

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY ZONING MAP, AND ADOPTING FINDINGS, CONCLUSIONS AND CONDITIONS FOR PROPERTIES LOCATED NORTH OF DUNLAP AVENUE NE AND WEST OF CLOVER RIDGE ROAD NE.

WHEREAS, the Albany Planning Commission recommended approval of the proposed Zoning Map amendment following a public hearing on February 11, 2008, for City of Albany File No. ZC-06-07;

WHEREAS, the Albany City Council held a public hearing on the same application on February 27, 2008, and read the ordinance once at this Council meeting; and

WHEREAS, this Zoning Map amendment will only take effect if the question of annexation for the subject properties is approved by the voters on the May 20, 2008, ballot.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The Findings of Fact, Conclusions of Law, and Conditions in the staff report attached as Staff Report Ordinance Exhibit C [which consists of the complete staff report to the Albany City Council, including attachments, and dated February 20, 2008 (File ZC-06-07)], are hereby adopted in support of this decision.

Section 2: The Zoning Map designation of the properties identified in the legal description in Ordinance Exhibit A is hereby amended from Linn County UGM-20 (Urban Growth Management – 20) to City of Albany RS-5 (Residential Single Family) and RM (Residential Medium Density).

Section 3: The properties affected by the Zoning Map amendment contain 9 parcels totaling approximately 14.9 acres of property. A legal description and map for the entire area is attached as Ordinance Exhibit A and Ordinance Exhibit B, respectively.

Section 4: A copy of the map showing the amendments to the Zoning Map shall be filed in the Office of the Albany City Recorder and the changes shall be made on the official City of Albany Zoning Map upon annexation and passage of this ordinance on second reading.

Section 5: A copy of the legal description of the affected properties and the map showing the amendment to the Zoning Map shall be filed with the Linn County Assessor's Office within 90 days after the effective date of this ordinance.

Passed by Council: 2-17-08

Approved by Mayor: 2-17-08

Effective Date: 2-17-08

Wan Bedon
Mayor

ATTEST:

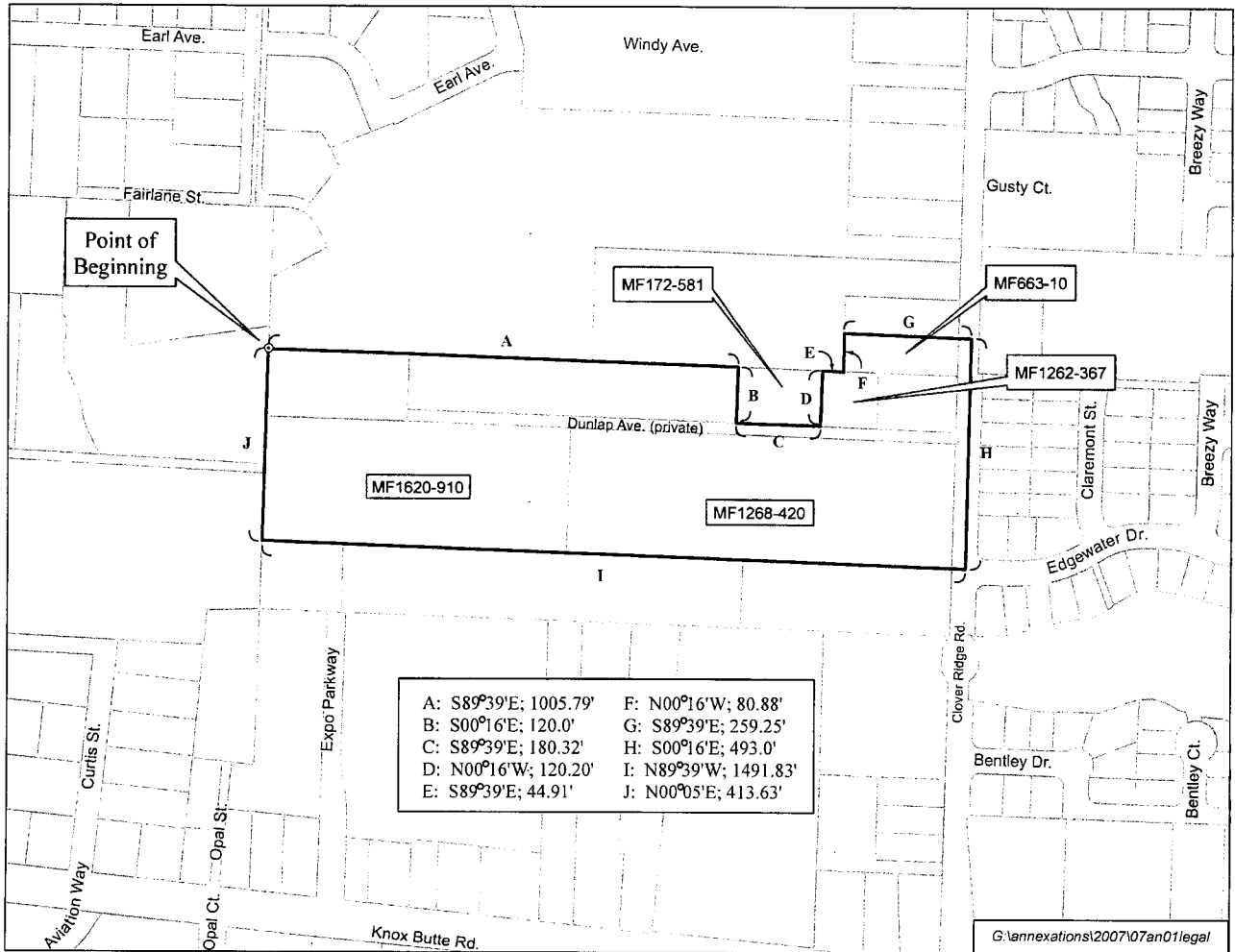
Betty Lougheed
City Clerk

**ANNEXATION RESOLUTION EXHIBIT A
ZONING ORDINANCE EXHIBIT A
LEGAL DESCRIPTION
FILES AN-01-07/ZC-03-07**

Beginning at the Southwest corner of Lot 21 of Fairlanes Subdivision, a residential subdivision recorded in County Survey No. 3038, Linn County, Oregon survey records; thence South 89°38' East, along the south line of said Fairlanes Subdivision and its easterly extension, a distance of 1005.79 feet to a 1/2-inch pipe, said pipe also being the Northwest corner of that tract owned by Robert and D. Kay Kingsberry, described in Linn County Microfilm Deed Records MF172-581; thence South 0°16' East, along the Westerly line of said Kingsberry tract, a distance of 120.00 feet, to the Southwest corner of said Kingsberry tract; thence South 89°39' East, along the Southerly line of said Kingsberry tract, a distance of 180.32 feet to the Southeast corner of said Kingsberry tract; thence, North 0°16' West, along the Easterly line of said Kingsberry tract, a distance of 120.20 feet to the Northwest corner of that tract owned by Micheal and Roberta Newman, described in Linn County Microfilm Deed Records MF1262-367; thence South 89°39' East, along the northerly line of said Newman tract, a distance of 44.91 feet, to the Southwest corner of that tract owned by Micheal and Roberta Newman, described in Linn County Microfilm Deed Records MF663-10; thence North 0°16' West, along the West line of said Newman tract, a distance of 80.88 feet to a 3/4-inch rod at the northwest corner of said Newman tract; thence South 89°39' East, along the northerly line of said Newman tract, and the easterly extension thereof, a distance of 259.25 feet, more or less, to the city limits boundary; thence South 0°16' East, along said city limits boundary, a distance of 493.0 feet, more or less, to the intersection of said city limits boundary and the easterly extension of Southerly line of that tract owned by Micheal and Roberta Newman, described in Linn County Microfilm Deed Records MF1268-420; thence North 89°39' West along the Southerly line of said Newman tract, a distance of 1491.83 feet to an iron bar, said point also being the Southwest corner of that tract owned by James and Monica Brooks, described in Linn County Microfilm Deed Records MF1620-910; thence North 0°05' East, along the Westerly line of said Brooks tract and the Northerly extension thereof, a distance of 413.63 feet to the Point of Beginning.

