W; Section 19A; Tax lot 1800). The subject property is within the Woodburn Urban Growth Boundary (UGB) and designated Commercial in the Woodburn Comprehensive Plan. The property is currently under the zoning jurisdiction of Marion County. The applicant proposes to establish an electrical contractor business on the subject parcel, relocated from its current location in Clackamas County.

2. The subject property is located south of the City of Woodburn on the west side of Highway 99E, off Novaya Ln NE. The subject property is a currently vacant field that was previously farmed. The property consists of three parcels created by Partition recorded in 1989 and approved by Partition case (P88-061). These parcels are all parts of tax lot 1800. The subject property was created in the current configuration by an approved Partition, and is therefore legal for land use purposes.
3. Adjacent properties to the north, and south are zoned UT-5 and within Woodburn's UGB. The northern adjacent parcel is in farm use and contains a homesite. The northeastern adjacent parcel is in rural residential use. The south adjacent parcel is a pre-existing non-conforming auto wrecking yard. To the east, across Highway 99E and outside of the UGB, are parcels zoned Exclusive Farm Use (EFU) and in active farm use. To the west of the subject parcel, outside of the UGB, is the Belle Passi Cemetery which is in a Public (P) zone.
4. The Marion County Planning Division requested comments from various governmental agencies. The following comments were received:

Marion County Building Inspection commented: "No Building Inspection concerns. Permit(s) are required to be obtained prior to any development and/or utilities installation on private property."

Marion County Septic Division commented: "A Site Evaluation followed by an installation-Construction permit is required prior to site development."

Marion County Land Development Engineering and Permits (LDEP) submitted the following:

ENGINEERING ADVISORIES

- A. PW Engineering has no action items for the proposed Zone Change itself.
- B. The following are PW Engineering advisories for future development:
 - The plat for partitioning case P88-61 pertaining to the subject property is depicted on MCSR 031947 and recorded at Reel 732 / Page 127 in the Clerks records for Marion County. The plat created the private easement named 'Novya Lane' along the south property from S Pacific Hwy 99E, a State Hwy. An access approach to Novya Lane does not appear to have been constructed.
 - The proposed access location in the middle of the subject property does not align with Novya Lane. At the time of application for building permits, Applicant will be required to confirm application having been made for an ODOT approach permit.
 - County Transportation System Development Charges (SDCs) will be assessed at the time of application for building permits.
 - Development of the property as generally depicted on the land use application site plan will require stormwater detention meeting county standards, and possibly also to ODOT standards that could include water quality treatment if discharging to the State Hwy.

- DEQ has jurisdiction over construction erosion for total ground disturbances of 1-acre plus.
- Fire turnaround and pullout easement(s) may be required by the local fire district or State Fire Marshal.

Oregon Department of Transportation (ODOT) commented: “We do not have any comments on the zone change, however we will have comments on future applications for development of the property with respect to frontage improvements and access considerations.”

The City of Woodburn Community Planning and Development Department submitted two letters explaining how the proposal is not consistent with either Woodburn Comprehensive Plan or the Woodburn/Marion County Urban Growth Coordination Agreement (UGCA). These letters can both be found in the record. The primary concerns are summarized below:

The subject property is zoned Urban Transition 5-acre minimum (UT-5) because it is within the UGB and not yet eligible for annexation. The urban growth area is a transitional area for properties that have not yet been annexed. Annexation is required prior to urban development with an urban level of public improvements to Woodburn standards.

The proposal fails to meet several material standards such as frontage improvements, gravel parking and potential outdoor storage. The proposal fails to comply with policies in the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement (UGCA). These specific policies are Section 1. Policies 4, 7, & 9. The proposal fails to comply with Woodburn’s Comprehensive plan. The specific Comprehensive Plan goals and policies include: G-1, P1.12, 1.14, 1.17, & 1.18.

The current zoning is appropriate for the parcel until such time that it can be annexed into the city and urban uses established. The subject property is not yet eligible for annexation because it is not adjacent to city limits.

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

VII. Additional Findings of Fact and Conclusion of Law

1. Applicants have 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, 394-395(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).

Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, Applicants have not met their burden and the application must be denied. If the evidence for every criterion is even slightly in Applicant’s favor, the burden of proof is met.

2. Pursuant to MCC 16.39.010, the hearings officer is authorized to make the initial decision on zone change applications.
3. Pursuant to MCC 16.39.040, a hearings officer's decision to approve a zone change does not become final until the Board of Commissioners adopts an ordinance implementing the decision.
4. With respect to jurisdiction, the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement (UGCA) provides: "The County shall retain responsibility for regulating land use on lands within the Urban Growth Area until such lands are annexed by the City. The City and County identify the Urban Growth Area as urbanizable and available over time for Urban Development."

