



Oregon  
Theodore R. Kubongoski, Governor

Department of Land Conservation and Development  
635 Capitol Street, Suite 150  
Salem, OR 97301-2540  
(503) 373-0050  
Fax (503) 378-5518  
www.lcd.state.or.us



## NOTICE OF ADOPTED AMENDMENT

8/23/2010

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Albany Plan Amendment  
DLCD File Number 002-10

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, September 03, 2010

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

\*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Janet Morris, City of Albany  
Gloria Gardiner, DLCD Urban Planning Specialist  
Ed Moore, DLCD Regional Representative

<paa> YA



FORM **2**

**DLCD**

# Notice of Adoption

In person  electronic  mailed

DATE  
STAMP

**DEPT OF**

**AUG 16 2010**

**LAND CONSERVATION  
AND DEVELOPMENT**  
For Office Use Only

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **City of Albany**

Local file number: **ZC-01-10**

Date of Adoption: **August 11, 2010**

Date Mailed: August 13, 2010

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: 5/28/10

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Amend the City of Albany zoning map to change the zoning designation of 0.77 acres from OP (Office Professional to RM (Residential Medium Density). RM zoning is deemed "compatible" with Comprehensive Plan Map so a concurrent Comprehensive Plan Map amendment is NOT needed. Reason for the request: While both zones allow for multiple family units, the RM zone has a taller maximum building height.

Does the Adoption differ from proposal?

The adopted change was not different from what was sent with the first form.

Plan Map Changed from:

to:

Zone Map Changed from: **Office Professional**

to: **Residential Medium Density**

Location: **16th Avenue SE, between Waverly Drive and Davidson St.** Acres Involved: **0.77 acres**

Specify Density: Previous: 22 residential units

New: 16 residential units

Applicable statewide planning goals:

**1** **2** **3** **4** **5** **6** **7** **8** **9** **10** **11** **12** **13** **14** **15** **16** **17** **18** **19**

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

DLCD file No. 002-10 (18345) [16280]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Greater Albany Public School District 8J

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Local Contact: **Janet Morris, AICP**

Phone: (541) 917-7563 Extension:

Address: **PO Box 490**

Fax Number: 541-917-7598

City: **Albany**

Zip: **97321**

E-mail Address: **janet.morris@cityofalbany.net**

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## **ADOPTION SUBMITTAL REQUIREMENTS**

**This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)**  
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD of the Adopted Amendment to:**

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615 ).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845 ).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615 ).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

ORDINANCE NO. 5744

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY ZONING MAP, TO AMEND THE ZONING MAP DESIGNATION OF LOTS 5, 6, 7 AND 8 OF THE RUPP SUBDIVISION LOCATED ON 16TH AVENUE SE; ADOPTING FINDINGS; AND DECLARING AN EMERGENCY.

WHEREAS, the Albany Planning Commission recommended approval of the proposed Zoning Map amendment application (File ZC-01-10) following a public hearing on July 26, 2010, and

WHEREAS, the Albany City Council held a public hearing on the proposed Zoning Map amendment application (File ZC-01-10) on August 11, 2010.

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

Section 1: The Zoning Map designations of the subject four properties shown on the map attached to this Ordinance as Exhibit A are hereby amended from OP (Office Professional) to RM (Residential Medium Density).


Section 2: The properties affected by the zoning amendment contain four subdivision lots totaling approximately 0.77 acres of land. A legal description of the four lots is attached to this Ordinance as Exhibit B.

Section 3: The Findings of Fact and Conclusions of Law in the staff report attached to this Ordinance as Exhibit C are hereby adopted in support of this decision.

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.

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.

IT IS HEREBY adjudged and declared that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety of the city of Albany, an emergency is hereby declared to exist; and this Ordinance shall be in full force and effect immediately upon its passage by the City Council and approval by the Mayor.

