



Oregon

Theodore R. Kulongoski, 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

06/14/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: Polk County Plan Amendment
DLCD File Number 002-11

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: Thursday, June 30, 2011

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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: Jerry Sorte, Polk County
Jon Jinings, DLCD Community Services Specialist
Steve Oulman, DLCD Regional Representative

<paa> YA

FORM 2

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

in person electronic mailed

DEPT OF

JUN 10 2011

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: **Polk County**

Local file number: **ZC11-01**

Date of Adoption: **6/8/2011**

Date Mailed: **6/9/2011**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **4/7/2011**

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".

The Board of Commissioners adopted Ordinance 11-04, which changes the zoning of a 0.11 acre property from Suburban Residential (SR) to Multi-Family Residential (RM). The subject property is located in the Salem UGB.

Does the Adoption differ from proposal? **No**, no explanation is necessary

Plan Map Changed from:

to:

Zone Map Changed from: **SR**

to: **RM**

Location: **One property south of 1950 Wallace Road NW, Salem, Oregon** Acres Involved: **0.11**

Specify Density: Previous: **No min. parcel size**

New: **6,000 square feet**

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: 002-11 (18783) [156681]

DLCD file No. _____

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

Local Contact: **Jerry Sorte**

Phone: (503) 623-9237 Extension:

Address: **850 Main Street**

Fax Number: **503-623-6009**

City: **Dallas**

Zip: **97338**

E-mail Address: **sorte.jerry@co.polk.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) 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**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

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**BEFORE THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF POLK, STATE OF OREGON**

In The Matter Of Zone Change ZC 11-01 on an)
Approximately 0.11 Acre Property Zoned)
Suburban Residential at Township 7S, Range 3W,)
Section 15, Assessment Map Tax Lot 605)

ORDINANCE NO. 11-04

WHEREAS, the Board of Commissioners held a public hearing on May 25, 2011 with due notice of such public hearing having been given, and provided an opportunity for public comments and testimony; and

WHEREAS, the Board of Commissioners received a recommendation in support of Zone Change ZC 11-01 from the Polk County Hearings Officer based upon his public hearing and conclusions; and

WHEREAS, the Board of Commissioners received a recommendation in support of Zone Change ZC 11-01 from Polk County Planning staff based upon the findings and evidence in the record; and

WHEREAS, the Board of Commissioners publicly deliberated on May 25, 2011, and the quorum unanimously passed a motion to approve Zone Change ZC 11-01; now, therefore:

THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Sec. 1. That Polk County amends the Official Zoning Map by changing the zoning of the subject property from Suburban Residential (SR) to Multi-Family Residential (RM) as shown on Exhibit A.

Sec. 2. That Polk County adopts the findings for Zone Change ZC 11-01 located in the Hearings Officer's recommendation as shown on Exhibit B and in the supplemental findings shown on Exhibit C.


Sec. 3. That Polk County amends Polk County Zoning Ordinance Section 111.090(A) to reflect the new date of the Official Zoning Map, as shown on Exhibit D.

Sec. 4. An emergency is declared, and the provisions of this ordinance become effective upon its adoption.

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Dated this 8th day of June 2011 at Dallas, Oregon.

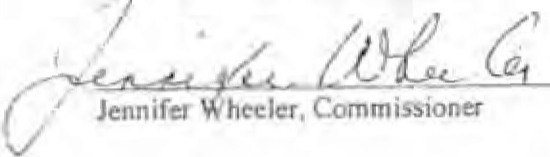
POLK COUNTY BOARD OF COMMISSIONERS



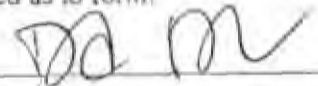
Craig Pope, Chair



Mike Ainsworth, Commissioner



Jennifer Wheeler, Commissioner

Approved as to form:


David Doyle

County Counsel

First Reading: 6-8-2011

Second Reading: 6-8-2011

Recording Secretary:  _____

Polk County Map

Community Development

- ROAD
- STATUTORY PAVED
- Taxlot 1
- Taxlot Area(s)
- Taxlot Boundary(s)



This map was prepared using the Polk County GIS data. The GIS data is maintained by the county to support its governmental activities. The county is not responsible for map errors, omissions, delays or discontinuance.

1 in. = 120 ft.

5/25/2011 POLK COUNTY

RECEIVED
 MAY 04 2011
 POLK COUNTY
 COMMUNITY DEVELOPMENT

**BEFORE THE PLANNING DIVISION
 FOR POLK COUNTY, OREGON**

In the Matter of the Application of Hans Thygeson, Faithworks Development LLC } Zone Change 11-01

SUMMARY OF PROCEEDINGS

This matter arose on the application of Hans Thygeson to change the zoning of a 0.1-acre property (owned by Faithworks LLC) from Suburban Residential (SR) to Multi-family Residential (RM). The subject property currently is developed as an access driveway, and would continue to be used for that purpose, as access to a neighboring property that is planned to be developed with multi-family housing. The subject property is immediately to the south of 1950 Wallace Road NW, Salem, Polk County, Oregon, and is legally described as T7S, R3W, section 15, tax lot 605.

Applicable review and decision criteria are Polk County Zoning Ordinance (PCZO) 111.140 and 111.275, and an intergovernmental agreement between the City of Salem and Polk County regarding the urban growth boundary and management of the urbanized area. The subject property is rectangular, approximately 230 feet by 20 feet, and is currently developed with a driveway that connects multiple single family dwellings to Wallace Road. The subject property is identified on the map included in the Staff Report as Attachment "A".

The applicant states that the reason for the proposed zone change is that the RM zone would allow the subject property to be used as an access parcel for a proposed multi-family dwelling development on property to the north of the subject property. Those properties are identified as Tax Lots 500 and 600 (T7S, R3W, Section 15), and are located within the City of Salem. Tax Lots 500 and 600 total approximately 3.1 acres. Those properties are zoned Multi-Family Residential 2 (RM2) by the City, and that zone allows apartment houses with the necessary city permits.

The Land Use Board of Appeals ruled in *Roth v. Jackson County* (LUBA No. 2000-083) that an access road is an accessory use. Therefore, the zoning of an access road must permit the use to which it is accessory. The current zoning of the subject property is SR, which permits one single family dwelling per parcel. The SR zone does not permit multi-family housing. The uses permitted in the proposed RM zone are listed in PCZO Chapter 134. PCZO 134.010(B)(11) permits apartment houses. Also, PCZO 134.040(A) allows uses listed in a number of other zones, including single-family residential use as described in PCZO 131.010(A). The RM Zone permits both multi-family and single-family residential uses; therefore, if this application is approved, the subject property could be used to access both the proposed multi-family dwelling units in the City of Salem and the existing single family dwellings that currently use the property for access to Wallace Road.

The applicant states that the function of the subject property for access purposes would not change if this request is approved. The applicant states that if the request is approved, the west half of the existing driveway will be widened to the north. In addition, pedestrian access from the proposed development to the north will be provided north of the subject property. The southerly side of the existing driveway on the subject property will not be impacted if this application is approved. Furthermore, the applicant states that no buildings would be constructed on the subject property as a result of the proposal.

Location	Comprehensive Plan Designation	Zoning Designation
Subject Property	Urban Reserve	Suburban Residential

Property North	City of Salem	City of Salem
Property South	Urban Reserve	Suburban Residential
Property East	Urban Reserve	Suburban Residential
Property West	City of Salem	City of Salem

Based on a review of Polk County Assessor's data, the subject property is vacant. The subject property was lawfully created pursuant to Polk County Subdivision and Partition Ordinance Section 91.950(1)(c) as result of tax foreclosure proceedings as described on the current deed for the subject property identified as Polk County Clerk Document 2007-17193, dated November 9, 2007.

Based on a review of the Polk County Significant Resource Areas (SRA) Map, the subject property does not contain inventoried significant resources. Based on a review of the National Wetland Inventory (NWI) map, Salem West Quadrangle, the subject property does not contain any inventoried wetlands. The subject property is not located within an identified floodplain pursuant to Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel number 41053C0283F dated December 19, 2006. There are no identified historic, archeological or Willamette River Greenway areas on the subject property.

Notice of the April 26, 2011, public hearing before the Hearings Officer and the May 25, 2011 hearing before the Board of Commissioners was provided as required by PCZO 111.340 to 111.370. Staff provided a notice sign to the property owner on April 6, 2011. Notice was mailed to property owners located within 250 feet of the outside perimeter of the subject property on April 5, 2011. Notice was printed in the Dallas, Oregon, *Itemizer-Observer* newspaper on April 6, 2011. Notice of the proposed zone change was provided to DLCD on April 7, 2011.

The subject property has frontage along Wallace Road NW (State Highway 221), which is designated as a minor arterial in *Polk County Transportation Systems Plan*, Figure 3.

No written comments were received by staff prior to the public hearing.

PUBLIC HEARING

A duly advertised public hearing was held in the Polk County Courthouse on the evening of April 26, 2011. The Hearings Officer called the meeting to order at the appointed time. Staff summarized its report and recommendation, identifying the applicable review and decision criteria. There were no objections as to notice, jurisdiction, or conflict of interest.

Ordinarily, the Hearings Officer would allow applicant or its representative to proceed first, but nobody had appeared for that purpose. Consequently, the Hearings Officer turned to Herb Shaw, the only member of the public present. Shaw submitted in writing a letter opposing the application, which is attached hereto as Exhibit "A". Shaw read his letter expressing opposition. As he concluded, representatives of the applicant appeared. Without objection, the Hearings Officer allowed the applicant's statement to be heard. Shaw stressed his opposition to the proposed change on grounds of its impact on the intersection with Wallace Road, which currently serves only a few single-family residences and which would carry more traffic if the subject property were rezoned from SR to RM to serve a multi-family development. He urged that any approval of the rezoning not take effect until improvements, enumerated in his letter, are made.

As Shaw was making his presentation, a representative of the applicant appeared. Without objection, the Hearings Officer allowed him to make a presentation on behalf of the applicant. Keith Whisenhunt identified himself as a civil engineer employed by applicant and authorized to speak on applicant's behalf. He said there were two issues involved: The proposed rezone, and access improvements. He said the issues are separate.

Whisenhunt noted that Wallace Road NW is a state highway (#221), under the jurisdiction of the Oregon Department of Transportation (ODOT). He said applicant has made separate applications to ODOT, as well as the City of Salem, to improve the intersection in the interests of safety. Specifically, he said the matters of median plantings, a new traffic control signal, and lowered speed limit will be resolved by ODOT, which has authority to issue appropriate access permits, and these matters are not properly at issue in this proceeding.

Shaw commented that his objections involved matters of public safety. Whisenhunt stated that the applicant will not undertake the multi-family improvements to be served by the subject property until clearance has been obtained from ODOT.

Staff announced that the final local decision will be made by the Board of Commissioners only after a *de novo* public hearing scheduled for May 25, 2011.

There was no request that the hearing be continued, or that the record be left open for additional written submissions. Consequently, the Hearings Officer declared the record to be closed, and adjourned the meeting. Robert W. Oliver, Polk County Hearings Officer, presided.

FINDINGS

Authorization for a zone change is provided under PCZO 111.275. Staff findings and analysis are included below. The applicant provided findings with the application that are included as "Applicant Findings" below and also as Attachment "E" of the staff report.