Urban Transition Zone (UT)

5. The UT (Urban Transition) zone purpose statement listed under MCC 16.13.000 states:

The UT (urban transition) zone is intended to retain and protect for future urban use properties which are undeveloped or underdeveloped and do not have available urban facilities such as sanitary sewer, water, drainage and streets. The zone allows the continuation of legally established uses and establishment of uses compatible with the plan designation. In areas planned for development relying on urban services, transitional uses may be allowed which will not interfere with the efficient, later use of the land for planned urban uses.

The zone is appropriate in areas designated in the applicable urban area comprehensive plan for future urban residential development, but may also be used to protect lands designated for future commercial, industrial or public uses. In areas designated for urban residential development, the residential density included in the zone is intended to be consistent with the average lot size of the immediate area. In areas planned for other uses, the zone is intended to retain lot sizes conducive to efficient development of planned uses and prevent conflicts associated with development of additional dwellings.

The zone is also intended to encourage the continued practice of commercial agriculture in areas planned for future urban development. The UT zone is intended to be a farm zone consistent with ORS 215.203.

The subject property is within the Urban Growth Boundary for the City of Woodburn. The subject property is not adjacent to lands that have been annexed by Woodburn and is therefore unable to be annexed into the city and/or connect to city water and sewer services at this time. It remains in a transitional zone until such time that it annexes. The property is not "urban" because it is located in the UGB.

The subject property is currently undeveloped and available for farm uses. Images from 2023 on Google streetview show harvested bales of hay on the property. Images from 2016 on Google streetview show row crops on the property. The UT zone is intended to encourage the continued practice of agriculture in areas planned for future urban development. Other permitted uses in the

UT zone are outlined in MCC 16.13.010. Conditional uses in the UT zone are outlined in MCC 16.13.020.

The current Urban Transition zone is intended to retain and protect the subject parcel for further urban development upon annexation into the City of Woodburn. The City of Woodburn Comprehensive Plan designated the subject parcel Commercial. As a conditional use in the Urban Transition zone, uses allowed within the most restrictive corresponding zone may be established. The most restrictive zone in Marion County Code that corresponds with the Commercial designation in Woodburn's Comprehensive Plan is CO (Commercial Office) in MCC 16.05. MCC 16.01.030 explains how urban zones are classified, specifically stating, "The zone classifications below are listed in order of most restrictive to least restrictive under the appropriate plan designation." For the comprehensive plan designation of Commercial, the zone classification list (in order of most restrictive to least restrictive) is, "CO, CR, CG, HC, UT, UD".

Applicant proposes a zone change to CG (Commercial General) because the proposed use is an electrical contractor shop which is neither a permitted nor conditional use in the UT zone. It is likewise neither a permitted nor conditional use in the CO zone which is the most restrictive corresponding zone.

Therefore, the use could not be applied for as a conditional use in the UT zone under MCC 16.13.020(Q).

Within the Urban Growth Coordination Agreement (UGCA) between the City of Woodburn and Marion County is the requirement to annex upon establishment of an urban use. This requirement is mirrored in Woodburn's Comprehensive Plan.

Applicant asserts that the proposed use of the property as an electrical contractor shop is separate from the proposal to change the zone of the subject parcel, and that the zone change is not an urban use.

Applicant argues that the policies in the UGCA and Woodburn Comprehensive Plan regarding establishment of urban uses therefore do not apply to the subject parcel.

The City of Woodburn and Planning Staff suggest that the UGCA policies that pertain to development within the Urban Growth Boundary (UGB) apply to the application. City of Woodburn argues that the application seeks to do exactly what the UGCA was developed to prevent.

Planning Staff states that the interpretation that delineates between this application and the proposed use of the subject parcel would, if adopted, result in a proposal that cannot meet the Marion County's criteria for a zone change. Consideration of every allowed use in the CG zone would be required. Many of the uses allowed in the CG zone would not be appropriate on a parcel that has no public services available and is not eligible for annexation. It is only when Applicant's specific planned use as an electrical contractor's shop is considered, with proposed conditions of approval, that the zone change criteria in MCC 16.39.050 could be satisfied.

Applicant states that the request is a “conditional zone change” limiting allowed uses to those now allowed in the UT zone “plus one specialty trade contractor and trade contractor’s associated warehousing.”

The most practical interpretation, as stated by Staff, is that the planned use of the subject property post zone-change must be acknowledged. An application to change the zone of the subject property to Commercial General without a use to be considered, could not be approved.

Marion County considers a proposed use when evaluating a zone change in the UGB. In this case, the Applicant seeks to pursue a specific use, that in and of itself, is not unreasonable for the subject property. Regardless, such reasonable usage as is requested by Applicant for “conditional zone change” limiting the use to those “now allowed in the UT zone plus one specialty trade contractor and associated warehousing” is not permitted because it is not allowed under the appropriate approval criteria, which includes the UCGA, addressed further herein.