Said area containing 14.9 acres, more or less.

**ANNEXATION RESOLUTION EXHIBIT B
 ZONING ORDINANCE EXHIBIT B
 LEGAL DESCRIPTION MAP
 AN-01-07/ZC-03-07**





Community Development Department

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STAFF REPORT Annexation and Zoning Map Amendment

<u>HEARING BODY</u>	ALBANY CITY COUNCIL
<u>HEARING DATE</u>	Wednesday, February 27, 2008
<u>HEARING TIME</u>	7:15 p.m.
<u>HEARING LOCATION</u>	Council Chambers, Albany City Hall, 333 Broadalbin Street SW

GENERAL INFORMATION

DATE OF REPORT:	February 20, 2008
FILES:	AN-01-07 and ZC-06-07
TYPE OF APPLICATIONS:	Annexation and zoning of approximately 14.9 acres west of Clover Ridge Road NE
REVIEW BODIES:	City Council (The Planning Commission held a public hearing on February 11, 2008.)
STAFF REPORT PREPARED BY:	Mike Leopard, Infrastructure Analyst
PROPERTY OWNERS/ APPLICANTS:	Micheal and Roberta Newman; 3749 Dunlap Avenue NE; Albany, OR 97322 James and Monica Brooks; 3800 Dunlap Avenue NE; Albany, OR 97322
APPLICANT REP:	Multi/Tech Engineering Services, Inc.; 1155 13th Street SE, Salem, OR 97302
ADDRESS/LOCATION:	250, 310, and 320 Clover Ridge Road NE; and 3705, 3749, 3800, and 3855 Dunlap Avenue NE – See Staff Report Attachment A.
MAPS/TAX LOTS:	Linn County Assessor's Map No. 11S-03W-04AB; Tax Lot 700; and 11S-03W-04AC; Tax Lots 100, 200, 203, 300, 400, 500, 501, and 600
CURRENT ZONING:	Linn County UGA-UGM-20; Urban Growth Management – 20-acre minimum lot size
TOTAL LAND AREA:	14.9 acres
EXISTING LAND USE:	Single-family homes on large lots and undeveloped parcels
EXISTING COMP PLAN DESIGNATIONS:	Low Density Residential (north of Dunlap Avenue NE) and Medium Density Residential (south of Dunlap Avenue NE) – See Staff Report Attachment B.
NEIGHBORHOOD:	East Albany

SURROUNDING ZONING: North: Linn County UGA-UGM-20
South: RM (Residential Medium Density)
East: RS-6.5 (Residential Single Family)
West: RS-6.5 and RC (Regional Commercial)
See Staff Report Attachment C.

SURROUNDING USES: Predominantly single-family homes on large lots directly adjacent to the subject property. Newer subdivisions have been/are being developed in the general vicinity around Clover Ridge Road NE and Knox Butte Road NE.

PROPOSED ZONING: RS-5 – (Residential Single Family) - north of Dunlap Avenue NE
RM – south of Dunlap Avenue NE

PRIOR HISTORY: Property lies within an island of unincorporated land that was formed when the “Brandis” annexation was approved in 2002. Other portions of this island have been annexed since 2002 as the City has received applications.

REASON FOR ANNEXATION

The applicants wish to have the subject property annexed to make it eligible for future development at urban densities according to the City of Albany Comprehensive Plan and Development Code.

NOTICE INFORMATION. On January 28, 2008, notice of the public hearing for this project was mailed to property owners within 300 feet of the subject property. As of the date this staff report was completed, staff had not received any written comments on this project. The subject property was posted with signs on January 23, 2008.

PLANNING COMMISSION RECOMMENDATION

On February 11, 2008, the Albany Planning Commission unanimously recommended that the City Council pass a resolution proposing the annexation of this property located on Clover Ridge Road NE, and forwarding the question of annexation to the voters on the May 20, 2008, ballot.

The Planning Commission also recommended that this same property be zoned RS-5 and RM.

SUGGESTED COUNCIL ACTION

Passage of the attached resolution that would propose the annexation of these properties located north of Dunlap Avenue NE, west of Clover Ridge Road NE, and forward the question of annexation to the voters on the May 20, 2008, ballot.

Passage of the attached ordinance on first reading only that would change the zoning of the subject property from Linn County UGM-20 to City of Albany RS-5 and RM, if the annexation is approved by the voters.

FINDINGS AND CONCLUSIONS
FILE AN-01-07

INTRODUCTION

On January 11, 2006, the City Council adopted modified procedures for voter-approved annexation in the City of Albany. These procedures are detailed in Article 2 of the City of Albany Development Code (ADC 2.100 – 2.180).

Listed below are findings and conclusions that address the review criteria as specified in the Development Code. Review criteria are listed in *bold italics* and are followed by findings and conclusions.

The following abbreviations are used in these findings:

“ADC” means Albany Development Code, available online (<http://www.cityofalbany.net/commdev/devcode/index.php>) and in the office of the Albany Community Development Department.

“OAR” means Oregon Administrative Rules, available online (http://www.sos.state.or.us/archives/rules/number_index.html).

“ORS” means Oregon Revised Statutes, available online (<http://leg.state.or.us/ors/>).

A. ***Eligibility Criteria.*** *The City Council shall determine that property is eligible for annexation based on the following criteria:*

(a) *The property is contiguous to the existing city limits.*

(b) *The property is located within the Albany Urban Growth Boundary as established by the Albany Comprehensive Plan.*

FINDINGS OF FACT:

A1. The subject properties contain approximately 14.9 acres, and are contiguous to the current city limits along the south, west, and east property boundaries. (See Staff Report Attachment A.)

A2. Plate 1 of the City’s Comprehensive Plan shows the Urban Growth Boundary (UGB). The subject parcels are within the UGB.

CONCLUSION

A1. This criterion is met because the property proposed for annexation is contiguous with the existing city limits and is within the Albany UGB.

B. ***Infrastructure Criteria.*** *The City shall determine that it is timely to annex property based on the following criteria:*

(a) *An adequate level of urban services and infrastructure is available, or will be made available in a timely manner.*

(b) *As used in this section:*

i. *“Adequate level” means conforms to adopted plans and ordinances.*

ii. *“Urban services” means police, fire, and other City-provided services.*

iii. *“Infrastructure” means sanitary sewer, water, storm drainage, and streets.*

“Be made available in a timely manner” means that improvements needed for an adequate level of urban services and infrastructure will be provided at the time and place needed to serve the anticipated development. Improvements may be secured by a development agreement, annexation agreement, or other funding mechanism that will place the primary economic burden on the territory proposed for annexation and not on the City of Albany generally.