- A. A zone change is a reclassification of any area from one zone or district to another, after the proposed change has been reviewed and a recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. [PCZO 111.140]

Procedurally, the Hearings Officer holds a public hearing pursuant to PCZO 111.190 and makes a recommendation to the Board of Commissioners. The Board of Commissioners then holds a public hearing pursuant to PCZO 111.200 and makes a final local decision. Planning Division staff reviewed the proposed zone change, and prepared a staff report and recommendation for the Hearings Officer. This application has been reviewed under the proper review process and complies with this criterion.

- B. Pursuant to Section 111.160, a zone change may be approved, provided that the request satisfies all applicable requirements of this ordinance, and provided that with written findings, the applicant(s) clearly demonstrate compliance with the following criteria:
1. The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification; [PCZO 111.275 (A)]
 - a. Urban Reserve Land Designation (Applicable Sections)
 - i. The Urban Reserve designation addresses itself toward protecting the intent and integrity of the city's coordinated and adopted land use plan by limiting random development actions which could stand in the way of logical, planned development. The Urban Reserve designation recognizes that the provision of adequate levels of public facilities and services should guide urban development, and not the other way around.
 - ii. The Urban Reserve designation shall reflect and be in support of the County's Urban Land Development policies, and the policies and intent statements contained within the intergovernmental agreement adopted by Polk County and each municipality regarding the development and

management of urbanizable lands.

- iii. **The Urban Reserve designation may be implemented through a number of zones, but primarily through the Suburban Residential (SR) zone or the Exclusive Farm Use (EFU) Zone. [PCCP, Section 4]**

b. Urban Land Development; Applicable Goals and Policies

- i. **To protect agricultural land from urban expansion and random development through containment of urban growth. [PCCP, Section 2, Element K, Goal 1]**
- ii. **To provide for an orderly and efficient transition from rural to urban land use within designated growth areas. [PCCP, Section 2, Element K, Goal 2]**
- iii. **Polk County will recognize that the type and form of development of urbanizable land is to be based upon each municipality's adopted land use and phased growth plan, a plan which has been coordinated with that of the County. [PCCP, Section 2, Element K, Policy 2.3]**
- iv. **Polk County will provide the opportunity for each city to review and comment upon any proposed land use action within that municipality's urbanizable area prior to County action. [PCCP, Section 2, Element K, Policy 2.4]**
- v. **Polk County zoning will reflect and support the intent of a municipality's coordinated and adopted land use plan for the urbanizable area in order to protect that area from random development actions. [PCCP, Section 2, Element K, Policy 2.5]**

The Urban Reserve designation acknowledges that lands under this designation will be developed for urban uses. Approval of this request is supported by the Urban Reserve designation, Polk County's Urban Land Development policies, and the intergovernmental agreement adopted by Polk County and the City of Salem for urbanizable land. Polk County Urban Reserve designation may be implemented through a number of zones, but primarily through the Suburban Residential (SR) Zone or the Exclusive Farm Use (EFU) Zone. In this case, applicant is requesting implementation utilizing the Multi-Family Residential Zone (RM), which provides the closest match to the City of Salem zoning of the applicant's adjacent Tax Lots.

Although RM zoning is not currently applied to properties in Polk County, this zoning designation is appropriate for the Polk County Comprehensive Plan (PCCP) land use designation of this property located within the City of Salem UGB. According to the PCCP, less than four percent of total land area in Polk County is being used for high-density land uses, and this is not expected to increase except for area of high population densities such as Salem. The access easement for neighboring properties and parcel shape precludes any other use for the site than this request describes. Utilizing this parcel to provide access to the proposed project north of the site (within the City of Salem) contributes to the high-density land use anticipated within the UGB. Additionally, approval of this request to change the zoning to RM will provide for coordination of planning between the City of Salem and Polk County.

Approval of this request is consistent with the purpose and policies identified in the PCCP. This zone change will closely mirror the zoning of the adjacent property under City of Salem jurisdiction. The PCCP under section 2 (k), Urban Land Development, establishes two goals: To protect agricultural land from urban expansion and random development through containment of urban growth; and, to provide for an orderly and efficient transition from rural to urban land use within designated growth areas. By allowing this zone change, multi-family housing needs can be met without impacting agricultural land.

Applicant contends that the zone change he seeks meets the requirements of the PCZO, and maintains consistency with the PCCP. The proposed use of this parcel and the requested zone change meets the criteria developed by Polk County and the City of Salem for properties designated as Urban Reserve.

Staff notes that the subject property is located in the City of Salem's urban growth boundary (UGB), and is designated Urban Reserve on the PCCP Map. The Urban Reserve land designation applies to properties with a city's urban growth boundary, but outside city limits. The Urban Reserve designation is intended to provide a planned, orderly transition from rural lands within the UGB to urban uses. Land that would be used for urban uses must be supported by adequate public facilities and services. Management of the urban growth boundary is shared between Polk County and the City, and the City's comprehensive plan is the guiding land use planning document within the UGB. Polk County has an intergovernmental agreement with the City of Salem that regulates land use planning within the portion of Polk County in the UGB but outside city limits. This application's compliance with that agreement is discussed in greater detail below.

The subject property is currently zoned SR. Based on the statements in the application and on a review of the 2008 Polk County aerial photograph, the property is currently used as a driveway by five single family dwellings that are also located in the SR zone. The subject property is narrow, averaging approximately 20 feet in width, and it is improbable that the subject property could or would ever be developed with a residential structure. The applicant is proposing to apply the RM zone to the subject property. The RM zone permits dense residential development, but again, due to the narrow width and current physical development of the subject property, it is unlikely that the subject property would be developed with a multi-family residential structure. Consequently, it is reasonable to evaluate this application under the assumption that the subject property can only reasonably be used as a driveway to neighboring properties.

The subject property, developed as a driveway, requires few public services and facilities. As indicated by the applicant, stormwater generated from the subject property would flow to the north and would be managed as a part of the multi-family residential development proposed in the City of Salem to which the subject property would be accessory. If this application is approved, and the subject property is developed in conjunction with the property to the north, the applicant may be required to obtain a 1200-C stormwater permit from the Oregon Department of Environmental Quality (DEQ) and submit a Post-Construction Runoff Plan to the Polk County Building Division if more than one acre of land is disturbed. The subject property would require access to Wallace Road, State Highway 221, and the applicant would need to obtain a new or amended access permit if required by the Oregon Department of Transportation (ODOT). If approved, the subject property would not require water or sewage disposal services. The proposal is unlikely to significantly change the property's need for police and fire protection services.

Goal 1 of Section 2, Element K, of the PCCP states that a goal of urban land development in Polk County is "[t]o protect agricultural land from urban expansion and random development through containment of urban growth." The applicant's proposal would change the zoning to RM, which provides for a greater array of urban uses than the current SR zone. While the use of the subject property as a driveway would not change, it would likely experience increased traffic volumes with the addition of traffic from a proposed apartment complex in the City of Salem. The subject property is contiguous to the City of Salem along its northern and western property lines, and does not border any agricultural land. For those reasons, staff concluded that the increased levels of traffic on the subject property would not affect any agricultural land negatively, nor would this proposal constitute "random development."

Planning staff provided the City of Salem notification of this land use application on March 11, 2011. The City replied that it had no comments on the application.

In order to ensure continued compliance with the PCCP, all future development on the subject property would need to comply with the applicable development standards in the PCZO. Prior to any future development of the subject property, the property owner would be required to obtain all

necessary federal, state, and county permits. These permits may include a stormwater permit from DEQ and a new or amended access permit to Wallace Road from ODOT.

Based on the findings discussed above, the Hearings Officer finds that the application complies with this criterion.

**2. The proposal conforms with the purpose statement of the proposed zone;
[PCZO 111.275 (B)]**

Applicant states that the proposed Polk County Multi-Family Residential Zone (RM), does not currently have a purpose statement. The proposed use of this parcel is consistent with PCZO 134.010(B)(11), which allows for an unlimited number of apartments in the RM Zoning District. The subject property does not adjoin any properties within a business zone or industrial zone.

The proposed zone designation of the site will continue to meet the purpose and intent of the SR Zone to provide a transition between urban and rural living. Approving this request will allow the applicant to continue to use his property in the same manner as it is used today, in a manner consistent with the proposed RM zoning designation, and consistent with the City of Salem Comprehensive Plan and Zoning Code.

In summary, the applicant is proposing to change the zoning of the subject property to RM. The RM zone does not contain a purpose statement. Generally, the uses permitted in the zone, especially the outright permitted uses, are consistent with the purpose of a zoning district even if a written purpose statement does not exist. In the RM zone apartment houses and single family dwellings are outright permitted uses, and the subject property would be used to access those uses. For those reasons, staff concluded that the applicant's proposal conforms with the clear purpose and intent of the RM zone.

The Hearings Officer finds that the application complies with this criterion.

3. The uses allowed in the proposed designation will not significantly adversely affect allowed uses on adjacent lands; [PCZO 111.275(C)]

Applicant contends that the site includes a paved driveway providing access to five SR-zoned properties in Polk County. This parcel will continue to be used as access to the existing single-family homes. In addition, it will provide access to the proposed development to the north. The capacity of the driveway and connection to Wallace Road NW is sufficient to provide an acceptable level of service for the users of the driveway.

Current use of the adjacent parcels as single-family homes will not be adversely affected by approval of this zone change. If the request is approved, the west half of the existing driveway will be widened to the north in order to meet the requirements of both Polk County and Salem for this type of use. In addition, pedestrian access from the proposed development to the north will be provided north of the site. The southerly side of the existing driveway on the site will not be impacted by the work. Furthermore, no buildings will be constructed on the site as a result of the proposed development.

Use of the site as access to the proposed development is consistent with the Oregon DOT management of access locations on Wallace Road NW (Highway 221). Their goal in access management is to combine access points, locate them to minimize conflicts, and space them to provide for the needed capacity of the roadway. The use of the site as access to Wallace Road NW meets their goal. It will eliminate two existing access points to Wallace Road NW and allow the proposed development to the north to access Wallace Road NW at a location directly across from Lynda Lane NW. This will allow for left-turning movements without conflicting vehicle paths. The applicant's application for ODOT approval of this access is in process.

Rezoning the subject property will meet the PCCP goals by staying consistent with the zoning of the adjacent parcels within the Salem corporate limits and by providing for orderly development within the UGB. The City of Salem's Comprehensive Plan Urban Growth Policy No. 2 calls for

orderly development of land. The land within city limits on the east side of Wallace Road in the proximate area of the Site is zoned for Multiple Family Residential 1 (RM1) or Multiple Family Residential 2 (RM2). One of the permitted uses of RM1 under Salem code 148.160 (c) is apartment houses, court apartments, condominiums, duplexes, and room and board facilities serving five or fewer persons. A permitted use of RM2 under city code 148.310 (d) is townhouses, apartment houses, court apartments, condominiums, duplexes and room and board facilities serving five or fewer persons. Applying the RM zone designation to the subject property will create consistency with surrounding zoning and approved urban growth policies.

The applicant is proposing to change the zoning of the subject property from SR to RM. Based on a review of the Polk County Zoning Map, contiguous properties to the south and east are located in the Salem UGB and zoned SR. The SR zone permits one single-family dwelling per parcel and a host of uses that are typically accessory to single-family dwellings. Based on a review of the 2008 Polk County aerial photograph, the contiguous properties to the south and east are used for residential purposes. The subject property is bordered to the north and west by properties within the City of Salem and zoned Multi-Family Residential (RM2). The City's RM2 zone is similar to the RM zone in that it permits apartment houses and a host of residential uses.