Zone Change Criteria

6. Under Marion County Code (MCC) 16.39.050, approval of a 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 description and policies for the applicable Comprehensive Plan land use classification.*

The subject site is located within the City of Woodburn’s Urban Growth Boundary and has a Comprehensive Plan designation of Commercial. The proposed zone is appropriate for the underlying comprehensive plan designation of Commercial. Marion County and Woodburn both have Commercial General zones that would be appropriate for the underlying comprehensive plan designation of Commercial.

The Marion County Plan, the applicable Comprehensive Plan that governs the County CG zone, specifies economic development policies that govern the County’s CG zone. The proposal is consistent with the economic goals of the County.

Applicant provided a detailed comparison between Marion County and Woodburn’s Commercial General codes. Applicant demonstrates that Marion County’s provisions are consistent with the regulations of Woodburn’s version of this zone. In Woodburn’s version of CG, outdoor storage for contractor shops is not permitted. Applicant offered a condition of approval limiting outdoor storage to comply with Woodburn’s version of CG.

The proposed zone change is consistent with the Marion County Plan. However, as detailed more fully below, the proposed zone change is not consistent with the Growth Management Goals and Policies of Woodburn’s Comprehensive Plan.

The criterion is not met.

B. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.

The subject parcel is adjacent to Highway 99E. Applicant submitted a letter from registered transportation engineer Chris Clemhow explaining that a detailed transportation analysis is not required for the proposed zone change and use as an electrical contractor's shop. The letter asserts that the trips generated by the proposed use are already accounted for considering the commercial designation in Woodburn's comprehensive plan, and Marion County's Transportation System Plan. There is no dispute that Highway 99 has no capacity or other limitations at the subject property.

Presently, there are neither water nor sewer facilities extended to the subject parcel. The City intends on extending water and sewer at the time of annexation. The use of the subject parcel for a for an electrical contractor's shop requires water and sewer services.

Applicant states that the subject parcel could be adequately served by a private onsite septic system and domestic well, and stormwater facilities. Marion County responds that applications for a commercial well and installation of septic system on the parcel would both require the City of Woodburn's approval by way of a signed Land Use Compatibility Statement (LUCS), and that the City of Woodburn does not approve new uses developing on well and septic within the UGB, and requires annexation for urban uses being established within the UGB.

Development of the parcel with an urban use is not currently possible without the ability to have either public or private water and sewage facilities.

Adequate public facilities are not in place and are planned to be provided concurrently with the development of the property. The criterion is not met.

C. The request shall be consistent with the purpose statement for the proposed zone.

The CG (Commercial General) zone purpose statement listed under MCC 16.07.000 states:

The purpose of the CG (commercial general) zone is to provide areas suitable for warehousing, wholesale commercial sales and services with related outdoor storage or retail sales. The commercial general zone is appropriate in those areas designated commercial in the applicable urban area comprehensive plan where the location has access to an arterial street or highway for transport of bulk materials and where impacts associated with permitted uses will not create significant adverse impacts on local streets or residential zones.

The proposed CG zone is appropriate for the underlying Woodburn Comprehensive Plan designation of Commercial. The subject parcel is adjacent to Highway 99E, an area that would be appropriate for warehousing or wholesale commercial sales. The proposed use as electrical contractor's shop is an approved use in CG as per MCC 16.07.010(A)(3). The location of the subject parcel, and proposed use is consistent with the purpose statement of Commercial General in the Marion County Code. MCC 16.39.050 (C) is met.

- D. *If the proposed zone allows uses more intensive than uses in other ones appropriate for the land use designation, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*

The most restrictive zone appropriate for the Commercial designation is the Commercial Office (CO) zone. The proposed zone change to Commercial General (CG) will allow uses that are more intensive than those allowed in the CO zone. In the UT zone, uses permitted in the most restrictive of the corresponding zones may be allowed with an approved Conditional Use permit. An electrical contractor shop is not permitted in the CO zone either as a permitted or as a conditional, use.

Applicant suggests that the zone change application to CG should be considered separately from the planned electrical contractor shop. As clarified by MCC 16.01.030, the Commercial General (CG) zone allows uses that are more intensive than other zones appropriate for the land use designation such as Commercial Office (CO) and Commercial Retail (CR). Without consideration of the proposed use, the proposed zone change could not satisfy this criterion because it would permit uses that would significantly adversely affect uses on adjacent properties zoned for less intensive uses. Uses permitted within the CG zone include intensive uses such as many kinds of retail stores, hotels, amusement parks, and movie theaters. A zone change permitting such uses could negatively affect farming operations to the north and west, and rural residences northeast of the subject parcel due to non-farm conflicts, significantly increased traffic and potential noise. The application materials, including the traffic statement, are all based around the proposed development of an electrical contractor shop because many of the uses permitted in the CG zone are incompatible with the subject parcel.