FINDINGS OF FACT

- B1. City utility maps show that a 12-inch public water main currently exists in Clover Ridge Road NE along the frontage of the subject area. There are also two 8-inch mains that are stubbed from the south that lie approximately 140 feet south of the subject area.
- B2. The City's Water Facility Plan (2004) shows no system deficiencies in this area. An existing system "loop" of large diameter water mains along Century Drive NE, Knox Butte Road NE, Clover Ridge Road NE, and Bernard Avenue NE/Somerset Avenue NE, covers the recommended facility plan projects for this area.
- B3. City utility maps show that an 8-inch public sanitary sewer main currently exists in Clover Ridge Road NE. These sewer facilities were constructed by the City in advance of the recent Linn County improvements to Clover Ridge Road NE. Connection to these facilities by unserved properties will result in connection charges for those properties. These connection charges are used to reimburse the City for the cost of installing the sewers. There are also two 8-inch mains that are stubbed from the south that lie approximately 140 feet south of the subject area.
- B4. The City's Wastewater Facility Plan (1998) indicates that there are no system deficiencies downstream of this site.
- B5. Clover Ridge Road NE was improved to City standards by Linn County in 2004. The subject parcels have access to Clover Ridge Road NE from a private shared access road (Dunlap Avenue NE). Burkhart Creek (south of the site) and Truax Creek (north of the site) are the main drainage features in this area. Storm drainage facilities in the newly reconstructed Clover Ridge Road NE collect stormwater from the road and some adjacent parcels and carry the runoff to these creeks, or to smaller drainageways in the area.
- B6. The City's Storm Drainage Master Plan (1988) indicates that the subject properties lie entirely within the Burkhart Creek drainage basin. The Plan shows no capacity deficiencies within, adjacent to, or downstream of the subject parcels (Fig. 9.1). The 1988 Plan indicates that the main channel of Burkhart Creek is sufficient to carry the 100-year storm flows. The Master Plan states, "[o]ne problem area was identified within this Burkhart basin. Flooding occurs in an area just east of Highway I-5 at Fairlane Street and Earl Avenue. The area is very level in grade and the streets are unimproved. Storm drainage improvements along the streets will allow flows to be carried to the main channel and alleviate flooding." The Plan also states, "[t]here are no recommended improvements within this subbasin due to the adequate capacity of existing storm drainage elements. The main channel of Burkhart Creek is to be retained as the major drainage way for the basin. Any future drainage from development should be directed to the main channel." Future development on the subject property will require that a drainage plan be provided by the developer to show how stormwater runoff from the site will be collected and properly discharged to the public drainage system.
- B7. The subject parcels currently access Clover Ridge Road NE from a shared private road (Dunlap Avenue NE). Clover Ridge Road NE is classified as a minor collector street and was recently reconstructed to City standards by Linn County. Improvements include: curb and gutter; sidewalk along the west side of the road; a travel lane in each direction; and on-street striped bike lanes. Jurisdiction over Clover Ridge Road NE is currently held by Linn County. New development of property with frontage along Clover Ridge Road NE would be responsible for paying connection charges for street and storm drainage improvements in Clover Ridge Road NE.
- B8. Albany's Transportation System Plan (TSP) identifies a new minor collector street being extended in a north-south direction across the western portion of this site. Until this new collector street is connected to Knox Butte Road NE in the future, primary access to and from the site would be provided by Clover Ridge Road NE. The TSP also shows the portion of the future Dunlap Avenue NE that lies west of this north-south street as being classified as a collector. Depending on the approved alignment of the north-south collector street, development on the subject property may also be responsible for some portion of the Dunlap Avenue NE improvements to collector standards.

- B9. ADC 12.060 allows the City to impose conditions for the dedication and construction of public street improvements within and adjacent to new development.
- B10. Adequate public water flow for fire protection is currently available in this area. Because the subject properties are part of a larger existing “island” of unincorporated territory, there are properties on all sides that are currently being served by the City’s Fire Department. Fire service to these properties would be a logical expansion of the current service boundaries.
- B11. Because the subject properties are part of a larger existing “island” of unincorporated territory, there are properties on all sides that are currently being served by the City’s Police Department. Police service to these properties would be a logical extension of the current patrol boundaries.
- B12. The applicant’s findings state, “[t]he timeliness of the development will be secured through an improvement agreement or other mechanism to assure that the developer is responsible for the extension of facilities necessary to serve the site.”

CONCLUSIONS

- B1. This criterion is met because public utilities and transportation system improvements have been made adjacent to the subject properties (in Clover Ridge Road NE), and these improvements are adequate to serve future development on the site. The associated Annexation Agreement (see Staff Report Attachment E) ensures that any additional needed improvements to serve future development on the subject properties would be made solely by the benefiting properties and not by the City of Albany generally.
- B2. Clover Ridge Road NE is classified as a minor collector road in Albany’s TSP and is improved to City standards. Until a future street connection is made to Knox Butte Road NE to the south, primary access to the site would be from Clover Ridge Road NE. The transportation system adjoining the site conforms to Albany’s adopted TSP and has an adequate level of infrastructure to support development on the site.
- B3. Albany’s TSP shows a new collector road being extended in a north-south direction across the western portion of this site, and an east-west collector street (Dunlap Avenue) west of this north-south street, as development occurs. ADC 12.060 allows the City to condition a future development application on the site to construct the collector road. These collector streets within the western portion of the site can be made available in a timely manner by conditioning a future development on the site to make the improvements.
- B4. This criterion is met because fire service is already provided to these parcels by the City through a fire district and public water facilities are in place to serve the area. The subject properties are within an “island” and are surrounded by properties that are in the city limits. Properties surrounding this site are served by the City’s fire and police departments, so the addition of this area to the city limits would be a logical extension of the current service boundaries.

CONDITION

- B1. The applicants must sign the Annexation Agreement that is represented by Staff Report Attachment E.
- C. **Planning Criteria.** *The City shall determine that adequate planning has occurred based on the following criterion:*

Sufficient planning and engineering data have been provided, and necessary studies and reviews have been completed such that there are no significant unresolved issues regarding appropriate Comprehensive Plan and implementing ordinances. Examples of needed studies may include public infrastructure plans, buildable lands inventories, area refinement plans, or any task in an approved work program for Periodic Review.

FINDINGS OF FACT

- C1. This annexation request is for 9 parcels that total approximately 14.9 acres. The Comprehensive Plan Map designations for these properties are Medium Density Residential for the area south of Dunlap Avenue NE, and Low Density Residential for the area north of Dunlap Avenue NE (see Staff Report Attachment B). The applicant has submitted a concurrent Zone Change application that requests City of Albany zoning designations of RS-5 and RM.
- C2. Public infrastructure facility plans that deal with this area include: Water Facility Plan (2004); Wastewater Facility Plan (1998); Storm Drainage Master Plan (1988); Transportation System Plan (1997).
- C3. The subject property was not in the study area for the "1995 East I-5 Vision." Recent work done as part of the City's Periodic Review has resulted in a change to the Comprehensive Plan designation of the area south of Dunlap Avenue NE from Low Density Residential to Medium Density Residential.
- C4. The Local Wetlands Inventory for the East I-5 area (1997) shows wetlands on these parcels. Some of the wetlands on the subject properties are identified in this Local Inventory as being considered "locally significant." (See attached map labeled Staff Report Attachment D.)
- C5. In the past, the City Council has expressed concern regarding residential development with backyard fences along arterial and collector streets. Staff has addressed this concern within the proposed Annexation Agreement (See Staff Report Attachment E). The City Council may consider amending the Albany Development Code to prohibit backyard fences along arterial and collector streets in the future.

CONCLUSIONS

- C1. This criterion is met because of the information provided in the various studies and plans covering this area.
- C2. The Annexation Agreement addresses the fence issue.

D. Reasonableness. The City Council shall determine that the proposed annexation is reasonable.

FINDINGS OF FACT

- D1. The subject parcels lie within an existing "island" of unincorporated territory surrounded.
- D2. City sewer and water facilities are available within the Clover Ridge Road NE right-of-way. When previously unserved properties connect to public sewer and water facilities, connection charges may be due. These connection charges are used to repay the City (or the initial developer) for the initial cost of constructing the improvements.

CONCLUSIONS

- D1. The proposed annexation would decrease the total size of the existing island of unincorporated territory west of Clover Ridge Road NE, but would create a smaller island of Tax Lot 201.
- D2. The City will be partially reimbursed for sewer improvements in Clover Ridge Road NE when properties apply to connect to those facilities. Public water facilities in Clover Ridge Road NE were constructed by Myles Breadner as part of development occurring to the north of the subject property.