As discussed earlier in this staff report, staff concluded that it is reasonable to assume that the subject property will continue to be used for driveway access purposes. The subject property is too narrow, averaging approximately 20 feet, for the property owner reasonably to establish a dwelling unit. The subject property is already developed as a driveway and serves multiple dwellings. The likely impact on the neighborhood of this zone change would be an increase in the traffic and pedestrian volume that moves across the subject property associated with the proposed multi-family residential development to the north. Staff believes that the increased use of the subject property would not significantly affect the allowed uses on adjoining properties. The subject property would resemble a municipal street, which customarily abuts single family dwellings and apartment houses. Based on the above, the Hearings Officer finds that the application complies with this criterion.

4. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; [PCZO 111.275(D)]

Applicant states, with regard to this requirement:

Water

Water facilities will not be needed as no structures are proposed for the Site.

Sanitary Sewer

Sanitary sewer facilities will not be needed as no structures are proposed for the Site.

Storm Drainage

Runoff from the Site will flow to the north and east and onto the property to the north. It will be managed as part of the proposed development within the City of Salem jurisdiction.

Transportation

Wallace Road NW is fully developed as a four-lane arterial roadway with left turn lanes and medians to provide access control. Public transportation on Wallace Road NW, includes a bus stop within 1,000 feet to the north of the subject property, and a stop within 500 feet to the south.

Applicant contends that if additional public facilities are required to serve the proposed development to the north, the City of Salem process to issue an Urban Growth Development Area

Permit will address these needs. The development potential of the site will not change if this request is approved. As such, the need for utilities, drainage improvements, or transportation facilities is not impacted by this request.

Staff noted that the applicant has proposed to change the zoning of the subject property from SR to RM. The subject property is a narrow, 0.1-acre property that is physically developed with a driveway. If this zone change is approved, the applicant indicates that it would continue to be used as a driveway to single family dwellings in the SR zone and as an access parcel to a proposed multi-family residential development on the property to the north. The subject property averages approximately 20 feet in width, so it is unlikely that the subject property could be developed with a dwelling unit. Accordingly, the subject property does not require water or a means for sewage disposal. The subject property is currently, and would continue to be, used as a driveway, so the level of fire and protective services required by the property are unlikely to significantly change. The subject property is located in the Salem Suburban Rural Fire Protection District and receives protective services from the Polk County Sheriff's Department.

Staff anticipates that the amount of traffic traversing the subject property will increase significantly assuming the property to the north is developed for multi-family use. The subject property abuts Wallace Road (State Highway 221). Access onto Wallace Road is regulated by ODOT. The applicant would need to receive all necessary permits from ODOT, and complete any ODOT-required traffic mitigation, in order to permit traffic from the proposed multi-family development in the City to access Wallace Road. If this application is approved, and the subject property is developed in conjunction with the property to the north, the applicant may be required to obtain a 1200-C stormwater permit from DEQ if more than one acre of land is disturbed. Improvements on the subject property may also require submittal of a Post-Construction Runoff Plan to the Polk County Building Division as required by Polk County Code 80.133(2). A Post-Construction Runoff Plan is required for construction activity disturbing less than one acre if that construction activity is part of a larger development that would disturb one acre or more.

Staff concluded that there are adequate public facilities, services, and transportation networks available at this time to serve the subject property. Approval of the proposed zone change would not authorize the applicant to establish a use that would exceed the capacity of those services until such services are planned or available.

The Hearings Officer agrees, and finds that this criterion satisfied.

5. The proposed change is appropriate taking into consideration the following:

a. Surrounding land uses, [PCZO 111.275(E)(1)]

Development on Tax Lots 500 and 600 (T7S, R3W, Section 15), which are within the City of Salem, must meet the standards and requirements required by the City of Salem. The Site and Tax Lots 500 and 600 require a buffer category B (using table 132-1 in chapter 132 of City of Salem codes). The City of Salem Design Handbook under section 2 (B) (2a) guidelines on landscaping, requires appropriate combination of landscaping and screening to buffer between the multiple family use and adjacent single family zone. The apartment complex on Tax Lots 500 and 600 will have a ten-foot buffer around the perimeter. The buffer zone will include one plant unit per 20 square feet of yard area and a six-foot fence.

Staff agreed with the applicant that the proposed zone change would be appropriate considering surrounding land uses. The subject property is located in the Salem UGB and the properties to the north and west are located in city limits. Based on the information in the application, the contiguous property to the north is zoned RM2 by the City of Salem. According to the information in the application, the applicant has applied to establish a multi-family dwelling complex on the property to the north. Based on a review of the Polk County Zoning Map, neighboring properties to the south and east are located outside of city limits and zoned SR. The SR zone permits one single-family dwelling per parcel. The subject property is located in a residential neighborhood, and permitting a zone change to allow the property to be used as a driveway to serve

a multi-family residential complex would be consistent with surrounding land uses. The driveway would act in a similar fashion to a municipal street, which is customarily located in a residential neighborhood.

b. The density and pattern of development in the area, [PCZO 111.275(E)(2)]

Applicant notes that the site is contiguous with Tax Lot 600 (T7S, R3W, Section 15) to the north which is zoned RM2 in the City of Salem. This is consistent with RM zoning according to Polk County. The site is a small parcel of land outside city limits, but inside the UGB, zoned as SR which will continue to be used by neighbors and as a driveway due to easement restrictions. To the west is Wallace Road and additional properties with RM2 zoning on the west side of Wallace Road. The only single family residential zoning within proximity of the subject property is adjoining to the south and adjacent to the east. The general mix of zoning in the area is RM1 and RM2.

Staff states that the applicant is proposing to change the zoning of the subject property to RM. The RM zone has a minimum parcel size of 6,000 square feet for a single family dwelling. The subject property contains approximately 4,600 square feet (0.11 acre). If the zone change is approved, the subject property could not be partitioned any further. The proposed zone change would; therefore, allow different uses of the subject property, but would not result in an increase of parcel density.

c. Any changes which may have occurred in the vicinity to support the proposed amendment. [PCZO 111.275(E)(1-3)]

Applicant states that, as the City of Salem's population has increased, the area surrounding the proposed project has been continuously becoming more urban. As this occurs, the Oregon DOT has made efforts to manage access in the interest of public safety, with consideration of public convenience. This request is consistent with the consolidation of driveway accesses accomplished by using this parcel for the access to the proposed development to the north. Design and right-of-way acquisition by the City of Salem has already begun on a project to improve capacity at the intersection of Glen Creek Road NW and Wallace Road NW. That project will widen the intersection to provide dual left-turn lanes on northbound Wallace Road NW to westbound Glen Creek Road NW, dual right-turn lanes on eastbound Glen Creek Road NW to southbound Wallace Road NW, right-turn-only lane on northbound Wallace Road NW to eastbound Glen Creek Road NW (if needed), and widening of both Glen Creek Road NW approaches to receive the additional turn lanes.

Staff concluded that the impetus for this zone change request is to provide access to a multi-family residential complex that they have proposed on neighboring property to the north, within the City of Salem. The proposed RM zone is an appropriate zone to apply to the subject property in order to allow the property to provide access to the proposed multi-family development and the single family dwellings that it currently serves. Staff did not identify any other recent changes that have occurred in the vicinity of the subject property that are relevant to this application.

6. The proposal complies with any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land; and [PCZO 111.275(F)]

Applicant argues that the subject property is located outside of Salem corporate limits, but within the UGB. This parcel is too small for independent use or development. Oregon statutes provide an institutional structure for statewide planning and mandated coordination of all planning activities affecting land use. On September 11, 1991, the City of Salem and Polk County entered an intergovernmental agreement regarding management of the urbanized area within the UGB. The subject property is not being used for agricultural production, and is designated as Property Class 040, so it falls within the parameters set by this agreement. Designation of multi-family residential zoning on this property is consistent with the intent of the Urban Reserve to limit random development. This action will maximize the efficiency of land use within the existing urban area.

The Urban Reserve recognizes the UGB was designated to assure an appropriate supply of land will be available to meet the city's urban growth needs. Approval of this zoning change request meets the intent of the intergovernmental agreement between Polk County and the City of Salem regarding urban growth. The requested RM zoning designation matches that of the adjacent properties within the boundaries of the City of Salem being developed by the Owner. This change promotes the orderly and efficient conversion of land to urban use, while conserving and protecting environmental, energy, economic and social resources.

Staff noted that the subject property is located in the City of Salem's UGB. Polk County has an intergovernmental agreement with the City concerning titled: *Intergovernmental Agreement Between City of Salem and Polk County Regarding the Urban Growth Boundary and Management of the Urbanized Area (IGA)*. The IGA acknowledges that the City of Salem's comprehensive plan is the guiding land use planning document for the UGB. It also contains specific development standards for residential development on septic tanks. Staff provided notice of the proposed zone change to the City of Salem, and the city responded that they did not have any comments with respect to the matter. The proposal does not entail residential development on a septic tank. For these reasons, staff concluded that the proposed zone change is consistent with the IGA.

7. The proposal complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply. [PCZO 111.275(G)]

Applicant states that approval of this proposed zone change complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. One of the purposes of Goal 10 is to make efficient use of buildable residentially designated land within urban growth boundaries. The proposed zoning for this property meets this goal. Using this parcel of unbuildable land to facilitate residential use within the UGB is consistent with the PCCP and Goal 10 since it delays the need to develop agricultural land.

Under OAR Chapter 660 Division 8, the mix and density of needed housing is identified in the housing needs projection. It further requires designation of sufficient buildable land on the comprehensive plan map to satisfy housing needs by type and density range. The population in the City of Salem increased by 11.1% between April 1, 2000 and July 1, 2006. Although economic conditions have slowed growth over the past few years, there is still a need for additional housing units within the UGB to accommodate continued growth. According to the Salem-Keizer Housing and Community Development Consolidated Plan (2009-2013), construction activities since 2000 have been dominated by single-family homes and a ratio of 345 single-family dwellings have been built to 25 multi-family dwellings in 2007-2008. Allowing a zone change to RM for this parcel will contribute to the coordinated and orderly development of different housing types and density. The RM zoning designation will be appropriate for the Site.

Staff noted that the subject property is designated as Urban Reserve on the PCCP Map. The subject property is located in an exception area, as defined in OAR 660-033-0020(6), and is no longer subject to Goals 3 (Agricultural Lands) or 4 (Forest Lands). The subject property is zoned SR which allows parcels to be established that are smaller than two acres. The subject property is already urban, so an exception is not required to comply with Goal 14 (Urbanization).

With respect to Goal 12 (Transportation), staff did not believe that a transportation impact analysis (TIA) would be needed to authorize this zone change. OAR 660-012-0060(1), the Transportation Planning Rule (TPR), states the following:

- (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility.

