



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

November 14, 2008

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of St. Helens Plan Amendment
DLCD File Number 001-08 R



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: November 28, 2008

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

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

***NOTE: THE 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.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Gary Fish, DLCD Regional Representative
Bill Holmstrom, DLCD Transportation Planner

<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

DEPT OF

NOV 10 2008

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: **City of St. Helens**

Local file number: **A.1.08**

Date of Adoption: **11/5/2008**

Date Mailed: **11/7/2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 2/11/2008

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".

Annexation of approximately 5.81 acres into city limits. 5N1W-33CD-1000

Does the Adoption differ from proposal? Yes, Please explain below:

Original decision was appealed by the applicant and later remanded by LUBA. Current decision has different conditions of approval regarding street frontage improvements. Findings were revised accordingly.

Plan Map Changed from: **ULI**

to: **LI**

Zone Map Changed from: **M-2 (County Zoning)**

to: **Light Industrial, LI**

Location: **755 N Columbia River Hwy**

Acres Involved: **6**

Specify Density: Previous: **n/a**

New: **n/a**

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

001-082(16699) [14974]

DLCD file No. _____

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

Columbia County

Local Contact: **Jacob Graichen**

Phone: (503) 366-8204 Extension:

Address: **PO Box 278**

Fax Number: **503-397-4016**

City: **St. Helens**

Zip: **97051-**

E-mail Address: **jacobg@ci.st-helens.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.

**CITY OF ST. HELENS PLANNING DEPARTMENT
FINDINGS OF FACT AND CONCLUSIONS OF LAW
Annexation A.1.08**

APPLICANT: Wayde Elliott
OWNER: Elliott Heights LLC

ZONING: County Zoning is M-2 Light Industrial; City Comp Plan Designation is Unincorporated Light Industrial, ULI

LOCATION: 5N1W-33CD-01000, 755 N Columbia River Hwy

PROPOSAL: The applicants have petitioned the City that certain property be annexed into the City of St. Helens

SITE INFORMATION

The subject property is approximately 8.81 acres in size. It is developed with a mini-storage and carwash business (under construction). Access is provided by Columbia River Highway which is improved though lacking sidewalk. There are o/h power lines in the right-of-way along the subject property. Generally, the site is neighbored by industrial uses though there are some exceptions such as the single-family dwelling lying just to the south of the site. Surrounding comprehensive plan designations are Unincorporated Light Industrial, ULI on the same side of the highway as the subject property.

PUBLIC HEARING & NOTICE

Hearing dates are as follows:

April 8, 2008 before the Planning Commission

April 16, 2008 before the City Council

November 5, 2008 before the City Council (LUBA Remand)

Notice of this proposal was sent to surrounding property owners within 300 feet of the subject property(ies) on March 18, 2008 via first class mail. Notice was Published in the The Chronicle on March 22, 2008. Notice was sent to the Oregon Department of Land Conservation and Development on February 11, 2008.

For the LUBA Remand hearing, notice of this proposal was sent to surrounding property owners within 300 feet of the subject property(ies) on October 9, 2008 via first class mail. Notice was Published in the The Chronicle on October 11, 2008.

AGENCY REFERRALS & COMMENTS

Columbia River Fire & Rescue: (no response)
St. Helens School District No. 502: (no response)
City Engineering Manager: (no response)
City Engineering Technician II: (no response)
City Building Official: (no response)

City Public Works Supervisor: This site had flooding issues in the last storm; it is a project that is not complete and still has issues. Question: does the City want to inherit those problems?

City Police Chief: O.K.

City WWTP Superintendent: (no response)

Board of County Commissioners: (no response)

County Land Development Services: (no response)

County Public Health Authority: (no response)

County Roadmaster: (no response)

County Surveyor: (no response)

Columbia 911: (no response)

Qwest Communications: (no response)

NW Natural: (no response)

Comcast Cable Communications, Inc.: (no response)

Columbia River PUD: Columbia River PUD has an overhead power line along Highway 30 that has adequate capacity to serve the proposed annexation area.

McNulty Water District: (no response)

ODOT: See attached letter dated April 7, 2008.

APPLICABLE CRITERIA, ANALYSIS & FINDINGS

SHMC 17.08.040 (1) – Quasi-judicial amendment and standards criteria

- (a) A recommendation or a decision to approve, approve with conditions, or to deny an application for a quasi-judicial amendment shall be based on all of the following standards:
 - (i) The applicable comprehensive plan policies and map designation; and that the change will not adversely affect the health, safety, and welfare of the community; and
 - (ii) The applicable Oregon Statewide Planning Goals adopted under ORS Chapter 197, until acknowledgment of the comprehensive plan and ordinances; and
 - (iii) The standards applicable of any provision of this code or other applicable implementing ordinance.
- (b) Consideration may also be given to:
 - (i) Any applicable evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application. (Ord. 2875 § 1.020.040, 2003)

Discussion: (a)(i) The Comprehensive Plan designation for the subject property is Unincorporated Light Industrial, ULI. The policy for ULI designated lands is to zone them Light Industrial, LI upon annexation. Moreover, once annexed, an incorporated Comprehensive Plan designation is necessary. Of them, the LI zone falls within the Light Industrial designation. There is no evidence that this proposal will be contrary to the health, safety and welfare of the community.