Applicant indicates its willingness to agree to a condition of approval that would limit the use of the subject property to an electrical contractor shop. An electrical contractor shop is an outright permitted use in the CG zone as per MCC 16.07.010(3).

Applicant proposes conditions of approval to limit storage to inside of the building to comply with Woodburn's version of CG. An electrical contractor shop is not permitted in either the CO or CR zones. The proposed CG zone limited to only permitting an electrical contractor shop would still allow more intensive uses than other zones appropriate for the land use designation.

Applicant correctly states that a low-intensity and provisional electrical contractor shop is consistent with uses on adjacent properties, but it is a more intensive use than other zones appropriate for the land use designation.

Evidence in the record does not support the assertion that the proposed zone and proposed use will not significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses. The criterion is not met.

City of Woodburn/Marion County Urban Growth Coordination Agreement (UGCA)

7. The proposal involves land within the Urban Growth Boundary of Woodburn. Applicant argues that the UGCA is inapplicable to the zone change application, and the City of Woodburn and Planning suggest that the UGCA is applicable.

Applicant argues that pursuant to ORS 215.427(3), only standards and criteria in effect when the application was submitted may be applied to approve or deny zone changes.

Applicant states that the UCGA, also referenced by the applicant as the “IGA” (an Intergovernmental Agreement) cannot be applied as a standard of denial in the Marion County Code. Applicant argues that IGA standards concerning “development” do not apply and that standards concerning “land use actions” are met. Applicant suggests that the UGCA is an intergovernmental agreement between the City and the County, and not a document to govern land use issues.

Applicant also asserts that the UGCA does not apply because the subject property lies within the “Urban Growth Area” which the UGCA defines as the area between the City Limits and the Urban Growth Boundary. Applicant suggests that the Urban Growth Area, defined as the area between the City Limits and the Urban Growth Boundary, is different than the UGB.

The Urban Growth Area is not the same thing as the UGB. However, the subject property is within the UGB, outside of the City Limits, and is within the Urban Growth Area.

ORS 190.010 allows local governments to enter into written agreements with other local governments for the performance of shared functions, which includes land use planning. The terms within a binding intergovernmental agreement become established procedures for land use activities covered by the agreement.

ORS 197.628 requires that all cities and counties in Oregon submit their comprehensive plans to LCDC for periodic review. In 2015, as part of the City's periodic review, LCDC issued a remand to the City, requiring the City to adopt and the County to approve, of a coordination agreement between City and County. The resulting agreement, the UGCA, requires the City and County to agree upon policies and procedures for amending the City UGB and was codified through revisions to both the City and County Comprehensive Plans.

The UCGA, by its express language, applies to "county land use division and land use decisions within the Urban Growth Area. The UCGA requires consistency with Marion County Comprehensive Plan and the Woodburn Comprehensive Plan.

The UCGA was adopted as part of both the Marion County Comprehensive Plan and the City of Woodburn Comprehensive Plan. Because it is adopted as part of both comprehensive plans, it is a binding land use planning document under Oregon’s Statewide Planning Goals, specifically Goal 2 (Land Use Planning) and Goal 14 (Urbanization). These planning goals are addressed further below.

The 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement (UCGA) is a binding intergovernmental agreement that applies to the proposal and is enforceable.

The applicable sections of the UCGA are addressed below.

“Whereas” Intent Provisions

Page 2 in the “whereas” section: Whereas, the intent of the urban growth program for the City is as follows:

1. *Promote the orderly and efficient conversion of land from Rural/Resource uses to urban uses within the Urban Growth Area.*
2. *Reduce potential conflicts with resource lands, establishing an Urban Reserve Area and Expansion limitations where necessary.*
3. *Promote the retention of lands in resource production in the Urban Growth Boundary until provided with urban service and developed.*
4. *Coordinate growth in accordance with the Woodburn comprehensive Plan and the Marion County Comprehensive Plan.*

The City of Woodburn challenges the proposal as failing to comply with the intent of the UCGA as reflected in “Whereas” recitals 1 through 3. The City of Woodburn states that it does not find the proposed zone change to be conducive to an orderly and efficient conversion of land from Rural to Urban uses.

The City of Woodburn argues that the transition from Rural to Urban uses with the Woodburn UGB should occur as land is annexed into the city and receives urban levels of service. Annexation of the subject property is not possible at this time, and not proposed by the applicant.

The proposed zone change is inconsistent with the intent of the urban growth program outlined in the UGCA and the Woodburn Comprehensive Plan.