A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- (b) Change standards implementing a functional classification system; or
- (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan. [OAR 660-012-0060(1)]

OAR 660-012-0060(1) requires a demonstration of compliance with additional state regulations when an amendment to a land use regulation would “significantly affect an existing or planned transportation facility.” In this case, the existing transportation facility is Wallace Road, which abuts the subject property. The applicant indicates that the subject property would be used as an access parcel to a proposed multi-family development on contiguous property to the north in the City of Salem and to existing single-family dwellings in the UGB. The proposed multi-family development would generate traffic, and the subject property would contain an accessory use, an access driveway, to serve the multi-family development. The subject property contains 0.11 acre, and is too small to realistically be developed with multi-family dwelling units. Consequently, if this zone change is approved, the subject property would not independently generate traffic.

The proposed zone change would affect where, on Wallace Road, vehicles would access the proposed multi-family dwelling development on Tax Lots 500 and 600 in the City of Salem. Tax Lots 500 and 600 abut Wallace Road for approximately 300 feet directly contiguous to the north of the subject property. Staff assumed that if the proposed zone change was not requested, the proposed multi-family development would access Wallace Road directly from Tax Lots 500 or 600. However, due to the presence of a center median on Wallace Road, access in those locations would likely be limited to less desirable “right-in, right-out” turn movements. The proposed multi-family dwelling use is already permitted by that property’s zoning within the City of Salem, so traffic volumes from that type of use have been anticipated to access Wallace Road. For these reasons, staff does not believe that the proposed zone change would significantly affect Wallace Road as discussed under OAR 660-012-0060(1).

Wallace Road is State Highway 221, so the applicant would be required to obtain any necessary access permits from ODOT. ODOT may require traffic improvements where the subject property would access Wallace Road as a part of the access permitting process.

Staff did not identify any sections of ORS or OAR that are directly applicable to this proposed zone change. The proposal would not require a goal exception; therefore, the application complies with this criterion.

The Hearings Officer agrees with staff’s conclusions, and finds that this criterion is satisfied.

DISCUSSION

As noted above, the Land Use Board of Appeals (LUBA) has ruled that an access road is an

accessory use, so the zoning of a parcel constituting an access road must permit the use to which it is accessory. The subject property will be used as a roadway to be accessory to properties zoned for multi-family development. The current zoning of the subject property as SR (for single-family residential use) is not suitable for this use. Polk County's zoning for multi-family residential use is RM, as sought by the applicant for the subject property.

Jurisdiction over Wallace Road NW, a state highway, is vested in the Oregon Department of Transportation (ODOT). Any development by applicant that involves multi-family residential use of the subject property as an access must conform to ODOT's safety standards. Applicant states that it already has applied to ODOT, and acknowledges that it must satisfy ODOT specifications and requirements before implementing full development of the multi-family use on the parcels to which the subject parcel is accessory. The Hearings Officer does not believe it is appropriate for the Board of Commissioners to undertake the formulation of traffic control conditions, when that function already is vested within the jurisdiction of ODOT.

CONCLUSIONS

The proposed zone change has been reviewed following the proper process and complies with the applicable review and decision criteria. Additionally, the Hearings Officer concurs with staff and concludes that there are adequate public facilities, services, and transportation networks available at this time to support the proposed use of the property.

RECOMMENDATION

Staff and the Hearings Officer recommend approval of this application by the Board of Commissioners, changing the zoning of the subject property from Suburban Residential (SR) to Multi-Family Residential (RM).

Dallas, Oregon, May 3, 2011.



Robert W. Oliver
Polk County Hearings Officer

April 26, 2011

To: Polk County Hearings Officer and Board of Commissioners

RE: Faithworks Development LLC (Hans Thygeson)

File # ZC 11-01

CHANGING ZONING FROM SUBURBAN RESIDENTIAL (SR) TO MULTI-FAMILY RESIDENTIAL (RM)

The intersection with subject private lane and Wallace Road is a dangerous intersection that includes Lynda Lane on the West side (the subject private lane is on the East side of Wallace Road, directly across from Lynda Lane), and will become much more hazardous when this re-zoning is approved and the land owned by Mr. Thygeson is developed. The traffic accident history at this intersection for the past five years, according to the City of Salem Police records, is as follows:

- 12/14/2005 Non-injury/property damage accident
- 12/17/2005 Injury accident
- 07/10/2007 Non-injury/property damage accident
- 09/17/2007 Injury accident
- 04/22/2010 Injury accident
- 02/22/2011 Non-injury/property damage accident

Contributing factors to the high rate of traffic accidents at this intersection include, but are not limited to the following:

- There is not a left-turn refuge for Southbound (SB) traffic on Wallace Road, and SB U-turns are not allowed, although many do (Northbound traffic has a left-turn refuge, and U-turns are allowed); SB vehicles on Wallace Road making a left turn onto subject private lane create high risks of being rear-ended because the vehicle must slow and usually stop in the left lane (i.e., fast, passing lane) of SB traffic
- Left-turn movements from the subject private lane onto Wallace Road are also high-risk because of plantings (trees and shrubs) in the median strip to the North of the intersection that dangerously restrict visibility; motorists making the movement must avoid three lanes of Northbound (NB) traffic (which includes the left-turn refuge) and must make a difficult judgment as to whether there is a SB lane open for them to merge into; this movement has caused accidents in the past, and an untold number of near-accidents
- Traffic speeds are much too high for this type of roadway with little or no access control at intersections; the posted speed is 45 MPH, and most of the traffic is traveling at speeds of 50 to 55 MPH, with many traveling at even faster speeds

Currently, the private lane subject to this re-zoning request is a permanent easement used solely by four families that live down this lane, so traffic volumes have been low and limited. **Re-zoning for future development of multi-family residences will greatly change the status of this intersection.** An example of how this intersection will be impacted is best understood by looking at the vehicle accident history at the intersection of Harritt Drive and Wallace Road, located just a block to the

North of subject intersection, Harritt Drive has left-turn refuges for both NB and SB traffic, and U-turns are allowed in both directions. Conditions at Harritt Drive were impacted for the worse when that area was re-zoned and developed to high-density multi-family dwellings around 2005. Since then, the City of Salem Police records for traffic accidents are as follows:

- 04/22/2006 Injury accident
- 07/29/2008 Non-injury/property damage accident
- 03/06/2010 Injury accident
- 10/09/2010 Injury accident (fatality)
- 10/17/2010 Non-injury/property damage accident
- 03/16/2011 Non-injury/property damage accident

Not only is the rate of incidence increasing of late, but the intersection is much safer than the one at Lynda Lane. Changing the zoning at Lynda Lane intersection without first improving the intersection is complete disregard for the safety of all motorists using Wallace Road.

I'm sure the re-zoning issue is a done deal, although the developer has an existing ingress/egress that is much safer for motorists using it as well as motorists on Wallace Road; the existing access is a right-turn ingress and right-turn egress (the egress requires the motorists to make a U-turn at Harritt Drive in order to go Southbound). I hereby request that you make the re-zoning proposal effective date contingent upon completion of an intersection up-grade and modification to include at least each of the following:

- Remove the planter median strip to the North of the intersection and construct a left-turn refuge
- Install a full-functioning traffic signal at this intersection
- Reduce the speed limit on Wallace Road to 35 MPH from Orchard Heights Road out to and including Brush College Road

Not only are these improvements necessary to address and minimize the hazards that will definitely impact this intersection, it is my opinion that all costs to safely utilize this zoning change should be the financial responsibility of the developer.

Respectfully yours,



Herb Shaw
1930 Wallace Road NW
Salem, OR 97304

Supplemental Findings for Zone Change ZC 11-01

Findings Addressing Citizen Comments: During the legislative proceeding for ZC 11-01, Polk County received two written comments. The first, was submitted by Herb Shaw at the Hearings Officer public hearing that was held on April 26, 2011. The Hearings Officer addressed Mr. Shaw's comments in his recommendation included as Exhibit B to Ordinance No. 11-04.

The second written comment was submitted by E.M. Easterly on May 25, 2011, prior to the Board of Commissioner's Hearing. That comment raises three questions. The first question asks why the owner is asking the county to re-zone the subject property to RM prior to annexation into the City of Salem. As discussed throughout the Hearings Officer's recommendation, the applicant is requesting the zone change in order to use the subject property as an access parcel for a proposed multi-family development that is planned in the City of Salem, directly to the north of the subject property. The second question asserts that development of the subject property can only take place after annexation, and asks what the advantage is of re-zoning prior to annexation. While one option available to the property owner would be to seek annexation of the subject property, and application of a City of Salem zoning that would allow the proposed access driveway, the applicant has justified changing the zoning to RM. As discussed in the Hearings Officer's recommendation, the RM zone permits apartment houses and associated driveways. As a result of this zone change, the subject property need not be annexed in order to be used for its planned, access purposes. It is not the County's role to speculate as to the advantages of seeking a zone change within the County rather than annexation to the City of Salem. The third question asks whether the City of Salem or the West Salem Neighborhood Association were notified of this zone change proceeding. Staff provided notice of the zone change request to the City of Salem on March 11, 2011 and notice of the public hearing dates on April 5, 2011. The City replied that they did not have any comments with respect to this application. Staff did not provide notification of this zone change directly to the West Salem Neighborhood Association. The West Salem Neighborhood Association is a citizen group sponsored by the City of Salem. Polk County Planning staff does not monitor how City staff distributes land use notifications to their neighborhood associations. The West Salem Neighborhood Association may register with the Polk County Community Development Department, as can any other group of citizens that owns property or resides in Polk County, to receive electronic notification of land use actions in their geographical area as allowed under PCZO Sections 111.245(A) and 111.350(D). As discussed in the Hearings Officer's recommendation, notification of this land use proceeding was provided as required by PCZO 111.340 to 111.370.

Exhibit D to Ordinance No. 11-04

Polk County Zoning Ordinance Section 111.090(A) is amended to read as follows:

- (A) The Official Zoning Map adopted with an effective date of June 8, 2011, exists as an electronic map layer within the Polk County geographic information system (GIS) at a scale of 1:24,000. The Official Zoning Map shall be maintained by the Planning Director. [Amended by Ordinances 11-02 and 11-04]

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**BEFORE THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF POLK, STATE OF OREGON**

In The Matter Of Zone Change ZC 11-01 on an)
Approximately 0.11 Acre Property Zoned)
Suburban Residential at Township 7S, Range 3W,)
Section 15, Assessment Map Tax Lot 605)

ORDINANCE NO. 11-04

WHEREAS, the Board of Commissioners held a public hearing on May 25, 2011 with due notice of such public hearing having been given, and provided an opportunity for public comments and testimony; and

WHEREAS, the Board of Commissioners received a recommendation in support of Zone Change ZC 11-01 from the Polk County Hearings Officer based upon his public hearing and conclusions; and

WHEREAS, the Board of Commissioners received a recommendation in support of Zone Change ZC 11-01 from Polk County Planning staff based upon the findings and evidence in the record; and

WHEREAS, the Board of Commissioners publicly deliberated on May 25, 2011, and the quorum unanimously passed a motion to approve Zone Change ZC 11-01; now, therefore:

THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Sec. 1. That Polk County amends the Official Zoning Map by changing the zoning of the subject property from Suburban Residential (SR) to Multi-Family Residential (RM) as shown on Exhibit A.

Sec. 2. That Polk County adopts the findings for Zone Change ZC 11-01 located in the Hearings Officer's recommendation as shown on Exhibit B and in the supplemental findings shown on Exhibit C.

Sec. 3. That Polk County amends Polk County Zoning Ordinance Section 111.090(A) to reflect the new date of the Official Zoning Map, as shown on Exhibit D.