(a)(ii) The City's Comprehensive Plan has been adopted by the State, thus, the applicable Oregon Statewide Planning Goals adopted under ORS Chapter 197 needn't be analyzed.

(a)(iii) Other provisions applicable to this proposal are discussed elsewhere herein.

Finding: The Zone District Map amendment criteria are met as they relate to this annexation request, given that the Comprehensive Plan designation is Light Industrial, LI and the zoning is Light Industrial, LI upon annexation.

SHMC 17.28.030 (1) – Annexation criteria

- (a) Adequate public facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area; and
- (b) Comply with comprehensive plan amendment standards and zoning ordinance amendment standards and not be in conflict with applicable comprehensive plan policies and implementing ordinances; and
- (c) Complies with state laws; and
- (d) Abutting roads must meet city standards or property owner will be required to sign and record an irrevocable consent to local improvement district; and
- (e) Property exceeding 10 acres in gross size must show a need on the part of the city for such land if it is designated residential (e.g., less than five years' supply of like designated lands in current city limits).

Discussion: (a) The City's current water system has excess capacity of approximately 100% or about twice the consumption rate. The City's sewer has excess processing capacity at the plant of over twice the use rate domestically. McNulty Water District has stated in the past that they can handle any growth in the UGA that the City has. Storm water capacity is not an issue as it ultimately ends up in the Columbia River. If there is any conveyance issue with water, sewer or storm, improvements would be required at the time of development in relation to the intensity and nature of that development.

With regards to the road system, the City's Transportation System Plan (TSP) does include both the intersections of Columbia River Highway/Deer Island Road and Columbia River Highway/Pittsburg Road and the segment of the highway in between. The intersections have varied levels of service (LOS) for the 2016 growth forecast under all scenarios (i.e. no build condition and the TSM, TDM, road system, and combination alternatives) varying from "A" to "F." The roadway segment varies from "C" to \leq "D." LOS is measured on a scale from A-F, where A-C is generally considered adequate. In conclusion, even though there are potential issues with the street network, the site has already gone through the development process with the County for the mini storage facility and car-wash facility and ODOT's issues were addressed with that proposal.

Finally, with regards to public facilities, as noted under AGENCY REFERRALS & COMMENTS above, service agencies have been notified of the proposal and none

responded identifying conflicts with the proposed annexation and their respective provided service.

(b) There does not appear to be any conflicts with the Comprehensive Plan or implementing ordinances. The subject property's Comprehensive Plan designation and respective zoning given annexation are noted above.

(c) Pursuant to ORS 222.111(1), a City may only annex territory that is not within another City, and the territory must either be contiguous to the annexing City or be separated from the City only by a body of water or public right-of-way. The subject property is not within another City's jurisdiction and City of St. Helens corporate limits lies across Columbia River Highway and a Rail Road from the subject property; thus, it's only separated by rights-of-way.

Further, ORS Chapter 222 requires that that all property owners of the subject property to be annexed and at least half of the electors residing on the property consent in writing to the annexation. These documents were submitted with the annexation application.

(d) The subject property abuts one street/road: Columbia River Highway (Hwy 30). This is not a City right-of-way, rather an ODOT right-of-way and sidewalks are lacking. Curb, gutter and driveway approach have been installed. City standards require sidewalks too and the City Council have determined that such improvements are necessary for the health, safety and welfare of its citizenry. As such, sidewalk shall be installed pursuant to the attached agreement between the applicant and City.

(e) The subject property is less than 10 acres in size, thus, showing a need on the part of the city for such land (if designated residential) is not necessary.

Finding: The annexation approval criteria are met for this proposal given that the street abutting the subject property is brought into compliance with City street standards, within a time certain.

SHMC 17.112.020 – Established & Developed Area Classification criteria

(1) Established Area.

(a) An "established area" is an area where the land is not classified as buildable land under OAR 660-08-0005;

(b) An established area may include some small tracts of vacant land (tracts less than an acre in size) provided the tracts are surrounded by land which is not classified as buildable land; and

(c) An area shown on a zone map or overlay map as an established area.

(2) Developing Area. A "developing area" is an area which is included in the city's buildable land inventory under the provisions of OAR except as provided by subsection (1)(b) of this section. (Ord. 2875 § 1.150.020, 2003)

Discussion: This pertains to residential land. The subject property is not residential land.