Section I. Coordination Policies and Procedures

1. *The County shall retain responsibility for regulating land use on lands within the Urban Growth Area until such lands are annexed by the City. The City and County identify the Urban Growth Area as urbanizable and available over time for urban development.*

Marion County recognizes its responsibility.

2. *The City and County shall maintain a process providing for an exchange of information and recommendations relating to land use proposals in the Urban Growth Area. The County shall forward land use activities being considered within the Urban Growth Area by the County to the City for comments and recommendations. The City shall respond within twenty (20) days, unless the City requests and the County grants an extension.*

The City of Woodburn was provided notice of the application and the opportunity to comment.

3. *Upon receipt of an annexation request or the initiation of annexation proceedings by the City, the City shall forward information regarding the request (including any proposed zone change) to the County for comments and recommendations. The County shall have twenty (20) days to respond unless they request and the City allows additional time to submit comments before the City makes a decision on the annexation proposal.*

Applicant is not requesting annexation.

4. *All land use actions within the Urban Growth Area shall be consistent with the Woodburn Comprehensive Plan and the County's land use regulations.*

The proposal is not consistent the Woodburn Comprehensive Plan or the County's land use regulations.

5. *In order to promote consistency and coordination between the City and County, both the City and County shall review and approve amendments of the Woodburn Comprehensive Plan that apply to the Urban Growth Area. Such changes shall be considered first by the City and referred to the County prior to final adoption. If the County approves a proposed amendment to the Woodburn Comprehensive Plan, the change shall be adopted by ordinance and made a part of the County's Plan.*

This policy does not apply to the proposal.

6. *The area outside the Urban Growth Boundary shall be maintained in rural and resource uses consistent with Statewide Planning Goals. The area outside the Urban Growth Boundary designated the Urban Reserve Area shall be subject to the requirements in Section V below.*

This policy does not apply to the proposal.

7. *The City and County shall promote logical and orderly development within the Urban Growth Area in a cost-effective manner. The County shall not allow uses requiring a public facility provided by the City within the Urban Growth Area prior to annexation to the City unless agreed to in writing by the City.*

The proposal is for a zone change which would allow an urban level of uses on the subject property. As addressed below, conversion of land within the Urban Growth Area to urban uses shall occur upon annexation. Applicant is not proposing annexation. Applicant is not proposing connection to public facilities, but rather private water and sewage facilities.

Applicant suggests that all land within the UGB is essentially urban. However, the subject property is zoned UT, and the UT zone contemplates future urban use (emphasis added), and is intended to encourage uses consistent with Exclusive Farm Use zoning until such as time as the land is annexed into a city. In this case, the subject property is zoned UT, and exists with the UGB.

Applicant disputes that the county zone change standard includes an analysis of "urban use." Applicant argues that because the property will be served with adequate private water, sewer, and storm facilities, the standard is satisfied. However, the standard demands adequate "public" facilities and services. Public facilities and services are required to provide an urban level of services. Because Applicant proposes an urban use, without an urban level of services, the proposal does not meet the policy.

8. *City sewer and water facilities shall not be extended beyond the Urban Growth Boundary, except as may be agreed to in writing by the City and County, consistent with Oregon Administrative Rules, the Woodburn Comprehensive Plan and the Marion County Comprehensive Plan.*

This policy does not apply to the proposal.

9. *Conversion of land within the Urban Growth Area to urban uses shall occur upon annexation and be based on consideration of applicable annexation policies in the Woodburn Comprehensive Plan.*

The proposed zone change to CG would allow an urban level of use without annexation to receive an urban level of service. The Woodburn Comprehensive Plan states, "The County shall not allow urban uses within the Urban Growth Boundary prior to annexation to the City unless agreed to in writing by the City." The proposed zone change would make those urban uses allowed in the CG-zone outright permitted on the subject property without those uses being agreed to in writing by the City.

Applicant indicates that it would agree to a condition of approval that would limit the uses allowed by this zone change to SIC 1731, an electrical contractor shop. This use, SIC 17, is not allowed in CO or CR which are more restrictive urban commercial zones.

A zone change to CG is a necessarily a conversion of land to urban uses. The proposal is not consistent with this policy.

10. *The City shall discourage the extension of public facilities into the Urban Growth Area without annexation. However, if the extension of public facilities into the Urban Growth Area is necessary because of an emergency, health hazard or the City determines it is otherwise desirable, the facilities may be extended subject to terms and conditions contained in a service contract between the City and the property owner.*

This policy does not apply to the proposal.

11. *The City shall be the provider of public water, sanitary sewer and stormwater facilities within the Urban Growth Boundary unless otherwise agreed to by the City, the County, and any other applicable party. The City shall be responsible for preparing the public facilities plan for all lands within the Urban Growth Boundary.*

The proposal is for a zone change which would subsequently allow a use on the property that will require services. The services could theoretically be provided with a private well and onsite septic system. The City's intention throughout policies in the comprehensive plan and UGCA is to establish public sewer and water as land in the UGB is annexed. The City of Woodburn has not indicated any agreement to allow for private well and septic on this parcel within the UGB.