Sec. 4. An emergency is declared, and the provisions of this ordinance become effective upon its adoption.

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Dated this 8th day of June 2011 at Dallas, Oregon.

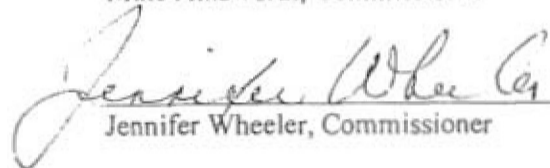
POLK COUNTY BOARD OF COMMISSIONERS



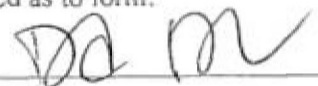
Craig Pope, Chair



Mike Ainsworth, Commissioner



Jennifer Wheeler, Commissioner

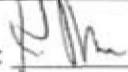
Approved as to form:


David Doyle

County Counsel

First Reading: 6-8-2011

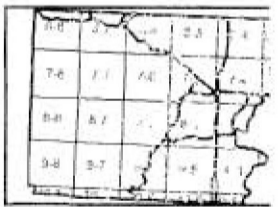
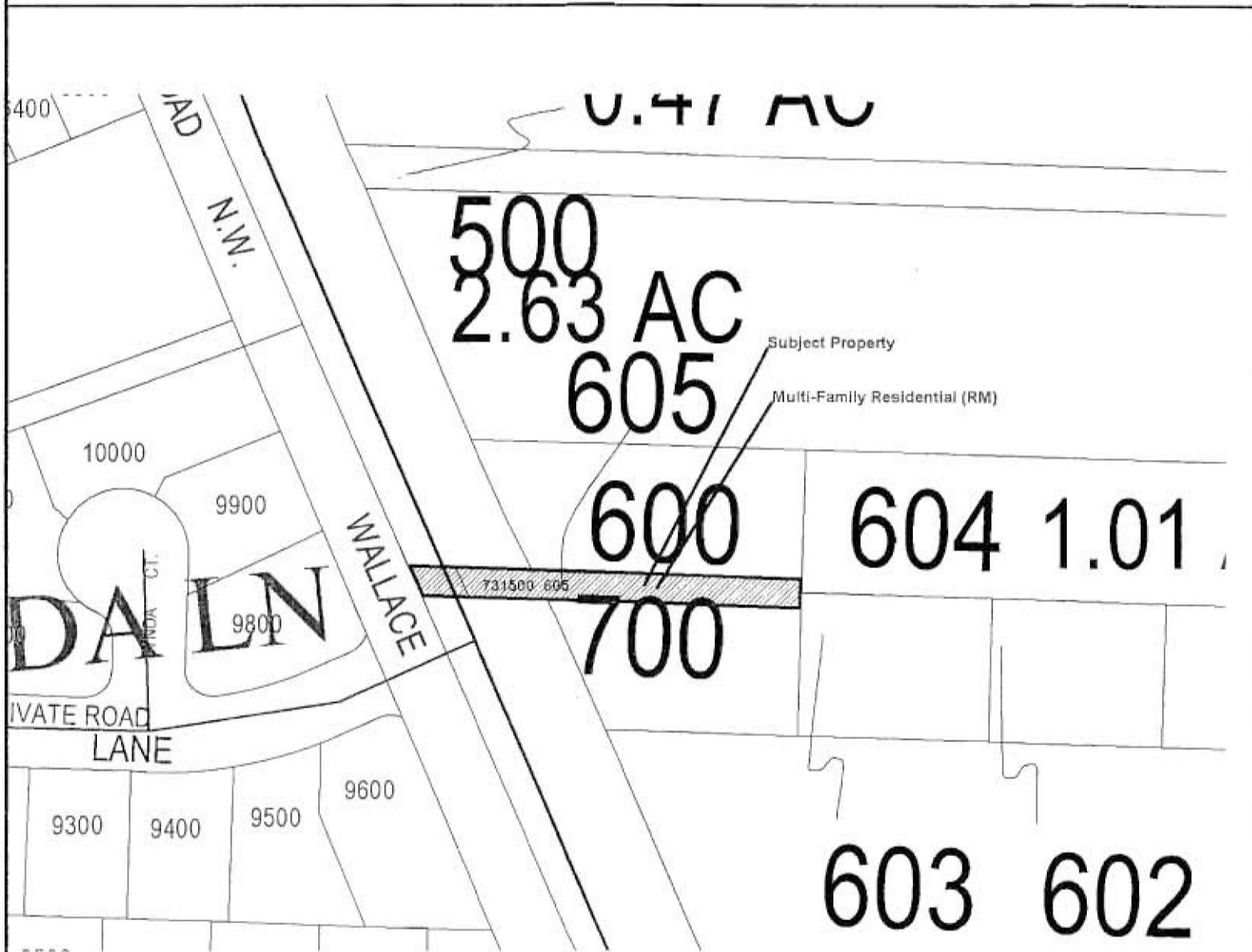
Second Reading: 6-8-2011

Recording Secretary: 

Polk County Map

Community Development

- Roads
 - STATEHWY
 - PAVED
- Taxlot||
 - Taxlot Arrows||
 - Taxlot Boundary||
 - Islot||



This map is produced using the Polk County GIS data. The GIS data is maintained by the county to support its governmental activities. The county is not responsible for map errors, omissions, misuse or misinterpretation.

1 in. = 120 ft.



5/25/2011



RECEIVED
 MAY 04 2011
 POLK COUNTY
 COMMUNITY DEVELOPMENT

**BEFORE THE PLANNING DIVISION
 FOR POLK COUNTY, OREGON**

In the Matter of the Application of Hans Thygeson, Faithworks Development LLC) Zone Change 11-01
)

SUMMARY OF PROCEEDINGS

This matter arose on the application of Hans Thygeson to change the zoning of a 0.1-acre property (owned by Faithworks LLC) from Suburban Residential (SR) to Multi-family Residential (RM). The subject property currently is developed as an access driveway, and would continue to be used for that purpose, as access to a neighboring property that is planned to be developed with multi-family housing. The subject property is immediately to the south of 1950 Wallace Road NW, Salem, Polk County, Oregon, and is legally described as T7S, R3W, section 15, tax lot 605.

Applicable review and decision criteria are Polk County Zoning Ordinance (PCZO) 111.140 and 111.275, and an intergovernmental agreement between the City of Salem and Polk County regarding the urban growth boundary and management of the urbanized area. The subject property is rectangular, approximately 230 feet by 20 feet, and is currently developed with a driveway that connects multiple single family dwellings to Wallace Road. The subject property is identified on the map included in the Staff Report as Attachment "A".

The applicant states that the reason for the proposed zone change is that the RM zone would allow the subject property to be used as an access parcel for a proposed multi-family dwelling development on property to the north of the subject property. Those properties are identified as Tax Lots 500 and 600 (T7S, R3W, Section 15), and are located within the City of Salem. Tax Lots 500 and 600 total approximately 3.1 acres. Those properties are zoned Multi-Family Residential 2 (RM2) by the City, and that zone allows apartment houses with the necessary city permits.

The Land Use Board of Appeals ruled in *Roth v. Jackson County* (LUBA No. 2000-083) that an access road is an accessory use. Therefore, the zoning of an access road must permit the use to which it is accessory. The current zoning of the subject property is SR, which permits one single family dwelling per parcel. The SR zone does not permit multi-family housing. The uses permitted in the proposed RM zone are listed in PCZO Chapter 134. PCZO 134.010(B)(11) permits apartment houses. Also, PCZO 134.040(A) allows uses listed in a number of other zones, including single-family residential use as described in PCZO 131.010(A). The RM Zone permits both multi-family and single-family residential uses; therefore, if this application is approved, the subject property could be used to access both the proposed multi-family dwelling units in the City of Salem and the existing single family dwellings that currently use the property for access to Wallace Road.

The applicant states that the function of the subject property for access purposes would not change if this request is approved. The applicant states that if the request is approved, the west half of the existing driveway will be widened to the north. In addition, pedestrian access from the proposed development to the north will be provided north of the subject property. The southerly side of the existing driveway on the subject property will not be impacted if this application is approved. Furthermore, the applicant states that no buildings would be constructed on the subject property as a result of the proposal.

Location	Comprehensive Plan Designation	Zoning Designation
Subject Property	Urban Reserve	Suburban Residential

Property North	City of Salem	City of Salem
Property South	Urban Reserve	Suburban Residential
Property East	Urban Reserve	Suburban Residential
Property West	City of Salem	City of Salem

Based on a review of Polk County Assessor's data, the subject property is vacant. The subject property was lawfully created pursuant to Polk County Subdivision and Partition Ordinance Section 91.950(1)(c) as result of tax foreclosure proceedings as described on the current deed for the subject property identified as Polk County Clerk Document 2007-17193, dated November 9, 2007.

Based on a review of the Polk County Significant Resource Areas (SRA) Map, the subject property does not contain inventoried significant resources. Based on a review of the National Wetland Inventory (NWI) map, Salem West Quadrangle, the subject property does not contain any inventoried wetlands. The subject property is not located within an identified floodplain pursuant to Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel number 41053C0283F dated December 19, 2006. There are no identified historic, archeological or Willamette River Greenway areas on the subject property.

Notice of the April 26, 2011, public hearing before the Hearings Officer and the May 25, 2011 hearing before the Board of Commissioners was provided as required by PCZO 111.340 to 111.370. Staff provided a notice sign to the property owner on April 6, 2011. Notice was mailed to property owners located within 250 feet of the outside perimeter of the subject property on April 5, 2011. Notice was printed in the Dallas, Oregon, *Itemizer-Observer* newspaper on April 6, 2011. Notice of the proposed zone change was provided to DLCD on April 7, 2011.

The subject property has frontage along Wallace Road NW (State Highway 221), which is designated as a minor arterial in *Polk County Transportation Systems Plan*, Figure 3.

No written comments were received by staff prior to the public hearing.

PUBLIC HEARING

A duly advertised public hearing was held in the Polk County Courthouse on the evening of April 26, 2011. The Hearings Officer called the meeting to order at the appointed time. Staff summarized its report and recommendation, identifying the applicable review and decision criteria. There were no objections as to notice, jurisdiction, or conflict of interest.

Ordinarily, the Hearings Officer would allow applicant or its representative to proceed first, but nobody had appeared for that purpose. Consequently, the Hearings Officer turned to Herb Shaw, the only member of the public present. Shaw submitted in writing a letter opposing the application, which is attached hereto as Exhibit "A". Shaw read his letter expressing opposition. As he concluded, representatives of the applicant appeared. Without objection, the Hearings Officer allowed the applicant's statement to be heard. Shaw stressed his opposition to the proposed change on grounds of its impact on the intersection with Wallace Road, which currently serves only a few single-family residences and which would carry more traffic if the subject property were rezoned from SR to RM to serve a multi-family development. He urged that any approval of the rezoning not take effect until improvements, enumerated in his letter, are made.

As Shaw was making his presentation, a representative of the applicant appeared. Without objection, the Hearings Officer allowed him to make a presentation on behalf of the applicant. Keith Whisenhunt identified himself as a civil engineer employed by applicant and authorized to speak on applicant's behalf. He said there were two issues involved: The proposed rezone, and access improvements. He said the issues are separate.