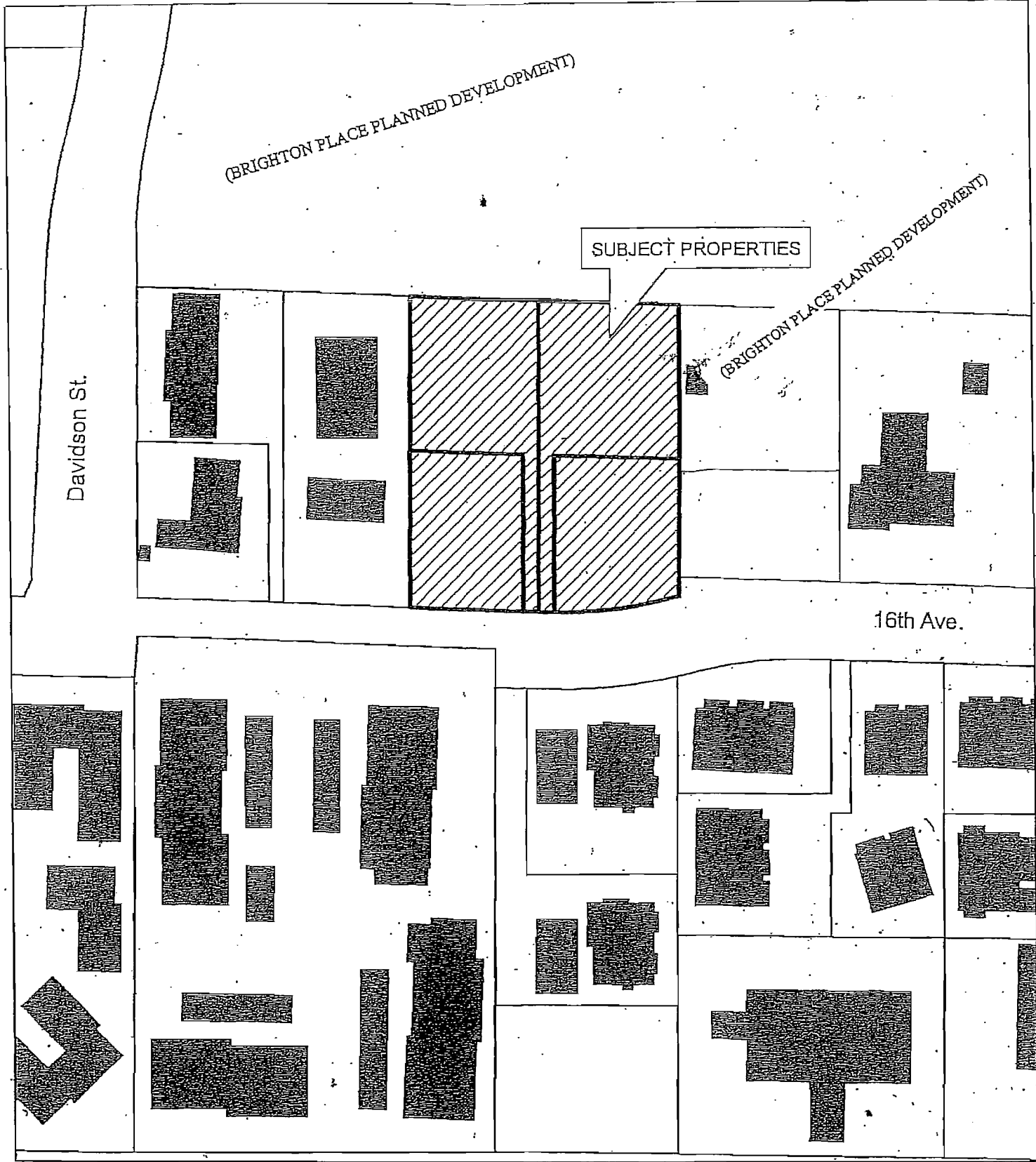
ATTEST  
  
City Clerk

Passed by Council: August 11, 2010

Approved by Mayor: August 11, 2010

Effective Date: August 11, 2010

  
Mayor



Julius and Dolores Rupp - Zone Map Change from OP to RM (File ZC-01-10)  
 Linn County Tax Assessor Map 11S-03W-08DB; Tax Lots 2000, 2100, 2200, 2300 -



The City of Albany's Information records, drawings, and other documents have been prepared under various conditions, including electronic reproduction for quality control, dissemination, and verification. All of the above information represents current information to the extent available. While the data provided is normally intended to be accurate, occasionally it may be necessary to use the information for non-intended purposes. Prior to making any property purchase or other transaction based in part upon the material provided, it is specifically advised that you independently verify the information mentioned herein and nearby.



Subject Property Location Map

Planning Division

**RUPP ZONE CHANGE DESCRIPTION**

ALL of Lots 5, 6, 7 and 8, Block 1 in "RUPP SUBDIVISION", a subdivision of Record in Linn County, Oregon and being more particularly described as follows:

Beginning at the southeast corner of said Lot 8, which point being on the north right-of-way line of 16<sup>th</sup> Avenue; thence along the boundary of said Lots 5, 6, 7 and 8 the following six (6) courses: 1) thence along said right-of-way line on the arc of a 300 foot radius curve to the left (chord bears South 73°10'17" West 5.35 feet) a distance of 5.35 feet; 2) thence continuing along said right-of-way line on the arc of a 250 foot radius curve to the right (chord bears South 81°19'45" West 75.38 feet) a distance of 75.68 feet; 3) thence North 90°00'00" West, along said right-of-way line, 92.090 feet to the southwest corner of said Lot 5; 4) thence North 01°36'11" West 197.80 feet to the northwest corner of said Lot 6; 5) thence North 90°00'00" East 172.00 feet to the northeast corner of said Lot 7; thence South 01°36'11" East 185.60 feet to the Point of Beginning.

September 17, 2009

RUPP ZONE CHANGE

(09-84) JRB:nm

File: nm\shared\legal\09-84 RUPP ZONE CHANGE DESCRIPTION.docf



# Community Development Department

333 Broadalbin Street SW, P.O. Box 490  
Albany, OR 97321

Phone: 541-917-7550 Facsimile: 541-917-7598  
www.cityofalbany.net

## STAFF REPORT

### Zoning Map Amendment – Land Division (Replat) – Site Plan Reviews

*(This report has been updated to reflect recommended changes by the Planning Commission.)*

**HEARING BODY**

CITY COUNCIL

**HEARING DATE**

Wednesday, August 11, 2010

**HEARING TIME**

7:15 p.m.

**HEARING LOCATION**

Council Chambers, Albany City Hall, 333 Broadalbin Street SW

**GENERAL INFORMATION**

**DATE OF REPORT:**

August 4, 2010

**FILES:**

ZC-01-10; RL-01-10; SP-05-10; SP-07-10

**TYPE OF APPLICATIONS:**

1) ZC-01-10: Zoning Map Amendment that would change the zoning designation of 0.77 acres (33,635 square feet) of property from OP (Office Professional) to RM (Residential Medium Density).

2) RL-01-10: Replat of Lots 5, 6, 7 and 8 of the Rupp Subdivision to reconfigure the lots into three parcels.

3) SP-05-10 (A): Site Plan Review for construction of a triplex (3 units) on proposed Parcel 1

4) SP-05-10 (B): Site Plan Review for construction of a triplex (3 units) on the proposed Parcel 2

5) SP-05-10 (C): Site Plan Review for construction of two triplexes (6 units) on proposed Parcel 3.

6) SP-07-10: Site Plan Review to fell 8 trees on the subject properties that have trunks larger than 25 inches in circumference.