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STAFF ANALYSIS

Zoning Map Amendment File ZC-06-07

The Albany Development Code (ADC) includes the following review criteria which must be met for this application to be approved. Code criteria are written in *bold italics* and are followed by findings and conclusions.

- (1) *The proposed base zone is consistent with the Comprehensive Plan map designation for the entire subject area unless a Plan map amendment has also been applied for in accordance with Section 2.080, ADC Article 2.*

FINDINGS OF FACT

- 1.1 The applicants propose to change the Zoning Map designation of 14.9 acres from Linn County UGM-20 (Urban Growth Management – 20-acre minimum lot size) to City of Albany RS-5 (Residential Single Family) and RM (Residential Medium Density).
- 1.2 The current Comprehensive Plan designations of the property where the Zoning Map amendment are proposed are Low Density Residential and Medium Density Residential.
- 1.3 The Plan Designation Zoning Matrix in the Development Code (ADC 2.570) shows that the proposed RS-5 is consistent with the Low Density Residential Comprehensive Plan Map designation, and RM is consistent with the Medium Density Residential designation.

CONCLUSION

- 1.1 This criterion is met because the applicants have applied for City zoning designations that are compatible with the existing Comprehensive Plan designations on the subject property.
- (2) *Existing or anticipated transportation facilities are adequate for uses that are permitted under the proposed zone designation.*

FINDINGS OF FACT

- 2.1 The property where the map amendments are proposed is located on the west side of Clover Ridge Road NE, about 700 feet north of Knox Butte Road NE.
- 2.2 An application to develop the property was not submitted with the Zoning Map Amendment application. An application to annex the property was submitted along with the Zoning Map Amendment application.
- 2.3 The property, when considered as a whole, has approximately 500 feet of frontage on Clover Ridge Road NE.
- 2.4 Clover Ridge Road NE is classified as a minor collector street. Linn County recently improved Clover Ridge Road NE to City standards with curb and gutter and sidewalks on the west side. The street is currently under the jurisdiction of Linn County. The speed limit is 25 miles per hour.
- 2.5 The City's Transportation System Plan (TSP) shows the need for a north-south collector street in this area. The most likely location for this street would be in line with Cameron Street NE to the north. The location of the intersection of this street with Knox Butte Road NE to the south has not been determined. Such an alignment would most likely put this future street through the western portion of the subject properties. Final design details for this and other streets through the subject properties would be reviewed in detail when a development application is submitted in the future. The TSP also shows the portion of Dunlap Avenue NE west of this north-south street as being classified as a collector. Depending on the alignment of the north-south collector street, development on the subject property may also be responsible for at least some portion of the Dunlap Avenue NE collector street.

CONCLUSIONS

- 2.1 Until a future street connection is made to Knox Butte Road NE to the south, primary access to the site would be from Clover Ridge Road NE. The transportation system adjoining the site (Clover Ridge Road NE) conforms to Albany's adopted TSP and has an adequate level of infrastructure to support development on the site. It will most likely be necessary to construct a portion of a north-south collector street through the west portion of the site at the time the property is developed. Depending on the alignment of the north-south collector street, development on the subject property may also be responsible for at least some portion of the Dunlap Avenue NE collector street.
- 2.2 This review criterion is met.
- (3) ***Existing or anticipated services (water, sanitary sewers, storm sewers, schools, police and fire protection) can accommodate potential development within the subject area without adverse impact on the affected service area.***

Sanitary Sewer

- 3.1 The City's utility maps show that there is an 8-inch public sanitary sewer main in Clover Ridge Road NE. An existing 8-inch main is stubbed near the west boundary of the site in Dunlap Avenue NE.
- 3.2 The subject property lies within Basin 10 as defined in the City's Wastewater Facility Plan. The Facility Plan makes recommendations for providing adequate sewer system capacity to accommodate anticipated development. The Plan does not show any collection system deficiencies downstream of the subject property. Future development on this site would be required to extend public sanitary sewer facilities as needed to serve the site and to provide access to the sewer system for adjoining properties to accommodate future main extensions.

Water

- 3.3 The City's utility maps show that there is a 12-inch public water main in Clover Ridge Road NE.
- 3.4 The subject properties are within an area that is looped by large diameter water mains (36 inch in Century Drive NE; 20 inch in Bernard Avenue NE, Cameron Street NE, and Somerset Avenue NE; 12 inch in Clover Ridge Road NE; and 20 inch in Knox Butte Road NE). These large water mains have completed the recommended Water Facility Plan projects called for in this area. The water system in this vicinity is adequate to provide domestic fire service to the anticipated future development within this area. Future development on the subject properties would be required to extend public water facilities as needed to serve the site and to provide access to the water system for adjoining properties.

Storm Drainage

- 3.5 The City's utility maps show that Burkhart Creek is the main drainage feature in this drainage basin, but the creek does not run through the subject properties. The creek runs from the east to the northwest, and crosses under Dunlap Avenue NE approximately 350 feet west of the western boundary of the site. Because the areas downstream (west and northwest) of the site were developed while in the county, the streets are unimproved and no public storm drainage piping exists within the rights-of-way that provide access to the area. Drainage facilities that do exist downstream of the site are open channels and ditches, with culverts at driveways and street crossings.
- 3.6 The City of Albany's Storm Drainage Master Plan (1988) states that "[t]here are no recommended [Facility Plan] improvements within this subbasin due to the adequate capacity of existing storm drainage elements." However, the plan also states, "[o]ne problem area was identified within this Burkhart basin. Flooding occurs...at Fairlane Street and Earl Avenue. The area is very level in grade and the streets are unimproved. Storm drainage improvements along the streets will allow flows to be carried to the main channel and alleviate flooding." In addition, the plan recommends that "[t]he main channel of Burkhart Creek is to be

retained as the major drainage way for the basin. Any future drainage from development should be directed to the main channel.” (Page 8.2)

- 3.7 The amount of stormwater runoff from a development generally depends on the total area of impervious surfaces on the property. The Albany Development Code specifies a maximum amount of “lot coverage” (buildings and parking areas) for each zoning district. It is generally accepted that the higher the density of a development, the more impervious surface is constructed, and the higher the amount of stormwater runoff from the site.
- 3.8 Future development on the subject properties will be required to provide detailed stormwater analyses to identify how best to accommodate stormwater runoff from the development. If necessary, onsite stormwater detention would be used to assure that downstream drainage elements are not overtaxed.

Schools

- 3.9 This request is to zone the property for low- and medium-density residential development. Typical residential developments have school-age children living in them. The voters approved a school bond measure in November 2006. The Greater Albany Public School District is planning on constructing a new school in the East I-5 area next year to address the growth in this area.

Police and Fire Protection

- 3.10 The Albany Police Department and Fire Department provide services to all development in Albany. When a property is annexed, these departments will provide service to the property regardless of its zoning designation.
- 3.11 The existing public water system in this area is adequate to provide fire flows for development that would be allowed in the proposed zones. The City’s computer water model indicates that fire flows in this area exceed 10,000 gallons per minute in Knox Butte Road NE and Clover Ridge Road NE near the subject property.

CONCLUSIONS

- 3.1 The public sanitary sewer, water, and storm drainage systems in this area have the capacity to serve development on the property if the zoning is changed to RS-5 and RM. Improvements and/or extensions of these systems into and through the site will be required at the time the property is developed.
 - 3.2 If the zoning designation of the property is changed to RS-5 and RM, future development will likely increase the demand for school space by providing housing that will include school-age children. The Greater Albany Public School District is planning on the construction of a new school in the East I-5 area within the next year to address current and future population growth.
 - 3.3 Upon development of the subject properties, the design of public infrastructure improvements would be required such that existing or anticipated services could accommodate potential development within this area without adverse impact on the affected service area.
 - 3.4 This review criterion is met.
- (4) *Any unique natural features or special areas involved such as floodplains, slopes, significant natural vegetation, and historic districts will not be jeopardized as a result of the proposed rezoning.***
- 4.1 Floodplains: *Comprehensive Plan Plate 5: Floodplains*, does not show a floodplain on this property. FEMA/FIRM Community Panel No. 410136 0185B, dated September 29, 1986, shows the property is in Zone C, a designation defined as “areas of minimal flooding.” This map also shows that Burkhart Creek stays within its banks during a 100-year flood.