Whisenhunt noted that Wallace Road NW is a state highway (#221), under the jurisdiction of the Oregon Department of Transportation (ODOT). He said applicant has made separate applications to ODOT, as well as the City of Salem, to improve the intersection in the interests of safety. Specifically, he said the matters of median plantings, a new traffic control signal, and lowered speed limit will be resolved by ODOT, which has authority to issue appropriate access permits, and these matters are not properly at issue in this proceeding.

Shaw commented that his objections involved matters of public safety. Whisenhunt stated that the applicant will not undertake the multi-family improvements to be served by the subject property until clearance has been obtained from ODOT.

Staff announced that the final local decision will be made by the Board of Commissioners only after a *de novo* public hearing scheduled for May 25, 2011.

There was no request that the hearing be continued, or that the record be left open for additional written submissions. Consequently, the Hearings Officer declared the record to be closed, and adjourned the meeting. Robert W. Oliver, Polk County Hearings Officer, presided.

FINDINGS

Authorization for a zone change is provided under PCZO 111.275. Staff findings and analysis are included below. The applicant provided findings with the application that are included as "Applicant Findings" below and also as Attachment "E" of the staff report.

- A. A zone change is a reclassification of any area from one zone or district to another, after the proposed change has been reviewed and a recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. [PCZO 111.140]**

Procedurally, the Hearings Officer holds a public hearing pursuant to PCZO 111.190 and makes a recommendation to the Board of Commissioners. The Board of Commissioners then holds a public hearing pursuant to PCZO 111.200 and makes a final local decision. Planning Division staff reviewed the proposed zone change, and prepared a staff report and recommendation for the Hearings Officer. This application has been reviewed under the proper review process and complies with this criterion.

- B. Pursuant to Section 111.160, a zone change may be approved, provided that the request satisfies all applicable requirements of this ordinance, and provided that with written findings, the applicant(s) clearly demonstrate compliance with the following criteria:**
- 1. The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification; [PCZO 111.275 (A)]**
 - a. Urban Reserve Land Designation (Applicable Sections)**
 - i. The Urban Reserve designation addresses itself toward protecting the intent and integrity of the city's coordinated and adopted land use plan by limiting random development actions which could stand in the way of logical, planned development. The Urban Reserve designation recognizes that the provision of adequate levels of public facilities and services should guide urban development, and not the other way around.**
 - ii. The Urban Reserve designation shall reflect and be in support of the County's Urban Land Development policies, and the policies and intent statements contained within the intergovernmental agreement adopted by Polk County and each municipality regarding the development and**

management of urbanizable lands.

- iii. **The Urban Reserve designation may be implemented through a number of zones, but primarily through the Suburban Residential (SR) zone or the Exclusive Farm Use (EFU) Zone. [PCCP, Section 4]**
- b. **Urban Land Development; Applicable Goals and Policies**
- i. **To protect agricultural land from urban expansion and random development through containment of urban growth. [PCCP, Section 2, Element K, Goal 1]**
 - ii. **To provide for an orderly and efficient transition from rural to urban land use within designated growth areas. [PCCP, Section 2, Element K, Goal 2]**
 - iii. **Polk County will recognize that the type and form of development of urbanizable land is to be based upon each municipality's adopted land use and phased growth plan, a plan which has been coordinated with that of the County. [PCCP, Section 2, Element K, Policy 2.3]**
 - iv. **Polk County will provide the opportunity for each city to review and comment upon any proposed land use action within that municipality's urbanizable area prior to County action. [PCCP, Section 2, Element K, Policy 2.4]**
 - v. **Polk County zoning will reflect and support the intent of a municipality's coordinated and adopted land use plan for the urbanizable area in order to protect that area from random development actions. [PCCP, Section 2, Element K, Policy 2.5]**

The Urban Reserve designation acknowledges that lands under this designation will be developed for urban uses. Approval of this request is supported by the Urban Reserve designation, Polk County's Urban Land Development policies, and the intergovernmental agreement adopted by Polk County and the City of Salem for urbanizable land. Polk County Urban Reserve designation may be implemented through a number of zones, but primarily through the Suburban Residential (SR) Zone or the Exclusive Farm Use (EFU) Zone. In this case, applicant is requesting implementation utilizing the Multi-Family Residential Zone (RM), which provides the closest match to the City of Salem zoning of the applicant's adjacent Tax Lots.

Although RM zoning is not currently applied to properties in Polk County, this zoning designation is appropriate for the Polk County Comprehensive Plan (PCCP) land use designation of this property located within the City of Salem UGB. According to the PCCP, less than four percent of total land area in Polk County is being used for high-density land uses, and this is not expected to increase except for area of high population densities such as Salem. The access easement for neighboring properties and parcel shape precludes any other use for the site than this request describes. Utilizing this parcel to provide access to the proposed project north of the site (within the City of Salem) contributes to the high-density land use anticipated within the UGB. Additionally, approval of this request to change the zoning to RM will provide for coordination of planning between the City of Salem and Polk County.

Approval of this request is consistent with the purpose and policies identified in the PCCP. This zone change will closely mirror the zoning of the adjacent property under City of Salem jurisdiction. The PCCP under section 2 (k), Urban Land Development, establishes two goals: To protect agricultural land from urban expansion and random development through containment of urban growth; and, to provide for an orderly and efficient transition from rural to urban land use within designated growth areas. By allowing this zone change, multi-family housing needs can be met without impacting agricultural land.

Applicant contends that the zone change he seeks meets the requirements of the PCZO, and maintains consistency with the PCCP. The proposed use of this parcel and the requested zone change meets the criteria developed by Polk County and the City of Salem for properties designated as Urban Reserve.

Staff notes that the subject property is located in the City of Salem's urban growth boundary (UGB), and is designated Urban Reserve on the PCCP Map. The Urban Reserve land designation applies to properties with a city's urban growth boundary, but outside city limits. The Urban Reserve designation is intended to provide a planned, orderly transition from rural lands within the UGB to urban uses. Land that would be used for urban uses must be supported by adequate public facilities and services. Management of the urban growth boundary is shared between Polk County and the City, and the City's comprehensive plan is the guiding land use planning document within the UGB. Polk County has an intergovernmental agreement with the City of Salem that regulates land use planning within the portion of Polk County in the UGB but outside city limits. This application's compliance with that agreement is discussed in greater detail below.

The subject property is currently zoned SR. Based on the statements in the application and on a review of the 2008 Polk County aerial photograph, the property is currently used as a driveway by five single family dwellings that are also located in the SR zone. The subject property is narrow, averaging approximately 20 feet in width, and it is improbable that the subject property could or would ever be developed with a residential structure. The applicant is proposing to apply the RM zone to the subject property. The RM zone permits dense residential development, but again, due to the narrow width and current physical development of the subject property, it is unlikely that the subject property would be developed with a multi-family residential structure. Consequently, it is reasonable to evaluate this application under the assumption that the subject property can only reasonably be used as a driveway to neighboring properties.

The subject property, developed as a driveway, requires few public services and facilities. As indicated by the applicant, stormwater generated from the subject property would flow to the north and would be managed as a part of the multi-family residential development proposed in the City of Salem to which the subject property would be accessory. If this application is approved, and the subject property is developed in conjunction with the property to the north, the applicant may be required to obtain a 1200-C stormwater permit from the Oregon Department of Environmental Quality (DEQ) and submit a Post-Construction Runoff Plan to the Polk County Building Division if more than one acre of land is disturbed. The subject property would require access to Wallace Road, State Highway 221, and the applicant would need to obtain a new or amended access permit if required by the Oregon Department of Transportation (ODOT). If approved, the subject property would not require water or sewage disposal services. The proposal is unlikely to significantly change the property's need for police and fire protection services.

Goal 1 of Section 2, Element K, of the PCCP states that a goal of urban land development in Polk County is "[t]o protect agricultural land from urban expansion and random development through containment of urban growth." The applicant's proposal would change the zoning to RM, which provides for a greater array of urban uses than the current SR zone. While the use of the subject property as a driveway would not change, it would likely experience increased traffic volumes with the addition of traffic from a proposed apartment complex in the City of Salem. The subject property is contiguous to the City of Salem along its northern and western property lines, and does not border any agricultural land. For those reasons, staff concluded that the increased levels of traffic on the subject property would not affect any agricultural land negatively, nor would this proposal constitute "random development."

Planning staff provided the City of Salem notification of this land use application on March 11, 2011. The City replied that it had no comments on the application.

In order to ensure continued compliance with the PCCP, all future development on the subject property would need to comply with the applicable development standards in the PCZO. Prior to any future development of the subject property, the property owner would be required to obtain all

necessary federal, state, and county permits. These permits may include a stormwater permit from DEQ and a new or amended access permit to Wallace Road from ODOT.

Based on the findings discussed above, the Hearings Officer finds that the application complies with this criterion.

2. The proposal conforms with the purpose statement of the proposed zone;
[PCZO 111.275 (B)]

Applicant states that the proposed Polk County Multi-Family Residential Zone (RM), does not currently have a purpose statement. The proposed use of this parcel is consistent with PCZO 134.010(B)(11), which allows for an unlimited number of apartments in the RM Zoning District. The subject property does not adjoin any properties within a business zone or industrial zone.

The proposed zone designation of the site will continue to meet the purpose and intent of the SR Zone to provide a transition between urban and rural living. Approving this request will allow the applicant to continue to use his property in the same manner as it is used today, in a manner consistent with the proposed RM zoning designation, and consistent with the City of Salem Comprehensive Plan and Zoning Code.

In summary, the applicant is proposing to change the zoning of the subject property to RM. The RM zone does not contain a purpose statement. Generally, the uses permitted in the zone, especially the outright permitted uses, are consistent with the purpose of a zoning district even if a written purpose statement does not exist. In the RM zone apartment houses and single family dwellings are outright permitted uses, and the subject property would be used to access those uses. For those reasons, staff concluded that the applicant's proposal conforms with the clear purpose and intent of the RM zone.

The Hearings Officer finds that the application complies with this criterion.

3. The uses allowed in the proposed designation will not significantly adversely affect allowed uses on adjacent lands; [PCZO 111.275(C)]

Applicant contends that the site includes a paved driveway providing access to five SR-zoned properties in Polk County. This parcel will continue to be used as access to the existing single-family homes. In addition, it will provide access to the proposed development to the north. The capacity of the driveway and connection to Wallace Road NW is sufficient to provide an acceptable level of service for the users of the driveway.

Current use of the adjacent parcels as single-family homes will not be adversely affected by approval of this zone change. If the request is approved, the west half of the existing driveway will be widened to the north in order to meet the requirements of both Polk County and Salem for this type of use. In addition, pedestrian access from the proposed development to the north will be provided north of the site. The southerly side of the existing driveway on the site will not be impacted by the work. Furthermore, no buildings will be constructed on the site as a result of the proposed development.

Use of the site as access to the proposed development is consistent with the Oregon DOT management of access locations on Wallace Road NW (Highway 221). Their goal in access management is to combine access points, locate them to minimize conflicts, and space them to provide for the needed capacity of the roadway. The use of the site as access to Wallace Road NW meets their goal. It will eliminate two existing access points to Wallace Road NW and allow the proposed development to the north to access Wallace Road NW at a location directly across from Lynda Lane NW. This will allow for left-turning movements without conflicting vehicle paths. The applicant's application for ODOT approval of this access is in process.