*Not included*

X

**REVIEW BODY:**

City Council

**PROPERTY OWNERS/  
APPLICANTS:**

Julius and Dolores Rupp; 2433 16th Avenue SE; Albany, OR 97322

**APPLICANTS'  
REPRESENTATIVES:**

Vernon Rupp; 19635 NW Quail Hollow Drive; Portland, OR 97229  
Jack Burrell; K&D Engineering, Inc.; PO Box 725; Albany OR 97321

**ADDRESSES/LOCATIONS:**

Vacant Land; No assigned addresses yet. Properties are located on the north side of 16th Avenue SE, between Davidson Street SE and Waverly Drive SE

**MAP/TAX LOTS:**

Linn County Assessor's Map No. 11S-3W-08DB; Tax Lots 2000, 2100, 2200, and 2300 Lots 5, 6, 7 and 8 of the Rupp Subdivision

**CURRENT ZONING:**

OP (Office Professional)

TOTAL LAND AREA: 0.77 acres (33,635 square feet)  
 EXISTING LAND USE: Vacant land  
 NEIGHBORHOOD: Santiam  
 SURROUNDING ZONING: North: OP (Office Professional) and RM (Residential Medium Density)  
 South: RM  
 East: RM  
 West: OP and RMA (Residential Medium Density Attached)  
 SURROUNDING USES: North: Planned Development (two offices and 45 attached single family townhouses; City library, multiple and single-family structures.  
 South: Single and Multiple-family structures  
 East: Vacant lot, single family and duplex structures  
 West: Multiple-family structures, a residential care facility, Valley Professional Center

PRIOR HISTORY: The subject four lots are part of an eight lot subdivision that was platted December 29, 1976 (File M1-14-76). In 2003, at the applicant's request, as part of the City's Goal 9 work, the subject four lots (plus the four lots to the west owned by the Rupps) were rezoned from (Residential Limited Multiple Family(RM-5) to Office Professional (OP) (File ZC-01-02/ORD 5555).

**NOTICE INFORMATION**

A Notice of Public Hearing on these applications was mailed to surrounding property owners and residents on July 16, 2010, in accordance with ADC 1.360. The Notice included information about both the Planning Commission hearing of July 26, 2010, and the City Council hearing of August 11, 2010. Also, on or before July 19, 2010, the subject properties were posted with a notice board in accordance with ADC 1.410.

**PLANNING COMMISSION AND STAFF RECOMMENDATION**

On July 26, 2010, the Planning Commission held a public hearing on these concurrent applications. Staff recommended the applications be approved, or approved with conditions where conditions were necessary. Don Johnson, an adjacent property owner, spoke in favor of the applications. No one spoke in opposition. The Planning Commission voted unanimously to recommend the City Council approve the applications as modified. The staff report reflects the recommended modifications to two conditions of the Site Plan Review application SP-05-10.

**PROPOSED MOTIONS**

*Note: If the City Council denies the zone change application, none of the concurrent applications can be approved because they have been designed based on the development standards for RM zoning and a particular development for the land.*

**MOTION TO APPROVE**

*If no new evidence is presented at the public hearing, the City Council may approve the applications based on the findings and conclusions of the staff report.*

I MOVE that the City Council adopt the Ordinance which will APPROVE zoning map amendment application ZC-01-10 to change the zoning designation of 0.77 acres identified on Linn County Tax Assessor's Map 11S-03W-08DB as Tax Lots 2000, 2100, 2200, and 2300, from Office Professional (OP) to Residential Medium Density (RM).

I ALSO MOVE that the City Council APPROVE WITH CONDITIONS land division application RL-01-10 to reconfigure four subdivision lots into three parcels; Site Plan Review applications SP-05-10 A, B and C to



construct apartments on each of the reconfigured parcels, and Site Plan Review application SP-07-10 to allow felling of eight trees that have trunks larger than 25 inches in circumference.

These motions are based on the findings and conclusions of the staff report and testimony presented at the public hearing.

OR

MOTION TO RECOMMEND APPROVAL WITH CONDITIONS AS MODIFIED

*If there is information not included in the staff report or new information presented at the public hearing, the City Council may propose new findings and conditions, and approve the application.*

I MOVE that the City Council adopt the Ordinance which will APPROVE zoning map amendment application ZC-01-10 to change the zoning designation of 0.77 acres identified on Linn County Tax Assessor's Map 11S-03W-08DB as Tax Lots 2000, 2100, 2200, and 2300, from Office Professional (OP) to Residential Medium Density (RM).

I ALSO MOVE that the City Council APPROVE WITH CONDITIONS as modified (insert modification here) land division application RL-01-10 to reconfigure four subdivision lots into three parcels; Site Plan Review applications SP-05-10 A, B and C to construct apartments on each of the reconfigured parcels, and Site Plan Review application SP-07-10 to allow felling of eight trees that have trunks larger than 25 inches in circumference.

These motions are based on the findings and conclusions of the staff report and testimony presented at the public hearing.

OR

MOTION TO TENTATIVELY DENY

*If the City Council finds that the applicant has not provided sufficient evidence to demonstrate that all of the review criteria have been met, or if they find the applicant has presented incorrect information, the City Council may deny an application.*

I MOVE that the City Council TENTATIVELY DENY the zoning map amendment application ZC-01-10 to change the zoning designation of 0.77 acres identified on Linn County Tax Assessor's Map 11S-03W-08DB as Tax Lots 2000, 2100, 2200, and 2300, from Office Professional (OP) to Residential Medium Density (RM).

The zone change application must be denied because the applicants have not demonstrated that Criterion \_\_\_\_\_ is not met for the following reason(s): \_\_\_\_\_ (insert here) \_\_\_\_\_.

Because the concurrent Land Division (file RL-01-10) and Site Plan Review applications (SP-05-10 A, B, and C and SP-07-10) are dependent on approval of the zone change, they are also tentatively denied.

I ALSO MOVE that the City Council direct staff to prepare findings to support denial based on the testimony presented at the public hearing and to present these findings to the City Council for consideration at a future meeting.

APPEALS

A decision of the City Council may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal not later than 21 days after the decision becomes final.

## STAFF ANALYSIS

### **Quasi-Judicial Zoning Map Amendment File ZC-01-10**

#### Background Information

The request is to change the zoning designation of land that is currently configured as four adjoining subdivision lots from OP (Office Professional) to RM (Medium Density Residential). The lots are located on the north side of 16th Avenue, between Waverly Drive SE and Davidson Street SE. They are all owned by the applicants, Julius and Dolores Rupp. The Rups also own several abutting developed lots to the west. For simplicity, these properties collectively may be referred to in the staff report as “the Rupp property.”

Before these lots were zoned OP, they were zoned RM-5 (which today corresponds to RM). The property owners went to the Planning Commission for a recommendation to change it to commercial in 2001. At that time City staff was reviewing the Comprehensive Plan and Zoning Map as part of Periodic Review in relation to Goal 9, Economic Development. The minutes from a Planning Commission work session on December 19, 2001, say under the heading “Other Property-Owner Requests; NE corner properties at 16th Avenue SE and Davidson: The owner would like these seven RM-5 lots to be rezoned commercial. Planning staff recommends keeping the parcels residential, due to the adjacent residential developments and access. The Commission agreed with staff’s recommendation.”

The proposal was not included in the list of changes that moved forward to a June 3, 2002, Planning Commission hearing. The staff report and a map done for the June 3, 2002, hearing did not include reference to this property.

A few zone changes requested by other property owners that were recommended for approval by the Planning Commission went forward to the City Council. Based on the Planning Commission decision not to recommend the zone change requested by the Rups, it was not forwarded to the City Council for further discussion. A June 17, 2002, staff report to the City Council that includes recommendations for changes to other properties that did receive a favorable recommendation from the Planning Commission does not include the Rupp property.

Jay Rupp, however, came to the City Council meeting on June 17, 2002, and asked them to make the change anyway. Minutes of the June 17, 2002, City Council work session say “Jay Rupp, P.O. Box 2241, Albany, asks for a zone change [for] the eight lot Rupp Subdivision at 16th and Davidson. He presented a location map to the Council (attached to these minutes). The property is currently zone RM-5 (limited multi-family), but he would like it to be OP. Konopa asked what the use is to the north. (Anne) Giffen said the land is zoned OP and occupied by Unitrin offices. Alterra is to the west, and there are other office buildings nearby. The streets are local streets. Rupp originally asked for CC zoning, but he meant OP, for office and residential uses.”

The minutes of more City Council work sessions on July 1, 2002; July 8, 2002; and August 5, 2002; do not include further discussion about the Rupp property. A decision to change the zoning of the Rupp property from RM-5 to OP was made by the City Council at the August 12, 2002, work session. The City Council adopted the ordinance (5555) that changed the zoning of the Rupp property at the City Council meeting held January 8, 2003.

#### Review Criteria

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

***Criterion (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 0.77 acres of property from OP (Office Professional) to RM (Residential Medium Density).
- 1.2 The Comprehensive Plan designation of the property is Residential Medium Density.
- 1.3 The Plan Designation Zoning Matrix in the Comprehensive Plan (page 9-13) shows that the proposed RM zoning is consistent with the Residential Medium Density Comprehensive Plan Map designation of the property.

## CONCLUSION

- 1.1 The proposed RM zoning of the property is consistent with the Residential Medium Density Comprehensive Plan Map designation of the property. This criterion is met.

***Criterion (2) Existing or anticipated transportation facilities are adequate for uses that are permitted under the proposed zone designation.***

## FINDINGS OF FACT

- 2.1 The Rupp property is located on the north side of 16th Avenue SE about 200 feet east of Davidson Street SE. The total area of the four lots is 33,671 square feet. The zone change would change the designation of the property from Office Professional (OP) to Residential Medium Density (RM).
- 2.2 Sixteenth Avenue SE is classified as a local street and is constructed to City standards with the exception of sidewalk.
- 2.3 Albany's Transportation System Plan (TSP) does not identify any capacity or level of service problems occurring adjacent to the development.
- 2.4 A Trip Generation Study was not required to be submitted with the zone change application.
- 2.5 The current OP zone designation on the site would allow for development of office, retail, and residential uses on the site. Multiple-family development is allowed, with a minimum lot area of 1,600 square feet per single bedroom unit. Based on the area of the property, up to 21 such units may be constructed on the site.
- 2.6 The RM zone designation allows for construction of multi-family residential development. A minimum lot area of 2,000 square feet per unit is required (studio and one-bedroom units). Based on the area of the property, up to 16 such units may be constructed on the site. A separate site plan application has been submitted for the property showing construction of a total of 12 units on this land area.

## CONCLUSIONS

- 2.1 The street system adjoining the development is constructed to City standards except for sidewalk.
- 2.2 Albany's TSP does not identify any capacity or level of service problems occurring adjacent to the development.
- 2.3 The requested zone designation to RM would allow for fewer units to be developed on the site, thereby resulting in fewer trips and less impact on the transportation system, than could occur under the current zone designation of OP.

- 2.4 Existing or anticipated transportation facilities are adequate for uses that are permitted under the proposed zone designation. This criterion is met.

***Criterion (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 City utility maps show an 8-inch public sanitary sewer main in 16th Avenue SE along the full length of the subject properties' frontages.
- 3.2 The City's Wastewater Facility Plan shows no system deficiencies downstream of this site.
- 3.3 Residential uses typically produce more wastewater discharge than office or commercial uses on a per acre basis. Staff's analysis concludes that the most sewer intensive use on the property would be residential development. ADC 3.190 (Table 1) indicates that in the RM zone the density restrictions would require 2,000 square feet per dwelling unit for studio and 1-bedroom units, and 2,400 square feet per dwelling for 2 and 3 bedroom units. ADC 4.090 (Table 1) shows that in the OP zone the land area required for residential uses is only 1,600 square feet per dwelling unit regardless the number of bedrooms.

Water.

- 3.4 City utility maps show an 8-inch public water main in 16th Avenue SE along the eastern portion of the property, and a 6-inch main along the western portion of the property. A 12-inch water main exists in Waverly Drive SE from 16th Avenue SE to 14th Avenue SE; a 12-inch water main exists in 14th Avenue SE from Waverly Drive SE to Davidson Street SE; and, an 8-inch water main exists in Davidson Street SE from 14th Avenue SE to 16th Avenue SE.
- 3.5 The City's Water Facility Plan shows no system deficiencies in this area.
- 3.6 Residential uses typically have higher average water consumption than office or commercial uses on a per acre basis. Staff's analysis concludes that the most water intensive use on the property would be residential development. ADC 3.190 (Table 1) indicates that in the RM zone the density restrictions would require 2,000 square feet per dwelling unit for studio and 1-bedroom units, and 2,400 square feet per dwelling for 2 and 3 bedroom units. ADC 4.090 (Table 1) shows that in the OP zone the land area required for residential uses is only 1,600 square feet per dwelling unit regardless the number of bedrooms.

Storm Drainage.

- 3.7 City utility maps show a 12-inch public storm drainage main in 16th Avenue SE. A private ditch along the north boundary of the site collects runoff from about four different properties, including the subject properties. This ditch collects stormwater and carries the runoff to an existing 24-inch public storm drain line that runs west to Davidson Street SE from the northwest corner of the subject properties.
- 3.8 The City's Storm Drainage Master Plan shows no system deficiencies downstream of this site. On-site storm water detention is likely to be required on the subject property regardless of its zone or the specific development proposal for the site.
- 3.9 The amount of stormwater runoff from a site is closely tied to the amount of impervious surface on the property. Impervious surfaces typically consist of buildings, driveways, parking lots, sidewalks, etc. The Albany Development Code (ADC) allows for up to 70% lot coverage in both OP and RM zones.

## Schools

- 3.10 As discussed under Findings 3.3 and 3.6 above, changing the zoning designation of the subject site from OP to RM will not allow an increase in the density of housing or other development that can be built on the property. The Greater Albany Public School District 8J did not respond to the City's notice to them of these applications so it is presumed they have no concerns or objections.

## Police and Fire Protection

- 3.11 The Albany Fire Department and the Albany Police Department currently provide service to this area of Albany and will continue to do so. As discussed under Findings 3.3 and 3.6 above, changing the zoning designation of the subject site from OP to RM will not result in an increase in the density of housing or other development that can be built on the property.

## CONCLUSIONS

- 3.1 Development of the property for residential uses under OP zoning would result in a higher water and sewer usage than multiple-family residential development under RM zoning. The maximum amount of stormwater runoff produced on the subject properties after development would be very similar whether zoned RM or OP.
- 3.2 School, fire, and police providers will not be affected by the change in zoning.
- 3.3 Existing or anticipated services can accommodate potential development on the Rupp property without adverse impact on the affected service area. This review criterion is met.

***Criterion (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 the Rupp property. FEMA/FIRM Community Panel No. 410137 0004F, dated July 7, 1999, shows the property is in Zone X, an area determined to be outside any 500-year floodplain.
- 4.2 Wetlands: *Comprehensive Plan Plate 6: Wetlands*, does not show any wetlands on the property. The National Wetlands Inventory does not show any wetlands on the property. The property is not included in any of the City's Local Wetland Inventories.
- 4.3 Slopes: *Comprehensive Plan Plate 7: Slopes*, does not show steep slopes on the property. The site plan submitted by the applicants with the concurrent Site Plan Review application shows that elevations on the property vary from about 225 to 222 feet in elevation.
- 4.4 Significant Natural Vegetation: *Comprehensive Plan Plate 3: Natural Vegetation and Wildlife Habitat*, does not show any areas of vegetation or wildlife habitat on the property. There are approximately 47 trees (cottonwood, birch, maple, hawthorn, and fir) on the property. Many of these trees were planted by the property owner to establish a screen along 16th Avenue. The concurrent Site Plan Review staff report reviewed below (SP-07-10) addresses the applicants' request to remove 8 of the 24 trees on the property that are the sizes subject to regulation. None of these trees were found to be significant.
- 4.5 Historic Districts: *Comprehensive Plan Plate 9: Historic Districts*, shows the property is not in a historic district.

## CONCLUSION

- 4.1 There are no unique natural features or special areas associated with this property. Rezoning the property will not affect any special features of the site. This review criterion is met.

### ***Criterion (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 Rupp property is OP (Office Professional). The proposed designation is RM (Residential Medium Density).
- 5.2 This review criterion requires that the intent and purpose of the proposed RM zoning district “best satisfies” the goals and policies of the Comprehensive Plan.
- 5.3 In 2001, the property owners asked the Planning Commission to change the zoning designation of this property from RM-5 to OP. The property owner now requests to change the zoning designation of the property back from OP to RM. (RM is the new name adopted with subsequent code changes for what was previously called RM-5).

In 2001, the Planning staff recommended the zoning not be changed from RM-5 to OP. The Planning Commission decided the zoning should not be changed.

In June 2002, Jay Rupp went to the City Council to ask that the zone change be made. The City Council decided to change the zoning. The decision was apparently based on a discussion at the June 2002 work session and a written summary provided by staff at the August work session. The discussion at the June 2002 work session included the following: The land to the north is zoned OP and is occupied by Unitrin offices (the Unitrin property and building are now a city library). Alterra [an assisted living facility] is to the west, and there are other office buildings nearby. The written summary at the August 2002 work session provides a description of the requested zone change and identifies “issues.” The “issues” category includes the following comment: “Ron Irish said there would be no traffic impacts on the transportation system going from RM-5 to OP.” Ron Irish is the City’s transportation analyst.

- 5.4 The City Council decision referenced above was a legislative decision made as part of a broad evaluation of zoning for a wide variety of properties throughout the city and the need for property with various types of zoning related to economic development. The application submitted by the property owner now is a quasi-judicial application that requires focused consideration of just the Rupp property. The review criteria for quasi-judicial zoning map amendments are more specific to a particular property and the findings needed to explain a quasi-judicial decision must be more detailed than the findings needed to explain a legislative decision.
- 5.5 In findings submitted with the Zoning Map Amendment application, the applicants’ representative explains that:

“A part of the City’s Goal 8 work (under ZC-01-02), the owner was given the opportunity to change the zone from Residential Medium Density – RM to Office Professional (OP). The discussions with City Development staff confirmed for the owners that the change in the zoning would continue to allow Multiple Family uses on the property. The owners would not have requested the change if it had been apparent to them that the standards for building height would be reduced by 15 feet and allow for a maximum height of 30 feet under the OP zone rather than the 45 foot height maximum allowed in the RM zone. This is the reason the zone change is now being sought.” (Applicants’ findings, page 6.)

The applicants' representative further explains:

"A concurrent Site Plan Review application has been submitted to construct apartments on the subject property. Multiple family uses are allowed in both the OP and RM zoning districts. There are differences in development standards for the two zones. The owner wishes to build 3 story apartments that exceed 30 feet in height. The OP zone has a maximum height of 30 feet. The RM zone allows building heights up to 45 feet. The apartments that are planned for the site are approximately 35 feet in height." (Applicants' findings, page 6.)

#### INTENT AND PURPOSE OF OP AND RM ZONING DISTRICTS

- 5.6 The proposed zoning district is RM (Residential Medium Density).
- 5.7 ADC 3.020(5) says, "The RM District is primarily intended for medium-density residential urban development. New RM districts should be located on a collector or arterial street or in Village Centers."
- 5.8 ADC 4.020(1) says that "The OP district is intended to provide a vertical or horizontal mix of professional offices, personal services, live-work, residential and limited related commercial uses in close proximity to residential and commercial districts. The limited uses allowed in this district are selected for their compatibility with residential uses and the desired character of the neighborhood. OP is typically appropriate along arterial or collector streets as a transitional or buffer zone between residential and more intense commercial or industrial districts."

#### CITY OBLIGATION IN REGARD TO GOALS AND POLICIES

- 5.9 The Comprehensive Plan defines a goal as, "a general statement indicating a desired end, or the direction the City will follow to achieve that end."

The Comprehensive Plan describes the City's obligation in regard to goals as follows: "The City cannot take action which opposes a goal statement unless: 1) It is taking action which clearly supports another goal, 2) There are findings indicating the goal being supported takes precedence (in the particular case) over the goal being opposed." (Comprehensive Plan, page ii)

- 5.10 The Comprehensive Plan (page 3) defines a policy as, "a statement identifying a course of action or City position."

The Comprehensive Plan describes the City's obligation in regard to policies as follows: "The City must follow relevant policy statements in making a land use decision . . . [I]n the instance where specific Plan policies appear to be conflicting, then the City shall seek solutions which maximize each applicable policy objective within the overall content of the Comprehensive Plan and in a manner consistent with the statewide goals. In balancing and weighing those statements, the City can refer to general categories of policies and does not have to respond to each applicable policy. Also, in this weighing process, the City shall consider whether the policy contains mandatory language (e.g., shall, require) or more discretionary language (e.g., may, encourage)." (Comprehensive Plan, pages ii and iii)

#### RELEVANT GOALS AND POLICIES OF THE COMPREHENSIVE PLAN

- 5.11 The following Comprehensive Plan goals and policies are relevant in considering whether the proposed RM zoning designation "best satisfies" the goals and policies of the Comprehensive Plan. Each of the relevant goals and policies are listed below in *bold italic* print.

5.12 **Goal 9: Economy – Economic Development**

**Albany's Economy**

**Goals**

- 1. Diversify the economic base in the Albany area and strengthen the area's role as a regional economic center.***

This goal indicates that Albany wants to have a diverse economic base and be the regional economic center. To do this, the goals listed below were adopted.

- 5. Strive for a balance of growth in jobs and housing for Albany and the region.***

This goal is not clear whether there should be a balance of jobs and housing across the whole City or within specific areas. Nor does it indicate what the balance should be. We have to rely on the policies listed below as guides to how this goal is to be implemented.

**Land Use**

**Goals**

- 1. Ensure an adequate supply of appropriately zoned land to provide for the full range of economic development opportunities in Albany, including commercial, professional, and industrial development.***

The zoning designation of the Rupp property was changed from RM-5 (Residential Multiple Family) to OP (Office Professional) in 2003 as part of the City's periodic review update of the zoning map. The property owners requested the change.

In 2007, consultants hired by the City did an update of the "Economic Opportunities Analysis"(EOA) that evaluates the demand for commercial and industrial land over the next 20 years (from 2007 to 2027) and how much commercial and industrial land we had at that time. The EOA was adopted by the City Council in March 2008.

The EOA finds that Albany will need 50-100 commercial sites less than one acre in the next 20 years. There were 29 sites available when the inventory for the EOA was done. So, there is a shortage of 21-71 sites less than one acre. (EOA, Table 15, page 23, attachment 4).

The EOA does not include a conclusion or recommendation that the City provide more commercial sites less than one acre (Table 16, and "Conclusions and Recommendations," page 24). Nevertheless, the EOA does find there will be a shortage of this size of site over the next 20 years.

(As noted above under Background Information, the property owner had requested then a change of zoning of this property from RM-5 to OP.)

- 2. Achieve stable land-use growth that results in a desirable and efficient land-use pattern.***

It is not clear what "stable land-use growth" means, nor is there a definition of what might be a "desirable and efficient land-use pattern." We interpret an efficient land-use pattern to mean a pattern of land uses that do not conflict, connected by a transportation system that includes streets where the volume of traffic does not exceed available capacity, with pedestrian routes along the connecting streets.



The proposed change of zoning of the subject property from RM to OP will extend the pattern of RM land west. The description in ADC 4.020(1) says “The OP district is intended to provide a vertical or horizontal mix of professional offices, personal services, live-work, residential and limited related commercial uses in close proximity to residential and commercial districts. The limited uses allowed in this district are selected for their compatibility with residential uses and the desired character of the neighborhood.”

The property to the south (across 16th Avenue) of the Rupp property is zoned RM and has developed as multiple family. The property immediately to the east is zoned RM and is vacant. The properties further to the east are zoned RM and have developed with single or duplex structures. The abutting properties to the west (to Davidson Street) are owned by the Rupp and are zoned OP. They have been developed with apartments. An assisted living facility is located on the property further to the west across Davidson Street. That site is zoned RMA (Residential Medium Density Attached). The abutting land to the north is zoned OP and has planned development approval for two office buildings and attached single family townhouses with building height of up to 45 feet (File PD-02-07, Brighton Place).

### **Policies**

- 1. Provide opportunities to develop the full range of commercial, industrial and professional services to meet the needs of Albany’s residents and others.***

See the discussion about the EOA and the supply of commercial land above.

- 2. Encourage land use patterns and development plans that take advantage of density and location to reduce the need for travel and dependency on the private automobile, facilitate energy-efficient public transit systems, and permit building configurations that increase energy efficiency.***

The Rupp property is in an area that includes a mix of residential, office, and retail uses. A public library, Heritage Mall and planned offices and attached single family houses are located to the north. Multiple-family developments are located to the south. Multi-family developments, an assisted living facility, and more commercial uses are located to the west. Land to the east is zoned RM, but contains single-family or duplexes. This mix of uses allows people to live, work, and shop in the same area traveling from place to place either in vehicles, by walking, riding a bike, or by bus.

- 3. Designate enough land in a variety of parcel sizes and locations to meet future employment and commercial needs.***

See the discussion about the EOA and the supply of commercial land above.

Findings submitted with the Zoning Map Amendment application cite ADC 3.030, Schedule of Permitted Uses and ADC 4.040, Schedule of Permitted Uses. The applicants’ representative points out that some uses allowed in RM zones, but not in OP zones, provide jobs. For example, educational institutions, entertainment and recreation, and plant nurseries are uses allowed in RM zones. These uses could provide jobs in an RM zone. They are not allowed in OP zones, so changing the zoning of the property could provide the opportunity for some jobs (Applicants’ findings, page 4).

The applicant’s representative goes on to explain that “The intention of the applicant is to build multiple family units on the property, and concludes that whether the property is zoned OP or RM, “...the property will not be used for job related uses. The property will be used to provide housing.” (Applicants’ findings, page 6.)

5.13 **Goal 10: Housing**

**Goals**

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

**Policies**

1. *Ensure an adequate supply of residentially-zoned land in areas accessible to employment and public services.*

In 2006, Planning Division staff completed a "Housing Needs Analysis" for the City. The City Council adopted it in April 2007. The Housing Needs Analysis evaluates the demand for a variety of types of residential land over the next 20 years (from 2005 to 2025) and how much residential land we had at that time.

The Housing Needs Analysis concluded that we will need an additional 13.9 acres of RM land over the next 20 years. (Table 5-9, page 56, attachment 5.)

A note under Table 5-9 says "Development areas less than one acre in RM-3 and RM-5 zones were excluded from the Available Land total because these properties will likely develop or already have been developed as single-family lots." This may call into question whether the Rupp property would be considered as adding to the supply of RM land because it is less than one acre.

2. *Provide a variety of choices regarding type, location, density and cost of housing units corresponding to the needs and means of city residents.*
3. *Encourage innovation in housing types, densities, lot sizes and design to promote housing alternatives. Examples include:*
  - a. *Attached single-family housing and condominium ownership opportunities in the Waterfront zoning district*
  - b. *The adaptive reuse of the upper floors of structures within the Downtown Business District for residential purposes.*
  - c. *Mixed housing types and price ranges at a minimum of ten units per acre in Village Center Comprehensive Plan districts.*
  - d. *Neighborhoods with a variety of lot and housing sizes and types.*
  - e. *Accessory dwelling units.*
  - f. *Other actions directed at reducing housing costs which conform to the Comprehensive Plan, including innovative Development Code regulations.*

As noted above, changing the zoning of the Rupp property from OP to RM would allow taller residential buildings on the property. This may encourage innovation in housing types, densities, lot sizes and design to promote housing alternatives.

5.14 **Goal 14: Urbanization**

**Goals**

1. *Achieve stable land use growth which results in a desirable and efficient land use pattern.*

This same goal is included under Goal 9: Economy, Land Use, Goal 2. See the discussion under Finding 5.12 above.

## Policies

### ***13. Encourage residential [office] professional uses as buffers between intensive commercial uses and less intensive residential uses where compatibility can be demonstrated with the surrounding residential neighborhood.***

The Rupp property is located between property zoned RM on the east and property zoned OP on the west. As noted above, the uses allowed in OP zones (like the one to west) are chosen for their compatibility with residential uses and the desired character of the neighborhood. With the current OP zoning, the Rupp property does not serve as a buffer between intensive commercial uses and less intensive residential uses. An OP zone more typically serves as a buffer between a residential area and property zoned CC (Community Commercial) where allowed commercial uses are more intensive than the commercial uses allowed in OP zones.

### ***15. Encourage land use patterns and development plans which take advantage of density and location to reduce the need for travel and dependency on the private automobile, facilitate energy-efficient public transit systems, and permit building configurations which increase the efficiency of energy use.***

This same policy is included under Goal 9: Economy, Land Use, Goal 2, as Policy 2. See the discussion under Finding 5.12 above.

## CONCLUSIONS

5.1 RM zoning allows buildings on a property to be a maximum 45 feet in height. OP zoning allows buildings to be a maximum of 30 feet in height. Changing the zoning of the Rupp property from RM to OP would allow buildings on the property to be up to 45 feet in height instead of up to 30 feet in height.

5.2 ADC 3.020(5) says, “The RM District is primarily intended for medium-density residential urban development. New RM districts should be located on a collector or arterial street or in Village Centers.”

ADC 4.020(1) says that “OP [zoning] is typically appropriate along arterial or collector streets as a transitional or buffer zone between residential and more intense commercial or industrial districts.”

The Rupp property has frontage on 16th Avenue. This street is classified as a local street, not a collector or arterial street.

5.3 The Rupp property is located adjacent to land zoned OP to the north and west, and land zoned RM to the east and across 16th Avenue to the south. The Rupp property does not serve the purpose of a transitional zone between more intense commercial or industrial districts. (Intense commercial or industrial uses are not allowed on any of the adjacent properties.) The OP designation of the Rupp property is not necessary to provide a buffer between intense commercial uses and residential uses.

5.4 The Economic Opportunities Analysis (EOA) updated in 2007 finds that Albany needs more commercial sites less than one acre. The Rupp property is less than one acre. OP zoning is “...intended to provide a vertical or horizontal mix of professional offices, personal services, live-work, residential and limited related commercial uses.”

RM zoning “...is primarily intended for medium-density residential urban development.”

OP zoning allows commercial development. RM zoning does not. Changing the zoning of the Rupp property from OP to RM would decrease the supply of potential commercial sites less than one acre when Albany needs more commercial sites less than one acre, not fewer sites.

- 5.5 OP zoning also allows residential development. ADC 4.050, Schedule of Permitted Uses, shows that, in OP zoning districts, single-family residences are allowed outright, attached single-family units are allowed through the Planned Development process, two-family residences require a conditional use review, and three or more units (apartments) require a conditional use review.

With its current OP zoning, the Rupp property could be developed with single-family homes for which no land use application or review required. Any other proposed residential use would require a land use application and review. Conditional use applications can be denied based on a conclusion that the use or proposed structure(s) is not compatible with surrounding uses.

A townhouse development with buildings up to 45 feet in height has been approved on the property that abuts the Rupp property to the north. The Rupp family also own the property to the west that has multi-family development on it. An assisted living facility is located on the property further to the west across Davidson Street.

- 5.6 The applicants' representative explains that it is the Rupp family's intention to develop their property with some type of residential use regardless of whether it is zoned OP or RM. The property is currently configured as four lots that lend themselves most efficiently to single-family houses.
- 5.7 Changing the zoning of the Rupp property from OP to RM would extend the existing RM zoning of the property to the east further west. The current pattern of RM-zoned property abutting OP-zoned property would simply move to the west by about 172 feet (the width of the Rupp property). The City's transportation analyst has found that 16th Avenue can accommodate traffic from residential development at the density allowed on the Rupp property with either OP zoning or RM zoning.
- 5.8 Either OP zoning or RM zoning for the Rupp property would further the Comprehensive Plan policy to encourage land use patterns that take advantage of density and location to reduce the need for travel and dependency on the private automobile, etc. This is a mixed use area where either residential development or commercial development on the Rupp property will contribute to a desirable mix of uses.
- 5.9 Because the property owners have expressed their intention to develop the property with a residential use, it is unlikely at this time that the property will be developed with a commercial use.
- 5.10 The Housing Needs Analysis, updated in 2006, finds that Albany needs more RM-zoned land. A note with that finding, however, says that the authors find it is unlikely RM-zoned land less than one acre will be developed with multi-family uses; it is more likely it will be developed with single-family houses. On the other hand, the Rupp family have expressed their intention to reconfigure their property from the four lots that appear intended for single-family houses to three parcels that can be developed with multi-family uses and have submitted applications to do that.
- 5.11 Rezoning the Rupp property from OP to RM will allow taller residential buildings which may contribute to the ability to provide an innovative housing type and/or design as encouraged in Goal 10, Housing, Policy 3.
- 5.12 The current OP zoning of the property would theoretically allow up to 21 multi-family units to be developed on the property based on the amount of land required in ADC 4.090, Table 1, Note 1 for each unit (1,600 square feet per unit). But the concurrent site plan submitted by the Rupp family for a multi-family development on the property demonstrates that in practice, 12 units is probably the maximum number of units that can be developed on this property.
- 5.13 No commercial zoning other than OP is feasible at this location because the property is located on a local street and is surrounded by either other OP-zoned or RM-zoned land. A higher intensity commercial zone other than OP would not be compatible with surrounding zoning and/or land uses.

5.14 The intent and purpose of the proposed RM zoning district best satisfies the goals and policies of the Comprehensive Plan. This review criterion is met.

***Criterion (6) The land use and transportation pattern recommended in any applicable City-contracted or funded land use or transportation plan or study has been followed, unless the applicant demonstrates good cause for the departure from the plan or study.***

6.1 There is no applicable City contracted or funded land use or transportation plan or study that recommends a different land use or transportation pattern for the subject properties. This criterion is not applicable.

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