- 4.2 Wetlands: The National Wetlands Inventory and the East I-5 Wetlands Inventory shows wetlands on the property. The East I-5 Local Wetlands Inventory designates some of the wetlands within the southern portion of the site as “locally significant.” The Department of State Lands (DSL) regulates wetlands in Oregon. Future development on the property may require permits from DSL. The applicants will be required to comply with DSL regulations and permit requirements when the property is developed.
- 4.3 Slopes: *Comprehensive Plan Plate 7: Slopes*, does not show steep slopes on the property. The City’s topographic data shows that elevations on the property vary from about 218 feet to about 222 feet.
- 4.4 Significant Natural Vegetation: *Comprehensive Plan Plate 3: Natural Vegetation and Wildlife Habitat*, shows areas of vegetation and/or wildlife habitat on the property. The property has some trees within the western portion of the site and around the existing dwellings near Clover Ridge Road NE. Future development on the property may require removal of trees. The uniqueness, size, age, and other characteristics of the trees are considered at the time development is proposed on the property.
- 4.5 Historic District: *Comprehensive Plan Plate 9: Historic Districts*, indicates that the property is not in an historic district.

CONCLUSIONS

- 4.1 Floodplains, slopes, and/or historic districts will not be jeopardized as a result of the proposed rezoning. It may be necessary to remove trees on the property when future development occurs on the property. The uniqueness, size, age, and other characteristics of the trees will be considered for any trees requiring City approval before removal.
- 4.2 Future development on the site may require permits from DSL if the development may impact wetlands that exist on the site.
- 4.3 This review criterion is met.
- (5) ***The intent and purpose of the proposed zoning district best satisfies the goals and policies of the Comprehensive Plan.***
- 5.1 The current zoning designation of the property where the Zoning Map amendment is proposed is UGM-20 (Urban Growth Management – 20-acre minimum lot size). The proposed zoning would result in approximately 9.1 acres of RS-5 (Residential Single Family) and 5.8 acres of RM (Residential Medium Density).
- 5.2 The total area of the proposed annexation is approximately 14.9 acres. There are currently seven existing single-family homes within the area proposed for vacation. The “Albany Housing Needs Analysis” (2006) methodology used for analyzing buildable lands inventory for partially developed land chose one-half acre as an allowance for an existing dwelling on parcels over three-quarter acre in size. Using this one-half acre value for the seven existing single-family homes within the annexation area, there are approximately 11.4 acres of vacant land in the subject property that can be considered for development if all the existing houses remain. There is more developable vacant land if the minimum lot size of 5,000 square feet is considered for the existing houses, or if the existing houses were removed.
- 5.3 The applicant’s findings suggest that this particular area in Albany is more suited for annexation and conversion to urban residential development than many other underdeveloped areas within the UGB due to its proximity to commercial, education, and other residential uses, as well as the availability of existing City utilities and services. In addition, the subject property lies within an island of unincorporated territory surrounded on all sides by property within the city limits that is being developed to urban densities.
- 5.4 The applicant’s findings state that the Comprehensive Plan indicates that based upon an average growth rate of 1.5 percent over the next 20 years, the City may need more than 100 acres of medium-density land. If the City grows at a rate of 2.3 percent, the City may need 240 acres of medium-density land by 2025.

- 5.5 The City recently modified the underlying Comprehensive Plan designations on the subject property based on work done in conjunction with Periodic Review. It was determined that this area would maintain its residential designation, but that the area south of Dunlap Avenue NE should be given a designation (Medium Density Residential) that allows for higher density housing opportunities.
- 5.6 The applicant's findings state that in order to carry out the purposes of the Comprehensive Plan and Development Code, comprehensive plan designations and zoning districts are established so that the entire territory of the City can be classified for purposes of land use according to the predominant character of development and current or intended use in an area. The surrounding area is developing to urban residential densities. This proposal for two zoning districts is for flexibility in providing for Albany's future residential needs, and an attempt to provide a transition between the single-family development to the north and the multi-family development to the south.

(6) **RELEVANT GOALS AND POLICIES**

The following Comprehensive Plan goals and policies are relevant in considering whether the proposed RS-5 (Residential Single Family) and RM (Residential Medium Density) zoning designations best satisfy the Goals and Policies of the Comprehensive Plan. Goals and policies are listed below in *bold italic* print, followed by finding of fact and conclusions.

GOAL 1: CITIZEN INVOLVEMENT

Goal: Ensure that local citizens and other affected groups, neighborhoods, agencies, and jurisdictions are involved in every phase of the planning process.

Policy 2: When making land use and other planning decisions:

- a. *Actively seek input from all points of view from citizens and agencies and assure that interested parties from all areas of the Urban Growth Boundary have the opportunity to participate.*
- b. *Utilize all criteria relevant to the issue.*
- c. *Ensure the long-range interests of the general public are considered.*
- d. *Give particular attention to input provided by the public.*
- e. *Where opposing viewpoints are expressed, attempt to reach consensus where possible.*

Policy 3: Involve the general public in the use, evaluation, and periodic review and update of the Albany Comprehensive Plan.

Policy 4: Ensure information is made available to the public concerning development regulations, land use, and other planning matters, including ways they can effectively participate in the planning process.

- 6.1 The City of Albany's Comprehensive Plan and Development Code provide requirements for citizen involvement in the decision-making process for Zoning Map amendments. Zoning Map amendments are processed as Type IV land use decisions with notice to affected parties, including surrounding property owners and affected government agencies. Public hearings before the Planning Commission and City Council are held. Notice of the public hearings is posted on the subject property. The City's Comprehensive Plan and Development Code, including the processes for citizen involvement, have been acknowledged by the Land Conservation and Development Commission (LCDC) as consistent with statewide planning goals.
- 6.2 People who are notified of the public hearing are invited to submit comments or questions about the application prior to the hearing or at the hearing. Review of the application is based on the review criteria listed in the Development Code. The purpose of the public hearing is to provide the opportunity for people to

express their opinion about the proposed changes, and where opposing viewpoints are expressed, to try to reach consensus. The Planning Commission and City Council facilitate this process at the public hearings.

GOAL 5: OPEN SPACES, SCENIC & HISTORIC AREAS; & NATURAL RESOURCES

VEGETATION AND WILDLIFE HABITAT

Goal: Ensure vegetation is and remains an integral part of Albany's environment.

Policy 1: Protect existing vegetation, which possesses significant environmental, wildlife habitat, and aesthetic qualities, particularly along the Santiam Canal and the Willamette and Calapooia Rivers, their tributaries, and associated floodplains and drainageways.

Policy 2: Encourage the protection of trees of significant size that represent a visual and aesthetic resource to the community and recognize that the vegetation resources of Albany's Historic Districts are an important element of Albany's historic and cultural heritage.

Policy 3: Where possible, retain the environmental and aesthetic qualities of existing wooded areas by incorporating them into public park and open space plans, and ensure the maximum preservation of vegetation during the development review and construction process.

- 6.3 *Comprehensive Plan Plate 3: Natural Vegetation and Wildlife Habitat*, shows areas of vegetation and/or wildlife habitat on the property. The property has a variety of tree types on it. Most of the trees are located in the western portion of the site and around the existing dwellings. There are existing single-family houses and a variety of outbuildings on the properties now. Additional development on the property may require the removal of some trees. The uniqueness, size, age, and other characteristics of the trees are considered at the time development is proposed on the property.

GOAL 5: WETLAND RESOURCES

Goal: Protect wetlands to ensure their continued contribution as natural areas, open space, wildlife and vegetative habitat, and storm water retention and conveyance.

- 6.4 *Comprehensive Plan Plate 6: Wetland Sites*, does not show any wetlands on the property. However, the East I-5 Local Wetlands Inventory maps do show wetlands on the property. The East I-5 Inventory did determine some of these wetlands to be "locally significant." The Oregon Department of State Lands (DSL) regulates wetlands in Oregon. Any type of residential development on the property may require permits from DSL. The applicants will be required to comply with DSL regulations and permit requirements when the property is further developed.

GOAL 10 HOUSING

Goal: Provide a variety of development and program opportunities that meet the housing needs of all Albany's citizens.

Policy 1: Ensure that there is an adequate supply of residentially zoned land in areas accessible to employment and public services to provide a variety of choices regarding type, location, density, and cost of housing units commensurate to the needs of city residents.

Policy 11: Encourage residential development on already serviced and vacant residential lots or in areas within which services are available or can be economically provided.

- 6.5 The subject property is located in an area that is accessible to employment and public services. This neighborhood contains several new subdivisions.
- 6.6 All city services are available to serve a residential development in this area.

GOAL 12: TRANSPORTATION

Goal: Provide a safe, diversified, economical, and efficient transportation system that protects and enhances Albany's economy, environment, neighborhood quality, cultural, and scenic values. For the purposes of this document, a transportation system includes auto, transit, bicycles, pedestrian, rail, and air transportation.

Policy 1: When planning for, designing, and providing transportation systems:

- a. Coordinate the requirements of the various transportation types with each other and minimize operational and safety conflicts.*
- b. Coordinate proposed projects with impacted agencies and businesses and applicable neighboring cities, county, state, and federal agencies.*
- c. Notify and coordinate with affected agencies regarding the transportation impacts of proposed development within or adjacent to the Urban Growth Boundary.*

Policy 2: Protect transportation facilities, corridors, and sites for their identified functions.

- a. Develop access control measures and encourage land development patterns that minimize direct access onto collector and arterial roads.*
- b. Protect the future operation of corridors by obtaining sufficient right-of-way or building setbacks to provide for future capacity in transportation corridors and by conditioning development proposals to minimize impacts.*
- c. Review land use designations, densities, and design standards for consistency with the functions, capacities, and levels of service of facilities identified in the TSP.*

Policy 3: Develop a roadway system that is efficient and safe for the traveling public while preserving neighborhood quality and character.

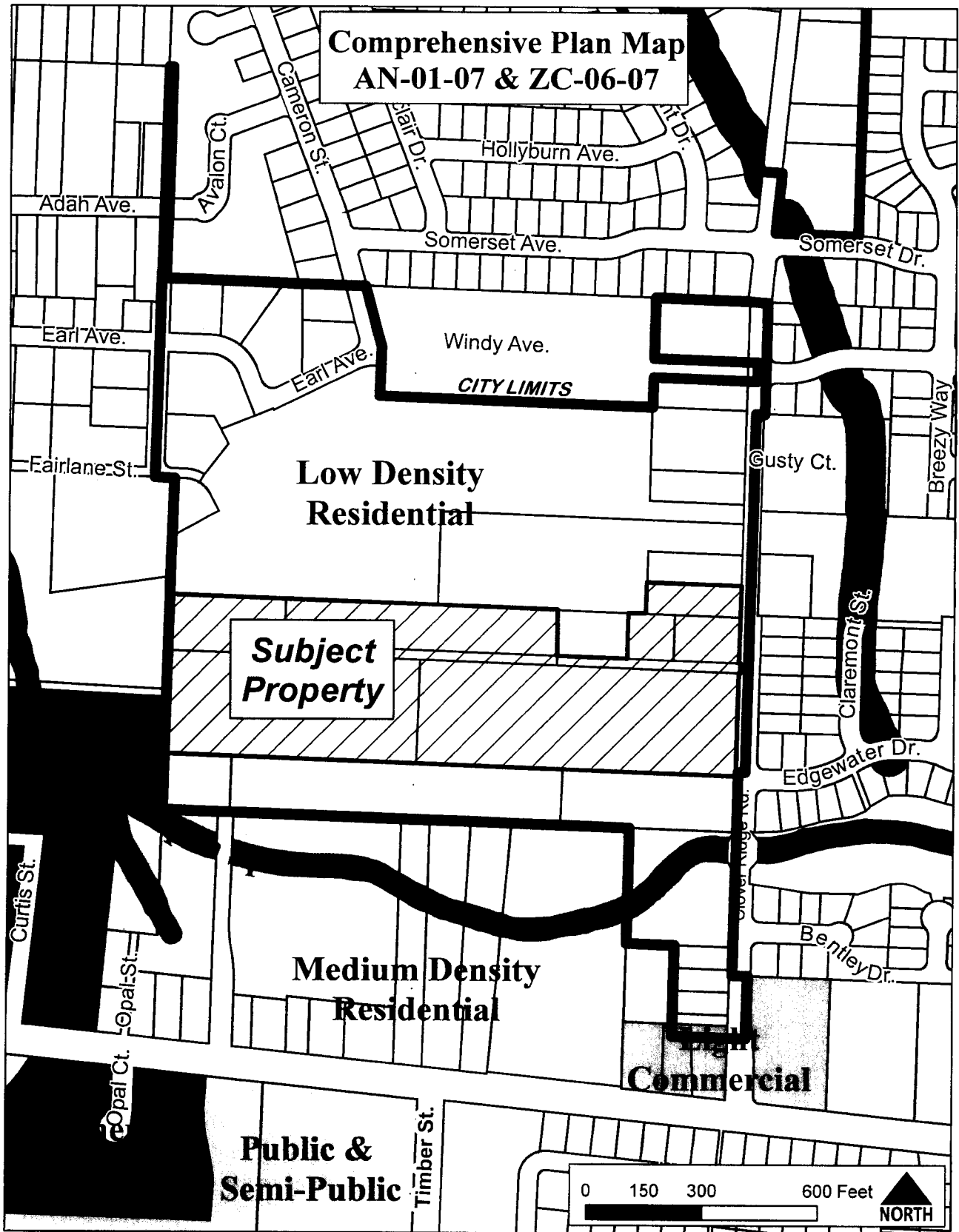
Policy 4: Develop a transportation system, encourage land use patterns and design standards, and promote transportation projects, programs, and policies which reduce dependency on the automobile and encourage alternatives such as public transit, bicycling, walking, car and van pools.

- 6.7 See the discussion under Zoning Map Amendment Review Criterion (2). The discussion finds that the transportation system can be made adequate for single-family residential development of the property. To avoid repeating the same information here, those findings and conclusions are included here by reference.