Rezoning the subject property will meet the PCCP goals by staying consistent with the zoning of the adjacent parcels within the Salem corporate limits and by providing for orderly development within the UGB. The City of Salem's Comprehensive Plan Urban Growth Policy No. 2 calls for

orderly development of land. The land within city limits on the east side of Wallace Road in the proximate area of the Site is zoned for Multiple Family Residential 1 (RM1) or Multiple Family Residential 2 (RM2). One of the permitted uses of RM1 under Salem code 148.160 (c) is apartment houses, court apartments, condominiums, duplexes, and room and board facilities serving five or fewer persons. A permitted use of RM2 under city code 148.310 (d) is townhouses, apartment houses, court apartments, condominiums, duplexes and room and board facilities serving five or fewer persons. Applying the RM zone designation to the subject property will create consistency with surrounding zoning and approved urban growth policies.

The applicant is proposing to change the zoning of the subject property from SR to RM. Based on a review of the Polk County Zoning Map, contiguous properties to the south and east are located in the Salem UGB and zoned SR. The SR zone permits one single-family dwelling per parcel and a host of uses that are typically accessory to single-family dwellings. Based on a review of the 2008 Polk County aerial photograph, the contiguous properties to the south and east are used for residential purposes. The subject property is bordered to the north and west by properties within the City of Salem and zoned Multi-Family Residential (RM2). The City's RM2 zone is similar to the RM zone in that it permits apartment houses and a host of residential uses.

As discussed earlier in this staff report, staff concluded that it is reasonable to assume that the subject property will continue to be used for driveway access purposes. The subject property is too narrow, averaging approximately 20 feet, for the property owner reasonably to establish a dwelling unit. The subject property is already developed as a driveway and serves multiple dwellings. The likely impact on the neighborhood of this zone change would be an increase in the traffic and pedestrian volume that moves across the subject property associated with the proposed multi-family residential development to the north. Staff believes that the increased use of the subject property would not significantly affect the allowed uses on adjoining properties. The subject property would resemble a municipal street, which customarily abuts single family dwellings and apartment houses. Based on the above, the Hearings Officer finds that the application complies with this criterion.

4. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; [PCZO 111.275(D)]

Applicant states, with regard to this requirement:

Water

Water facilities will not be needed as no structures are proposed for the Site.

Sanitary Sewer

Sanitary sewer facilities will not be needed as not structures are proposed for the Site.

Storm Drainage

Runoff from the Site will flow to the north and east and onto the property to the north. It will be managed as part of the proposed development within the City of Salem jurisdiction.

Transportation

Wallace Road NW is fully developed as a four-lane arterial roadway with left turn lanes and medians to provide access control. Public transportation on Wallace Road NW, includes a bus stop within 1,000 feet to the north of the subject property, and a stop within 500 feet to the south.

Applicant contends that if additional public facilities are required to serve the proposed development to the north, the City of Salem process to issue an Urban Growth Development Area

Permit will address these needs. The development potential of the site will not change if this request is approved. As such, the need for utilities, drainage improvements, or transportation facilities is not impacted by this request.

Staff noted that the applicant has proposed to change the zoning of the subject property from SR to RM. The subject property is a narrow, 0.1-acre property that is physically developed with a driveway. If this zone change is approved, the applicant indicates that it would continue to be used as a driveway to single family dwellings in the SR zone and as an access parcel to a proposed multi-family residential development on the property to the north. The subject property averages approximately 20 feet in width, so it is unlikely that the subject property could be developed with a dwelling unit. Accordingly, the subject property does not require water or a means for sewage disposal. The subject property is currently, and would continue to be, used as a driveway, so the level of fire and protective services required by the property are unlikely to significantly change. The subject property is located in the Salem Suburban Rural Fire Protection District and receives protective services from the Polk County Sheriff's Department.

Staff anticipates that the amount of traffic traversing the subject property will increase significantly assuming the property to the north is developed for multi-family use. The subject property abuts Wallace Road (State Highway 221). Access onto Wallace Road is regulated by ODOT. The applicant would need to receive all necessary permits from ODOT, and complete any ODOT-required traffic mitigation, in order to permit traffic from the proposed multi-family development in the City to access Wallace Road. If this application is approved, and the subject property is developed in conjunction with the property to the north, the applicant may be required to obtain a 1200-C stormwater permit from DEQ if more than one acre of land is disturbed. Improvements on the subject property may also require submittal of a Post-Construction Runoff Plan to the Polk County Building Division as required by Polk County Code 80.133(2). A Post-Construction Runoff Plan is required for construction activity disturbing less than one acre if that construction activity is part of a larger development that would disturb one acre or more.

Staff concluded that there are adequate public facilities, services, and transportation networks available at this time to serve the subject property. Approval of the proposed zone change would not authorize the applicant to establish a use that would exceed the capacity of those services until such services are planned or available.

The Hearings Officer agrees, and finds that this criterion satisfied.

5. The proposed change is appropriate taking into consideration the following:

a. Surrounding land uses, [PCZO 111.275(E)(1)]

Development on Tax Lots 500 and 600 (T7S, R3W, Section 15), which are within the City of Salem, must meet the standards and requirements required by the City of Salem. The Site and Tax Lots 500 and 600 require a buffer category B (using table 132-1 in chapter 132 of City of Salem codes). The City of Salem Design Handbook under section 2 (B) (2a) guidelines on landscaping, requires appropriate combination of landscaping and screening to buffer between the multiple family use and adjacent single family zone. The apartment complex on Tax Lots 500 and 600 will have a ten-foot buffer around the perimeter. The buffer zone will include one plant unit per 20 square feet of yard area and a six-foot fence.

Staff agreed with the applicant that the proposed zone change would be appropriate considering surrounding land uses. The subject property is located in the Salem UGB and the properties to the north and west are located in city limits. Based on the information in the application, the contiguous property to the north is zoned RM2 by the City of Salem. According to the information in the application, the applicant has applied to establish a multi-family dwelling complex on the property to the north. Based on a review of the Polk County Zoning Map, neighboring properties to the south and east are located outside of city limits and zoned SR. The SR zone permits one single-family dwelling per parcel. The subject property is located in a residential neighborhood, and permitting a zone change to allow the property to be used as a driveway to serve

a multi-family residential complex would be consistent with surrounding land uses. The driveway would act in a similar fashion to a municipal street, which is customarily located in a residential neighborhood.

b. The density and pattern of development in the area, [PCZO 111.275(E)(2)]

Applicant notes that the site is contiguous with Tax Lot 600 (T7S, R3W, Section 15) to the north which is zoned RM2 in the City of Salem. This is consistent with RM zoning according to Polk County. The site is a small parcel of land outside city limits, but inside the UGB, zoned as SR which will continue to be used by neighbors and as a driveway due to easement restrictions. To the west is Wallace Road and additional properties with RM2 zoning on the west side of Wallace Road. The only single family residential zoning within proximity of the subject property is adjoining to the south and adjacent to the east. The general mix of zoning in the area is RM1 and RM2.

Staff states that the applicant is proposing to change the zoning of the subject property to RM. The RM zone has a minimum parcel size of 6,000 square feet for a single family dwelling. The subject property contains approximately 4,600 square feet (0.11 acre). If the zone change is approved, the subject property could not be partitioned any further. The proposed zone change would, therefore, allow different uses of the subject property, but would not result in an increase of parcel density.

c. Any changes which may have occurred in the vicinity to support the proposed amendment. [PCZO 111.275(E)(1-3)]

Applicant states that, as the City of Salem's population has increased, the area surrounding the proposed project has been continuously becoming more urban. As this occurs, the Oregon DOT has made efforts to manage access in the interest of public safety, with consideration of public convenience. This request is consistent with the consolidation of driveway accesses accomplished by using this parcel for the access to the proposed development to the north. Design and right-of-way acquisition by the City of Salem has already begun on a project to improve capacity at the intersection of Glen Creek Road NW and Wallace Road NW. That project will widen the intersection to provide dual left-turn lanes on northbound Wallace Road NW to westbound Glen Creek Road NW, dual right-turn lanes on eastbound Glen Creek Road NW to southbound Wallace Road NW, right-turn-only lane on northbound Wallace Road NW to eastbound Glen Creek Road NW (if needed), and widening of both Glen Creek Road NW approaches to receive the additional turn lanes.

Staff concluded that the impetus for this zone change request is to provide access to a multi-family residential complex that they have proposed on neighboring property to the north, within the City of Salem. The proposed RM zone is an appropriate zone to apply to the subject property in order to allow the property to provide access to the proposed multi-family development and the single family dwellings that it currently serves. Staff did not identify any other recent changes that have occurred in the vicinity of the subject property that are relevant to this application.

6. The proposal complies with any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land; and [PCZO 111.275(F)]

Applicant argues that the subject property is located outside of Salem corporate limits, but within the UGB. This parcel is too small for independent use or development. Oregon statutes provide an institutional structure for statewide planning and mandated coordination of all planning activities affecting land use. On September 11, 1991, the City of Salem and Polk County entered an intergovernmental agreement regarding management of the urbanized area within the UGB. The subject property is not being used for agricultural production, and is designated as Property Class 040, so it falls within the parameters set by this agreement. Designation of multi-family residential zoning on this property is consistent with the intent of the Urban Reserve to limit random development. This action will maximize the efficiency of land use within the existing urban area.

The Urban Reserve recognizes the UGB was designated to assure an appropriate supply of land will be available to meet the city's urban growth needs. Approval of this zoning change request meets the intent of the intergovernmental agreement between Polk County and the City of Salem regarding urban growth. The requested RM zoning designation matches that of the adjacent properties within the boundaries of the City of Salem being developed by the Owner. This change promotes the orderly and efficient conversion of land to urban use, while conserving and protecting environmental, energy, economic and social resources.

Staff noted that the subject property is located in the City of Salem's UGB. Polk County has an intergovernmental agreement with the City concerning titled: *Intergovernmental Agreement Between City of Salem and Polk County Regarding the Urban Growth Boundary and Management of the Urbanized Area* (IGA). The IGA acknowledges that the City of Salem's comprehensive plan is the guiding land use planning document for the UGB. It also contains specific development standards for residential development on septic tanks. Staff provided notice of the proposed zone change to the City of Salem, and the city responded that they did not have any comments with respect to the matter. The proposal does not entail residential development on a septic tank. For these reasons, staff concluded that the proposed zone change is consistent with the IGA.

7. The proposal complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply. [PCZO 111.275(G)]

Applicant states that approval of this proposed zone change complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. One of the purposes of Goal 10 is to make efficient use of buildable residentially designated land within urban growth boundaries. The proposed zoning for this property meets this goal. Using this parcel of unbuildable land to facilitate residential use within the UGB is consistent with the PCCP and Goal 10 since it delays the need to develop agricultural land.

Under OAR Chapter 660 Division 8, the mix and density of needed housing is identified in the housing needs projection. It further requires designation of sufficient buildable land on the comprehensive plan map to satisfy housing needs by type and density range. The population in the City of Salem increased by 11.1% between April 1, 2000 and July 1, 2006. Although economic conditions have slowed growth over the past few years, there is still a need for additional housing units within the UGB to accommodate continued growth. According to the Salem-Keizer Housing and Community Development Consolidated Plan (2009-2013), construction activities since 2000 have been dominated by single-family homes and a ratio of 345 single-family dwellings have been built to 25 multi-family dwellings in 2007-2008. Allowing a zone change to RM for this parcel will contribute to the coordinated and orderly development of different housing types and density. The RM zoning designation will be appropriate for the Site.