Marion County asserts that any well or septic system would require the City of Woodburn to sign a Land Use Compatibility Statement (LUCS) approving the development. The City of Woodburn objects to the proposal. Although it appears that the proposal is not consistent with this policy based upon the City's position, the proposal could be consistent with the policy if a LUCS was required and agreed to by the City of Woodburn.

Section III. Administration of Zoning and Subdivision Regulations

1. *The County shall provide notice and request for comments on conditional uses, variances, adjustments, land divisions, property line adjustments and administrative reviews within the Urban Growth Area to the City at least 20 days before the County's initial evidentiary hearing or land use decision when no hearing is held. The County shall provide the City a notice of decision for all such applications in the Urban Growth Area when requested by the City.*
2. *Applications for uses permitted outright in the applicable County zone, including ministerial actions, will not involve any notice or request for comments to the City.*

Marion County follows these procedures for conditional uses, variances, adjustments, land divisions, property line adjustments and administrative reviews within the Urban Growth Area.

The proposal is for a zone change which does not fall within this regulation. Marion County has, however, followed these procedures in processing this application and notified the City. The City of Woodburn was notified of the public hearing and responded in opposition to the proposal.

3. *The County may require City development standards for development within the Urban Growth Area, including dedication of additional right-of-way or application of special street setbacks when requested by the City. The County may require compliance with City development standards, in lieu of County standards if the development is other than a single-family dwelling.*

The City of Woodburn expressed concern that Applicant would not implement the road development standards in the Woodburn Development Ordinance (WDO). Applicant confirmed that it does not consider road improvements to be reasonable under the rough proportionality standard. Applicant proposed a nonremonstrance agreement instead that the property owners or successors will not object to the formation of a local improvement district or other public financing mechanizing for the improvements required, and furthermore that the property owner or successor will pay their share for the improvements. With approval from the City and a nonremonstrance agreement as a condition of approval, this standard could be met.

4. *For development approved under (1) or (2), if public sewer and water facilities or city limits are located within 300 feet of the subject property, the County shall require that the development connect to the facilities under use or wells or other means are allowed in writing by the City. The City will require any property connecting to City sanitary sewer or water facilities to annex to the City. The City shall provide the County information about the location of public sewer and water. The County may approve development of permitted uses on properties more than 300 feet from the city limits, or from a public sewer or water facility using wells and DEQ approved wastewater disposal systems.*

Applicant references this section as applicable to the proposed zone change. However, this section is only applicable to types of development referenced in (1) or (2) of this subsection of the UGCA. The types of developments referenced in (1) or (2) are all uses that would be permitted outright permitted, permitted subject to review, or require a conditional use permit.

This section does not apply to developments that are not permitted in any way within the current zone, and require a zone change to establish. The proposed use requires a zone change to an urban zone because it is an urban use. Establishment of urban uses requires annexation as per the UGCA and Woodburn's Comprehensive Plan.

5. *If a proposed use is not specifically identified in the Marion County Urban Zone Code, and the County is proposing an interpretation classifying the use as permitted in the applicable zone under the interpretation provisions of the Zone Code, the County shall give the City an opportunity to comment before the County makes a final land use decision.*

Applicant is seeking a zone change to CG to establish a use that is specifically permitted in the CG zone. No interpretation of the use is required.

Woodburn Comprehensive Plan

8. Woodburn Comprehensive Plan Goals apply to the proposal.

Marion County Coordination Goals and Policies

C-1. To coordinate with Marion County regarding planning issues that extend beyond the boundaries of the City of Woodburn, including population allocations, amendments to acknowledged comprehensive plans and transportation system plans, and achievement of a compact urban growth form, as required by Statewide Planning Goals 2 (Land Use Planning and Coordination), 12 (Transportation) and 14 (Urbanization).

Woodburn has coordinated with Marion County regarding planning issues beyond city limits by working together to create the 2015 UGCA, and communicating regarding land use applications within the UGB, including the proposed zone change addressed herein.

C-1.1 Marion County Framework Plan goals, policies and guidelines will be considered when the City considers plan amendments that require Marion County concurrence.

This policy does not apply to the proposal.

C-1.2 The City of Woodburn shall have primary responsibility to plan for community growth within its Urban Growth Boundary, and recognizes its responsibility to coordinate with Marion County to ensure the efficient use of urbanizable land within the Woodburn Urban Growth Boundary.

Marion County recognized this goal with the 2015 UGCA. The City Woodburn has coordinated with Applicant and with Marion County to discuss this project.