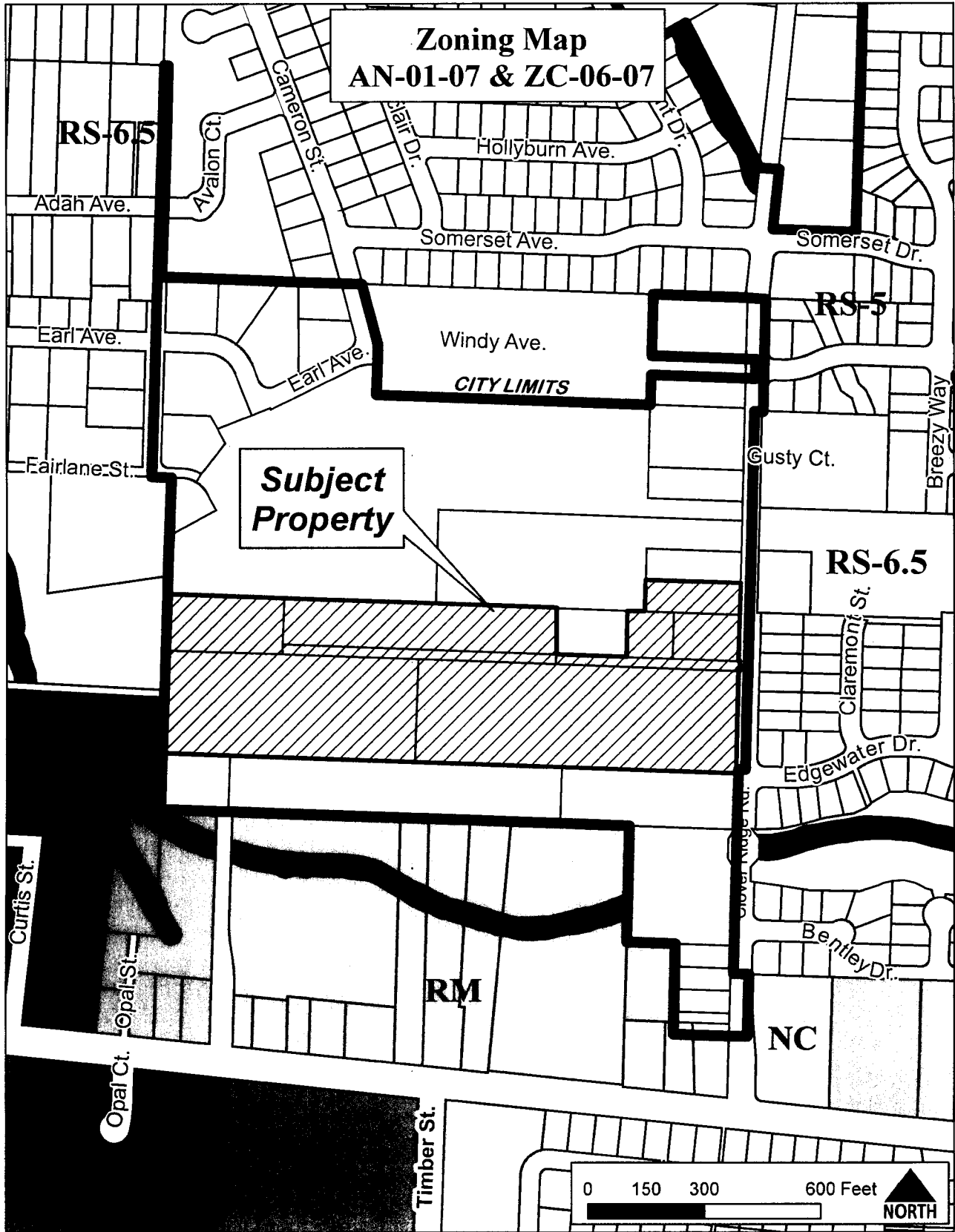
STAFF REPORT ATTACHMENT A
FILES AN-01-07 and ZC-06-07



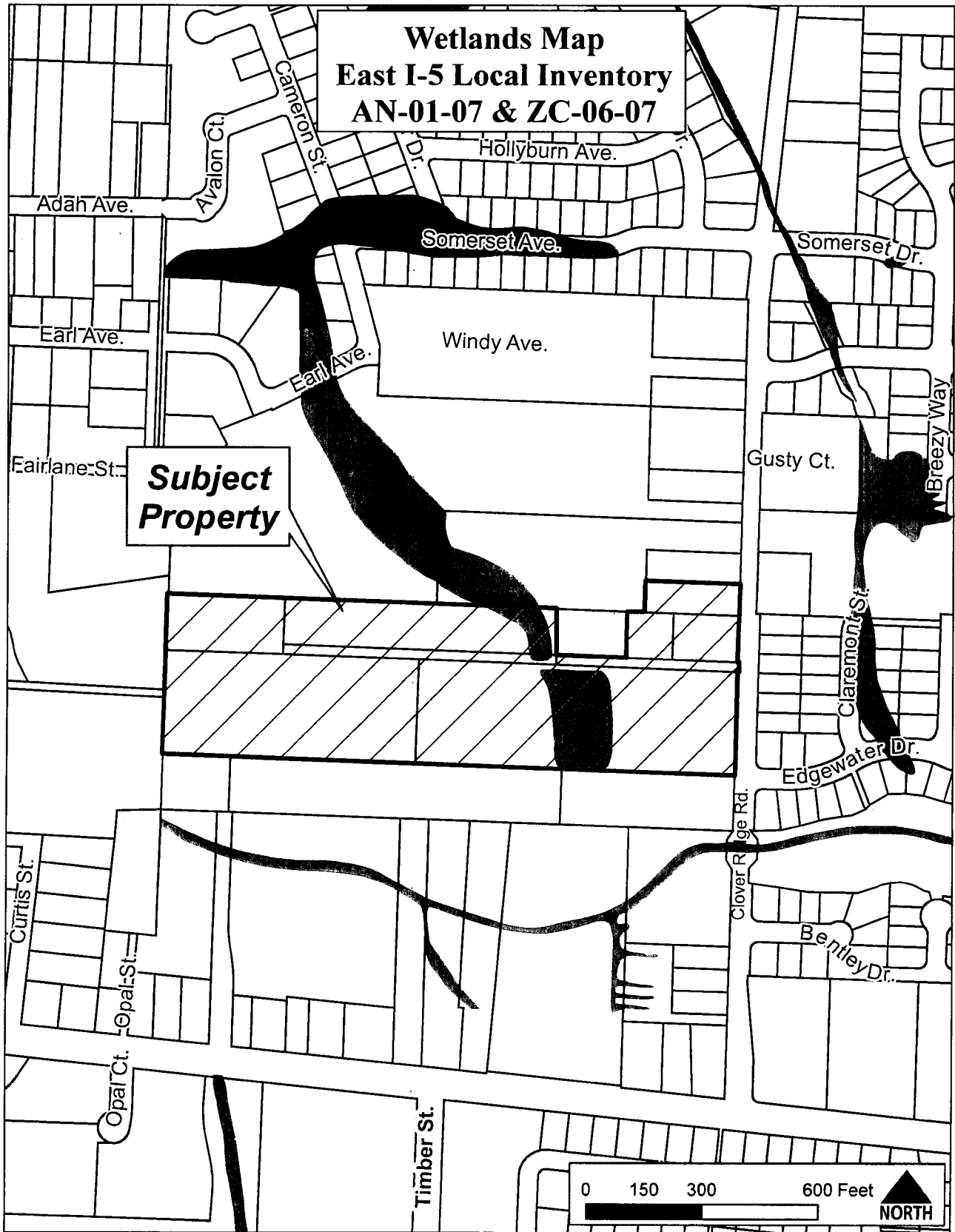
STAFF REPORT ATTACHMENT B
FILES AN-01-07 and ZC-06-07



STAFF REPORT ATTACHMENT C
FILES AN-01-07 and ZC-06-07



STAFF REPORT ATTACHMENT D
FILES AN-01-07 and ZC-06-07



ANNEXATION AGREEMENT

EFFECTIVE DATE: Upon approval of Albany City Council

PARTIES: MICHEAL D. and ROBERTA D. NEWMAN
3749 Dunlap Avenue NE
Albany, OR 97322-6504

JAMES L. and MONICA D. BROOKS
3800 Dunlap Avenue NE
Albany, OR 97322

CITY OF ALBANY, OREGON, a municipal corporation

("City")

RECITALS:

WHEREAS, Developer owns certain real property outside of and adjacent to City and described in Attachment 1 and shown in a map labeled Attachment 2 attached hereto (the "Property"), which they desire to be annexed to the City, and the City desires to put the annexation proposal on the ballot for approval of voters in accordance with Oregon law and the City Charter;

WHEREAS, City does not want annexation to impose express or implied obligations on the City to make and fund infrastructure improvements;

WHEREAS, prior to approving the proposal for the ballot, City staff has requested that Developer enter into an Agreement which will waive many of Developer's rights and remedies with regards to conditions that may be placed on development of the Property by City if public facilities are insufficient to support the development and which will commit Developer in good faith to make certain enhancements and observe restrictions concerning the Property at such time that the actual development of the Property begins;

WHEREAS, the City has the policy of not placing annexation proposals on the ballot unless the Council first determines that the annexation is timely and reasonable;

WHEREAS, among the factors considered by the Council in its timeliness determination is the adequacy of public infrastructure to serve the proposed annexation site;

WHEREAS, the Parties do not intend that this Agreement be a land use document or comply with the requirements of a Development Agreement as set forth in ORS 94.504 to 94.528;

WHEREAS, nothing in this Agreement limits the use of the Property for any lawful purposes, so long as any required City approval has been obtained;

WHEREAS, nothing in this Agreement shall require Developer to develop the Property or prohibit Developer from stopping any development after it has begun.