Staff noted that the subject property is designated as Urban Reserve on the PCCP Map. The subject property is located in an exception area, as defined in OAR 660-033-0020(6), and is no longer subject to Goals 3 (Agricultural Lands) or 4 (Forest Lands). The subject property is zoned SR which allows parcels to be established that are smaller than two acres. The subject property is already urban, so an exception is not required to comply with Goal 14 (Urbanization).

With respect to Goal 12 (Transportation), staff did not believe that a transportation impact analysis (TIA) would be needed to authorize this zone change. OAR 660-012-0060(1), the Transportation Planning Rule (TPR), states the following:

- (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility.

A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- (b) Change standards implementing a functional classification system; or
- (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan. [OAR 660-012-0060(1)]

OAR 660-012-0060(1) requires a demonstration of compliance with additional state regulations when an amendment to a land use regulation would “significantly affect an existing or planned transportation facility.” In this case, the existing transportation facility is Wallace Road, which abuts the subject property. The applicant indicates that the subject property would be used as an access parcel to a proposed multi-family development on contiguous property to the north in the City of Salem and to existing single-family dwellings in the UGB. The proposed multi-family development would generate traffic, and the subject property would contain an accessory use, an access driveway, to serve the multi-family development. The subject property contains 0.11 acre, and is too small to realistically be developed with multi-family dwelling units. Consequently, if this zone change is approved, the subject property would not independently generate traffic.

The proposed zone change would affect where, on Wallace Road, vehicles would access the proposed multi-family dwelling development on Tax Lots 500 and 600 in the City of Salem. Tax Lots 500 and 600 abut Wallace Road for approximately 300 feet directly contiguous to the north of the subject property. Staff assumed that if the proposed zone change was not requested, the proposed multi-family development would access Wallace Road directly from Tax Lots 500 or 600. However, due to the presence of a center median on Wallace Road, access in those locations would likely be limited to less desirable “right-in, right-out” turn movements. The proposed multi-family dwelling use is already permitted by that property’s zoning within the City of Salem, so traffic volumes from that type of use have been anticipated to access Wallace Road. For these reasons, staff does not believe that the proposed zone change would significantly affect Wallace Road as discussed under OAR 660-012-0060(1).

Wallace Road is State Highway 221, so the applicant would be required to obtain any necessary access permits from ODOT. ODOT may require traffic improvements where the subject property would access Wallace Road as a part of the access permitting process.

Staff did not identify any sections of ORS or OAR that are directly applicable to this proposed zone change. The proposal would not require a goal exception; therefore, the application complies with this criterion.

The Hearings Officer agrees with staff’s conclusions, and finds that this criterion is satisfied.

DISCUSSION

As noted above, the Land Use Board of Appeals (LUBA) has ruled that an access road is an

accessory use, so the zoning of a parcel constituting an access road must permit the use to which it is accessory. The subject property will be used as a roadway to be accessory to properties zoned for multi-family development. The current zoning of the subject property as SR (for single-family residential use) is not suitable for this use. Polk County's zoning for multi-family residential use is RM, as sought by the applicant for the subject property.

Jurisdiction over Wallace Road NW, a state highway, is vested in the Oregon Department of Transportation (ODOT). Any development by applicant that involves multi-family residential use of the subject property as an access must conform to ODOT's safety standards. Applicant states that it already has applied to ODOT, and acknowledges that it must satisfy ODOT specifications and requirements before implementing full development of the multi-family use on the parcels to which the subject parcel is accessory. The Hearings Officer does not believe it is appropriate for the Board of Commissioners to undertake the formulation of traffic control conditions, when that function already is vested within the jurisdiction of ODOT.

CONCLUSIONS

The proposed zone change has been reviewed following the proper process and complies with the applicable review and decision criteria. Additionally, the Hearings Officer concurs with staff and concludes that there are adequate public facilities, services, and transportation networks available at this time to support the proposed use of the property.

RECOMMENDATION

Staff and the Hearings Officer recommend approval of this application by the Board of Commissioners, changing the zoning of the subject property from Suburban Residential (SR) to Multi-Family Residential (RM).

Dallas, Oregon, May 2, 2011.



Robert W. Oliver
Polk County Hearings Officer

April 26, 2011

To: Polk County Hearings Officer and Board of Commissioners

RE: Faithworks Development LLC (Hans Thygeson)

File # ZC 11-01

CHANGING ZONING FROM SUBURBAN RESIDENTIAL (SR) TO MULTI-FAMILY RESIDENTIAL (RM)

The intersection with subject private lane and Wallace Road is a dangerous intersection that includes Lynda Lane on the West side (the subject private lane is on the East side of Wallace Road, directly across from Lynda Lane), and will become much more hazardous when this re-zoning is approved and the land owned by Mr. Thygeson is developed. The traffic accident history at this intersection for the past five years, according to the City of Salem Police records, is as follows:

- 12/14/2005 Non-injury/property damage accident
- 12/17/2005 Injury accident
- 07/10/2007 Non-injury/property damage accident
- 09/17/2007 Injury accident
- 04/22/2010 Injury accident
- 02/22/2011 Non-injury/property damage accident

Contributing factors to the high rate of traffic accidents at this intersection include, but are not limited to the following:

- There is not a left-turn refuge for Southbound (SB) traffic on Wallace Road, and SB U-turns are not allowed, although many do (Northbound traffic has a left-turn refuge, and U-turns are allowed); SB vehicles on Wallace Road making a left turn onto subject private lane create high risks of being rear-ended because the vehicle must slow and usually stop in the left lane (i.e., fast, passing lane) of SB traffic
- Left-turn movements from the subject private lane onto Wallace Road are also high-risk because of plantings (trees and shrubs) in the median strip to the North of the intersection that dangerously restrict visibility; motorists making the movement must avoid three lanes of Northbound (NB) traffic (which includes the left-turn refuge) and must make a difficult judgment as to whether there is a SB lane open for them to merge into; this movement has caused accidents in the past, and an untold number of near-accidents
- Traffic speeds are much too high for this type of roadway with little or no access control at intersections; the posted speed is 45 MPH, and most of the traffic is traveling at speeds of 50 to 55 MPH, with many traveling at even faster speeds

Currently, the private lane subject to this re-zoning request is a permanent easement used solely by four families that live down this lane, so traffic volumes have been low and limited. **Re-zoning for future development of multi-family residences will greatly change the status of this intersection.** An example of how this intersection will be impacted is best understood by looking at the vehicle accident history at the intersection of Harritt Drive and Wallace Road, located just a block to the

North of subject intersection. Harritt Drive has left-turn refuges for both NB and SB traffic, and U-turns are allowed in both directions. Conditions at Harritt Drive were impacted for the worse when that area was re-zoned and developed to high-density multi-family dwellings around 2005. Since then, the City of Salem Police records for traffic accidents are as follows:

- 04/22/2006 Injury accident
- 07/29/2008 Non-injury/property damage accident
- 03/06/2010 Injury accident
- 10/09/2010 Injury accident (fatality)
- 10/17/2010 Non-injury/property damage accident
- 03/16/2011 Non-injury/property damage accident

Not only is the rate of incidence increasing of late, but the intersection is much safer than the one at Lynda Lane. Changing the zoning at Lynda Lane intersection without first improving the intersection is complete disregard for the safety of all motorists using Wallace Road.

I'm sure the re-zoning issue is a done deal, although the developer has an existing ingress/egress that is much safer for motorists using it as well as motorists on Wallace Road; the existing access is a right-turn ingress and right-turn egress (the egress requires the motorists to make a U-turn at Harritt Drive in order to go Southbound). I hereby request that you make the re-zoning proposal effective date contingent upon completion of an intersection up-grade and modification to include at least each of the following:

- Remove the planter median strip to the North of the intersection and construct a left-turn refuge
- Install a full-functioning traffic signal at this intersection
- Reduce the speed limit on Wallace Road to 35 MPH from Orchard Heights Road out to and including Brush College Road

Not only are these improvements necessary to address and minimize the hazards that will definitely impact this intersection, it is my opinion that all costs to safely utilize this zoning change should be the financial responsibility of the developer.

Respectfully yours,



Herb Shaw
1930 Wallace Road NW
Salem, OR 97304

Supplemental Findings for Zone Change ZC 11-01

Findings Addressing Citizen Comments: During the legislative proceeding for ZC 11-01, Polk County received two written comments. The first, was submitted by Herb Shaw at the Hearings Officer public hearing that was held on April 26, 2011. The Hearings Officer addressed Mr. Shaw's comments in his recommendation included as Exhibit B to Ordinance No. 11-04.

The second written comment was submitted by E.M. Easterly on May 25, 2011, prior to the Board of Commissioner's Hearing. That comment raises three questions. The first question asks why the owner is asking the county to re-zone the subject property to RM prior to annexation into the City of Salem. As discussed throughout the Hearings Officer's recommendation, the applicant is requesting the zone change in order to use the subject property as an access parcel for a proposed multi-family development that is planned in the City of Salem, directly to the north of the subject property. The second question asserts that development of the subject property can only take place after annexation, and asks what the advantage is of re-zoning prior to annexation. While one option available to the property owner would be to seek annexation of the subject property, and application of a City of Salem zoning that would allow the proposed access driveway, the applicant has justified changing the zoning to RM. As discussed in the Hearings Officer's recommendation, the RM zone permits apartment houses and associated driveways. As a result of this zone change, the subject property need not be annexed in order to be used for its planned, access purposes. It is not the County's role to speculate as to the advantages of seeking a zone change within the County rather than annexation to the City of Salem. The third question asks whether the City of Salem or the West Salem Neighborhood Association were notified of this zone change proceeding. Staff provided notice of the zone change request to the City of Salem on March 11, 2011 and notice of the public hearing dates on April 5, 2011. The City replied that they did not have any comments with respect to this application. Staff did not provide notification of this zone change directly to the West Salem Neighborhood Association. The West Salem Neighborhood Association is a citizen group sponsored by the City of Salem. Polk County Planning staff does not monitor how City staff distributes land use notifications to their neighborhood associations. The West Salem Neighborhood Association may register with the Polk County Community Development Department, as can any other group of citizens that owns property or resides in Polk County, to receive electronic notification of land use actions in their geographical area as allowed under PCZO Sections 111.245(A) and 111.350(D). As discussed in the Hearings Officer's recommendation, notification of this land use proceeding was provided as required by PCZO 111.340 to 111.370.

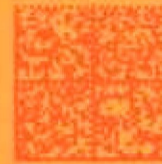
Exhibit D to Ordinance No. 11-04

Polk County Zoning Ordinance Section 111.090(A) is amended to read as follows:

- (A) The Official Zoning Map adopted with an effective date of June 8, 2011, exists as an electronic map layer within the Polk County geographic information system (GIS) at a scale of 1:24,000. The Official Zoning Map shall be maintained by the Planning Director. [Amended by Ordinances 11-02 and 11-04]

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JUN 10 2011

LAND CONSERVATION
AND DEVELOPMENT

Polk County Community Development

Polk County Courthouse
850 Main Street
Dallas, Oregon 97338



TO:

DLCD
Plan Amendment Specialist
635 Capitol ST NE, Suite 150
Salem, OR 97301