Finding: This is not applicable.

CONCLUSION & DECISION

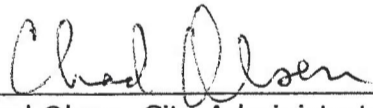
Based upon the facts and findings herein, and the recommendations of staff and the Planning Commission (from their April 8, 2008 hearing), the City Council approves this Annexation, subject to voter approval, and that upon annexation, the subject property have a Comprehensive Plan designation of Light Industrial (incorporated), LI and be zoned Light Industrial, LI, with the condition that:

Six foot wide sidewalk shall be installed along the entire subject property's street frontage, built to the then-existing ODOT standards, no later than August 1, 2012. If the applicant/landowner fails to install said sidewalk on or before August 1, 2012, the City may, after thirty (30) days written notification to the applicant/landowner, undertake to install the sidewalk and may charge the applicant/landowner its expenses in accomplishing the same. The charge for the construction of the sidewalk plus any additional costs incurred by the City in enforcing performance hereof, if unpaid for a period of thirty (30) days after the first billing therefore, shall be charged as a lien against the subject property and the City may enforce the lien as it would any other City lien.

Attachment: Letter from ODOT dated April 7, 2008 (1 page)

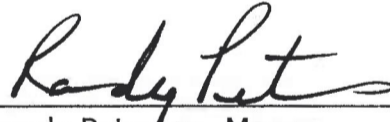
Agreement between Dr. Wayde Elliott & the City of St. Helens regarding sidewalk installation (3 pages)

Attested by:



Chad Olson, City Administrator

Signed by:



Randy Peterson, Mayor



Oregon
Theodore R. Kulongoski, Governor

Oregon Department of Transportation
ODOT Region 1
123 NW Flanders St
Portland, OR 97209 - 4037
Telephone (503) 731-8200
FAX (503) 731-8259

File code: PLA9 2A - 92
ODOT Case No: 2965

COPY

4/7/2008

St Helens, City of
Planning Dept
PO Box 278
St Helens, OR 97051

Attn: Jacob Graichen, Assistant Planner
Re: A.1.08: Elliott Annexation
Columbia River Highway

Dear Mr. Jacob Graichen,

We have reviewed the applicant's proposal to annex and rezone the Elliott Heights property from County Light Industrial to City Light Industrial. The site is adjacent to the Columbia River Highway (Highway 30). ODOT has jurisdiction of this State highway facility and an interest in assuring that the proposed zone change/comprehensive plan amendment is consistent with the identified function, capacity and performance standard of this facility. According to the 1999 Oregon Highway Plan (OHP), this facility is classified a Statewide Urban Highway and the performance standard is 0.7 volume to capacity (v/c) ratio.

For zone changes and comprehensive plan amendments local governments must make findings that the proposed amendment complies with the Transportation Planning Rule (TPR) OAR 660-012-0060. There must be substantial evidence in the record to either make the finding of "no significant effect" on the transportation system, or if there is a significant effect assurance that the allowed land uses are consistent with the identified function, capacity, and performance standard of the transportation facility.

The property will retain a light industrial zoning designation; therefore the proposed amendment will have no significant effect and complies with the TPR. However, because the property is adjacent to the highway, ODOT reserves the right to comment on any land use application when the property redevelops. In addition, an ODOT approach permit(s) for access to the state highway or written determination (e-mail, fax or mail acceptable) from ODOT that the existing approach(es) are legal for the proposed use is required and must be obtained for the property to gain access to the highway.

Thank you for providing ODOT the opportunity to participate in this land use review. If you have any questions regarding this matter, please contact me at: (503) 731-8234.

Seth Brumley
Development Review Planner

C: Martin Jensvold, ODOT Region 1 Traffic

COPY

AGREEMENT

BETWEEN: Dr. Wayde Elliott, an individual (“Dr. Elliott”)
AND: City of St. Helens, a municipal corporation (“City”)
(collectively referred to as “the Parties”)
DATED: July _____, 2008

RECITALS

- A. Dr. Elliott is the owner of certain real property located at 755 North Columbia River Highway, in Columbia County, Oregon, and further described as Columbia County Tax Account Number 5N1W33CD01000 (“the Property”).
- B. As a condition of approval of Dr. Elliot’s annexation application, for the Property, the St. Helens City Council required Dr. Elliott to install six foot sidewalks along the frontage of the Property immediately upon annexation.
- C. Dr. Elliott appealed the condition to the Land Use Board of Appeals (“LUBA”), resulting in an action styled *Wayde Elliott v. City of St. Helens*, LUBA No. 2008-087 (“the LUBA Proceeding” or “LUBA 2008-087”).
- D. The Parties desire to resolve among themselves all issues which are raised or could have been raised in the LUBA Proceeding without resorting to further litigation.
- E. The City is willing to defer the obligation to install a sidewalk along the frontage of the Property until August 1, 2012, so long as there is a mechanism for the City to enter onto and install the sidewalk to Oregon Department of Transportation (“ODOT”) standards, at Dr. Elliott’s expense, and so long as LUBA 2008-087 is voluntarily remanded to the Council to modify the condition from which Dr. Elliott appealed.

NOW, THEREFORE, in consideration of the terms of this Agreement, the Parties mutually agree as follows:

1. The City agrees to join in a Motion for a Voluntary Remand of LUBA 2008-087 for the purpose of amending the condition of annexation to allow Dr. Elliott a period of time, up to August 1, 2012, to install the sidewalk along the frontage of the Property, built to then-existing ODOT standards, as provided for in this Agreement. The City will prepare the Motion for a Voluntary Remand.
2. Dr. Elliott agrees to join in a motion for a voluntary remand of LUBA 2008-087 for the purpose of allowing the City Council to amend the condition of annexation to defer the timing of the condition to install a sidewalk along the frontage of the Property for a period of time to end on August 1, 2012. As a part of this Agreement, Dr. Elliott agrees to install a six foot sidewalk in accordance with then-existing ODOT standards on or before August 1, 2012.

3. If Dr. Elliott fails to install a six foot sidewalk in accordance with then-existing ODOT standards on or before August 1, 2012, the City may, after thirty (30) days written notification to Dr. Elliott, undertake to install the sidewalk and may charge Dr. Elliott its expenses in accomplishing the same. The charge for the construction of the sidewalk plus any additional costs incurred by the City in enforcing performance hereof, if unpaid for a period of thirty (30) days after the first billing therefore, shall be charged as a lien against the Property and the City may enforce the lien as it would any other City lien.

4. **Integrated Agreement.** This Agreement constitutes an integrated agreement and no statements or agreements, either written or oral, prior to or contemporaneous with the execution of this Agreement may be used to vary the terms hereof. Any modification of this Agreement must be in writing and signed by all parties, and any oral waiver or modification is void and unenforceable.

5. **Counterparts.** This document may be executed in counterparts. For the purpose of obtaining signatures on this document, original signatures, once affixed, may be transmitted among the parties by facsimile or electronic transmission, and signatures thus transmitted shall be deemed to be original signatures for the purpose of this document.

6. **Waiver.** No waiver of any of the terms of this Agreement shall be valid unless in writing and signed by the Parties.

7. **Severability.** If any term or condition stated herein is found void, invalid, or otherwise unenforceable under the laws of the state of Oregon, such provision shall be stricken and all other terms will remain in full force and effect.

8. **Construction.** Given that all the Parties have participated in the preparation of this Agreement, the rule of construction that contracts shall be construed against the drafter shall not apply to the interpretation of this Agreement.

9. **Interpretation.** This Agreement is to be interpreted under the laws of the state of Oregon.

COPY

10. This Agreement shall be binding upon the heirs, executors, administrators and assigns of the Parties and is a condition and covenant running with the Property.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate on the date and year first hereinabove written.

DR. ELLIOTT

CITY OF ST. HELENS

DR. WAYDE ELLIOTT, an individual

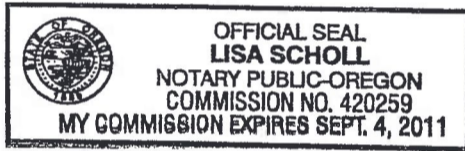
City of St. Helens, a municipal corporation

By: [Signature]
Name: Dr. Wayde Elliott

By: [Signature]
Name: Randy Peterson, Mayor

STATE OF OREGON)
County of Columbia) ss.

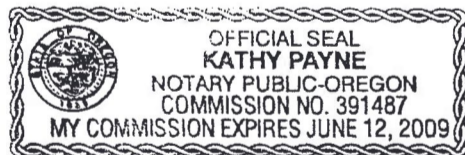
This instrument was acknowledged before me on July 25, 2008, by Dr. Wayde Elliott.



[Signature]
NOTARY PUBLIC FOR OREGON
My Commission Expires: Sept. 4, 2011

STATE OF OREGON)
County of Columbia) ss.

This instrument was acknowledged before me on July 16, 2008, by Randy Peterson, Mayor of the City of St. Helens.



[Signature]
NOTARY PUBLIC FOR OREGON
My Commission Expires: 6/12/09

COPY

St. Helens
P. O. Box 278
ST. HELENS, OREGON 97051

Attn: Plan Amendment Specialist
Dept. of Land Conservation & Develop.
635 Capitol Street NE, Ste. 150
Salem, OR 97301-2540

97301-2540 0007