The City of Woodburn submitted comments explaining that the proposal is not consistent with their comprehensive plan or the 2015 UGCA.

Commercial Lands Goals and Policies

During the 1990s, Woodburn experienced large-scale commercial growth near Interstate 5. Although commercial development has provided jobs for many Woodburn residents, this growth

has contributed to congestion at the 1-5/Highway 214 Interchange, which has constrained the City's ability to attract basic industrial employment that requires 1-5 access. Woodburn will encourage infill and redevelopment of existing commercial sites, and will encourage neighborhood-serving commercial developments in Nodal Development areas.

F-1. Identify, promote, and regulate to bring about urban infill and redevelopment of existing commercial areas within the community, as well as development of neighborhood nodes, to meet future development needs, support potential additional housing, and reduce traffic congestion and reliance on motor vehicles for basic commercial services.

This policy does not apply to the proposal.

F-1.1 The City should at all times have sufficient land to accommodate the retail needs of the City and the surrounding market area while encouraging commercial infill and redevelopment. The City presently has five major commercial areas: Highway 99E, 1-5 Interchange, the downtown area, the Nodal Neighborhood Commercial area (along Parr Road), and the 214/211/99E Four Corners intersection area. No new areas should be established.

This policy does not apply to the proposal.

F-1.8 Ensure that existing commercial sites are used efficiently. Consider the potential for reuse, re-tenanting, or redevelopment of existing commercial sites and modifications to zoning regulations that urbanize development to attract new investment.

This policy does not apply to the proposal.

Workforce and Target Industry Development

F-2 Enhance the quality of the city workforce and support development of target industries.

The applicant points out that the construction sector is identified as a target industry in the City of Woodburn's Economic Opportunities Analysis (EOA). The proposed zone change would allow the applicant to move their base of operations to the subject property. The subject property is designated Commercial in the Woodburn Comprehensive Plan, and therefore appropriate for the proposed CG zone. The use for an electrical contractor shop is permitted in both Marion County and Woodburn's versions of the Commercial General zone. The city's workforce would be enhanced by approximately 15 electrician positions required by Creative Electric, as well as several support staff. These are high-paying trade jobs that would be created within Woodburn's UGB. The proposal is consistent with this policy.

Growth Management Goals and Policies

G-1.1 The City's goal is to manage growth in a balanced, orderly, and efficient manner, consistent with the City's coordinated population projection.

The proposal is for a zone change to a zone that matches the underlying designation in the Woodburn Comprehensive Plan. Applicant has offered several conditions of approval that would

ensure future annexation of the property, future connection to public water and sewer, and future contributions towards frontage improvements.

The City of Woodburn does not extend urban services without either annexation, or written agreement, as outlined in the UGCA and their Comprehensive Plan. Annexation is not currently possible because the subject property is not adjacent to land in the City of Woodburn.

The proposal is not consistent with this goal.

G-1.7 The City's policy is to accommodate industrial and commercial growth consistent with Woodburn Economic Opportunities Analysis (EOA).

Applicant states that the proposal is consistent with the EOA. The construction industry is listed as a target industry on page 21 of the 2023 EOA. The proposal is consistent with this policy.

G-1.8 Woodburn's policy is to diversify the local economy. Woodburn seeks to diversify the local economy so that the community will prosper and can weather swings in the business cycle, seasonal fluctuations, and other economic variables. The intent is to provide a broad spectrum of commercial and industrial enterprises. The variety of enterprises will not only provide insulation from negative business factors, but a choice in employment opportunities that in turn allows for the diversification in income types.

Applicant states that the establishment of the electrical contractor's shop, as a result of the proposed zone change, will employ approximately 15 electricians and several administrative staff. The City of Woodburn did not comment on whether it considers the proposal a means to diversification of the local economy. The proposal is consistent with this policy.

G-1.12 The County shall retain responsibility for regulating land use on lands within the urban growth area (unincorporated land inside the UGB) until such lands are annexed by the City. The urban growth area has been identified by the City as urbanizable and is considered to be available, over time, for urban development.

The County retains this responsibility. The subject parcel is not yet eligible for annexation, which is a requirement for urbanization. The current zoning, Urban Transition, is a transitional zone that permits continuation of pre-existing or resource uses between the time a property is brought within an Urban Growth Boundary and the time it is annexed into the city.

The proposed zone change is to an urban zone, for the purpose of establishing an urban use, without annexation as required by the UGCA and the Woodburn Comprehensive Plan. The proposal is not consistent with this policy.

G-1.13 The City and County shall maintain a process providing for an exchange of information and recommendations relating to land use proposals in the urban growth area. Land use activities being considered within the urban growth area by the County shall be forwarded by the County to the City for comments and recommendations.

This process for an exchange of information is maintained.