AGREEMENT:

NOW, THEREFORE in consideration of the above Recitals and the mutual promises contained herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The Recitals are hereby incorporated into this Agreement as if set forth herein in full.
2. **Location.** The Property is adjacent to the City Limits of the City of Albany and within the Urban Growth Boundary for the City of Albany.
3. **Term.** The term of this Agreement shall commence on the date upon which it is approved by the Albany City Council and shall continue until superseded or terminated by the mutual agreement of the Parties or shall terminate upon rejection of the proposed annexation by the voters of the City. The Parties may enter into individual agreements, including, but not limited to, Development Agreements, at any future date, which agreements will supersede this Agreement as applied to the Property as a whole or to portions of the Property or individual phases of development, as specified in said future agreements.
4. **Definitions.** For purposes of this Agreement, specific terms shall be defined as follows:
 - 4.1. *"Public Facilities"*. Physical infrastructure necessary or beneficial to the development of real property in the City of Albany. Such facilities include, but are not limited to, streets, curbs, gutters, bridges, culverts, intersections, traffic signals, signage, ditches, piping, valves, pump stations, landscaping, trails, bicycle paths, parks, sewer, storm sewer, and/or water facilities.
 - 4.2. *"Development"*. The meaning prescribed for said term at Albany Municipal Code 20.22.010.

- 4.3. *“Developer”*. Any person or legal entity having the right or responsibility to control the development of the Property. This term includes, without limitation, all owners of property proposed for development.
5. **Ballot.** The Property shall be proposed to the voters of the City of Albany for annexation subject to the terms of this Agreement.
6. **Waiver of Rights and Indemnification.** If Developer proceeds with development of the Property, Developer agrees that if the City determines, in the exercise of reasonable discretion, based on substantial evidence in the record, that Public Facilities are insufficient to support a proposed development, and there is a reasonable relationship between any condition or denial and said deficiency in Public Facilities, and the City therefore conditions or denies an application based on such a determination:
- 6.1 Developer will waive the right to claim that such condition or denial constitutes a moratorium under ORS 197.505 to 197.540.
 - 6.2 Developer will waive any right to seek judicial or administrative relief including, but not limited to, claims for injunction or damages that may result from the delay or denial of development opportunities.
 - 6.3 Developer will waive any claim under any present or future legislation, judicial determination, or Oregon Constitutional amendments that require local government to compensate a property owner for damages which result from governmental regulations which are deemed to constitute a complete or partial taking of such property.
 - 6.4 Developer waives any right to appeal said condition or denial or to seek any other form of judicial or administrative relief, on the grounds that it places a “disproportionate burden” on Developer. This waiver is intended to include, but not be limited to, claims that the disproportionate burden constitutes a partial or complete taking of Developer’s property. This waiver shall relieve City of any requirement to make individualized findings that justify a condition on the proposed development or a denial of the proposed development, but the condition or denial must be directly related to a deficiency in Public Facilities caused or contributed to by the proposed development.
 - 6.5 Developer waives any right to claims arising under or granted by any statutory or constitutional regulatory compensation or waiver provisions, including but not limited to Ballot Measure 49 (2007) or otherwise enacted after the date of this proceeding which would create a right of claim for compensation or waiver from city land use regulations that exist upon the effective date of the proceeding and which, by the approval of the proceeding, are then applicable to the property.
 - 6.6 None of the rights waived by Developer shall waive Developer’s right to just compensation in the event that the City initiates eminent domain proceedings to acquire all or a part of Developer’s property.
 - 6.7 The Developer and its successors and assigns agree to indemnify and hold harmless the City of Albany, its agents, officers, and employees, from any of the following claims including, but not limited to, the attorney’s fees and other expenses incurred by the City resisting said claims:
 - 6.7.1 Any claim challenging the enforceability or binding nature of this Agreement;
 - 6.7.2 Any judicial or administrative proceeding which is brought by Developer or its successors or assigns challenging the correctness or any action taken by the City which is authorized under the terms of this Agreement;
 - 6.7.3 Any other proceeding of any kind or nature wherein Developer or its successors or assigns seeks damages or injunctive relief as a result of any City decision to deny, condition, or limit development activities.

- 6.8 The Property is currently designated on the City's Comprehensive Plan Map as Urban Residential Reserve. The current Linn County zoning designation is UGA-UGM-20. The act of annexing property does not automatically apply a city zoning designation. Until a zoning designation is approved by the City, the County designations will continue to be in effect.
7. **Developer Agrees.** If Developer proceeds with development of the Property, Developer agrees as follows:
- 7.1 Any residential subdivision constructed on the Property will be designed to have homes built on lots with frontage on Clover Ridge Road will face Clover Ridge Road. If Covenants, Conditions, and Restrictions (CC&Rs) are necessary to assure that the homes are constructed in this manner, CC&Rs will be included with the subdivision plat process.
8. **City Agrees.** The City, in consideration for the promises made by Developer, agrees as follows:
- 8.1 There are currently sufficient Public Facilities available to annex the property into the City of Albany upon approval of the voters. This does not imply that available Public Facilities are sufficient for any particular development.
- 8.2 The City shall not impose a Local Improvement District or other financial obligation upon Developer unless it is determined that the Developer benefits from the proposed improvement(s).
- 8.3 While the City's conditions or denials may place a disproportionate burden on the Developer to make Public Facilities improvements, any such conditions or denials shall be reasonably related to the Public Facilities needs which result from development on the Property. "Objective Engineering Standards" will be used to determine the need for Public Facilities which result from any proposed development. Notwithstanding the foregoing, both Parties agree that the Public Facilities needs of third parties or the public generally may also be a contributing factor to the Public Facilities needs which result from development on the Property. The needs of such third parties or the public shall not limit the City's discretion to impose conditions or denials on the Developer.
- 8.4 Subject to the provisions of this Agreement, the City agrees that upon annexation, and subject to the terms and limitations of this Agreement, the Property shall enjoy the same right to development as applies to similarly situated property in the City of Albany. This is a material consideration for the Developer to comply with the conditions and requirements set forth in this Agreement.
- 8.5 City shall make a good faith effort to identify and address planning issues and impacts that may arise as a result of development of the Property and will share with Developer any information of prospective issues or impacts.
- 8.6 Subject to the provisions of this Agreement, Developer has full entitlement to apply for development of all or any part of the Property and shall be entitled to the same consideration shown to similarly situated applicants.
9. **Contingency.** This Agreement is expressly contingent on (i) approval by the Albany City Council of the annexation proposal and this Annexation Agreement, and (ii) approval by the voters in accordance with Oregon law of such annexation proposal.
10. **Miscellaneous.**
- 10.1 ***Binding Effect.*** This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and permitted assigns and upon approval of the voters of the City of Albany, the terms of this Agreement shall be recorded in a form approved by the City so as to provide a record of this Agreement to run with the land described in the attached Attachment 1.