G-1.14 All land use actions within the urban growth area and outside the City limits shall be consistent with the City's Comprehensive Plan and the County's land use regulations.

The proposed zone change is not consistent with the Woodburn Comprehensive Plan and does not satisfy the zone change criteria in Marion County Code. The proposal is not consistent with this policy.

G-1.17 The City and County shall strive to enhance the livability and promote logical and orderly development of the urban growth area in a cost effective manner. The County shall not allow urban uses within the Urban Growth Boundary prior to annexation to the City unless agreed to in writing by the City. City sewer and water facilities shall not be extended beyond the City limits, except as may be agreed to in writing by the City and the property owner and the owner consents to annex. The City shall be responsible for preparing the public facilities plan.

The proposed zone change, and subsequent use, are consistent with the underlying designation in the City of Woodburn Comprehensive Plan. The proposed zone change is sought in order to establish an urban use and, therefore, requires annexation. The proposal is not consistent with this policy.

G-1.18 Conversion of land within the boundary to urban uses shall be based on a consideration of: (a) Orderly, economic provision for public facilities and services;

Applicant proposed a condition requiring an agreement to utilize public facilities and services once available. The City of Woodburn objects and does not approve of a new use relying on private water and septic facilities in the UGB. The city plans to provide services at the time of annexation. The subject parcel is not eligible for annexation. An orderly economic provision for public facilities and uses will be completed at the time of annexation.

(b) Availability of sufficient land for the various uses to ensure choices in the market place;

The proposal is for a zone change to a zone that is consistent with the Woodburn Comprehensive Plan designation for this property. Establishment of urban use requires annexation. The subject parcel is not eligible for annexation. The proposal will not increase the availability of land for various urban uses until such time that it annexes into the City of Woodburn.

(c) LCDC Goals;

The LCDC Goals applicable to this proposal are considered in the next section of this document (10).

As addressed further below, the proposal is not consistent with Goal 14.

(d) Further development of vacant and underutilized residential land within the City's buildable land inventory before annexing additional territory for conversion to residential use at urban densities; and

This subsection does not apply to the proposal.

(e) Applicable provisions of the Marion County and City Comprehensive Plans.

The proposal fails to fully comply with Marion County Code and the City of Woodburn Comprehensive Plan. The proposed zone change is to an urban zone for the establishment of an urban use. Annexation is not possible at this time. The proposal is not consistent with the Woodburn Comprehensive Plan.

Statewide Planning Goals

9. The relevant Statewide Planning Goals for consideration are Goals 2, 12, and 14:

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 base for such decisions and actions.

The process for evaluating the proposed zone change is outlined in MCC 16.39.050. The process allows the opportunity for public comment, staff review, and requires review by a hearings officer. This process implements policy frameworks of the Marion County Code, the underlying City of Woodburn comprehensive plan, and the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement. The planning process is consistent with Goal 2 – Land Use Planning, and the goal is met.

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

The subject property of the proposed zone change is adjacent to Highway 99E, which is classified as an Arterial road. The proposed zone is appropriate for citing adjacent to a highway. Applicant provided a letter from a registered Transportation Engineer stating the proposal will generate trips that are already accounted for within current Transportation Systems Plan for Marion County, as well as Exhibit 1. The proposed zone change is compatible with Goal 12 – Transportation, and the goal is met.

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 proposed zone change to Commercial General under Marion County is not consistent with the Growth Management Goals and Policies of the Woodburn Comprehensive Plan. The proposed

zone change is not consistent with the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement. The UCGA between Woodburn and Marion County ensures the orderly and efficient transition from rural to urban land uses within the urban growth boundary for Woodburn. The proposal is not consistent with the agreement, which is an enforceable agreement under ORS 190.010. The subject parcel is not eligible for annexation and has no public water nor sanitary sewer services available. The proposed zone change would permit urban uses without an urban level of services available. Therefore, the proposal is not consistent with Goal 14.

10. The proposal does not meet the criteria required for a zone change in the Marion County Code. The proposal is not consistent with the policies of Woodburn's Comprehensive Plan. The proposal is not consistent with the policies of the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement. The proposal is not consistent with Statewide Land Use Planning Goal 14. Because the proposal does not meet criteria and is not consistent with planning goals, the Application is DENIED.

VIII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court Street NE, Salem, Oregon), by 5:00 p.m. on the **23rd day of July, 2025** (15 days of the date of mailing of this decision). The appeal must be in writing, must be filed in duplicate, and must be accompanied by a payment of \$500.00, and must state wherein this order fails to conform to the provisions of the applicable ordinance and/or criteria. If the Board denies the appeal, \$300 of the fee will be refunded.

DATED this 8th day of July, 2025.


Jill F. Foster, Hearings Officer

CERTIFICATE OF MAILING

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

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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 8th day of July, 2025 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer