



Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

01/22/2013

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Beaverton Plan Amendment
DLCD File Number 006-11R

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, February 01, 2013

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

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

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

Cc: Leigh Crabtree, City of Beaverton
Gordon Howard, DLCD Urban Planning Specialist
Anne Debbaut, DLCD Regional Representative

<paa> YA



FORM

2

DLCD

Notice of Adoption

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

☐ In person ☐ electronic ☐ mailed

DATE
STAMP

DEPT OF

1 14 2013

LAND CONSERVATION
AND DEVELOPMENT

For Office Use Only

Jurisdiction: **City of Beaverton**Local file number: **ZMA2011-0002**Date of Adoption: **1/9/2013**Date Mailed: **1/11/2013**Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date:☐ 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".
 LUBA 2012-021 remanded the City's adoption of Ordinance No. 4580, application of SC-S (Station Community-Sunset) zoning district over six (6) properties, listed as follows: 1S102B000500 (TO:R40-80, TO:R80-120, TO:BUS), 1S102CA00500 (TO:BUS), 1S102CA00600 (TO:BUS), 1S102CB00100 (TO:R40-80, TO:BUS), 1S103A002200 (TO:R40-80), 1S103AD00600 (TO:R40-80). The City of Beaverton City Council voted to re-enact the Ordinance.
 Associated proposals with separate DLCD noticing: TA2012-0004, TA2012-0005

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

Plan Map Changed from:

to:

Zone Map Changed from: **TO:R40-80, TO:R80-120, TO:BUS**to: **Station Community - Sunset**Location: **Barnes Rd, Cedar Hills to Hwy 217; 1S1W02, 1S1W03**Acres Involved: **63**Specify Density: Previous: **1,899, no max**New: **1,899 to 5,115**

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

35-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 ☐ NoDLCD file No. 006-11R (19025) [17315]

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

ODOT, Metro, Washington County

Local Contact: **Leigh M Crabtree**Phone: **(503) 526-2458** Extension:Address: **4755 SW Griffith Dr, POBox4755**Fax Number: **503-526-3720**City: **Beaverton**Zip: **97076-4755**E-mail Address: **lcrabtree@beavertonoregon.gov**

ORDINANCE NO. 4598

**ORDINANCE AMENDING ORDINANCE NO. 2050,
ZONING MAP TO APPLY STATION COMMUNITY-SUNSET (SC-S)
ZONING DISTRICT TO SIX PARCELS LOCATED NORTH OF HIGHWAY 26,
SOUTH OF JOHNSON CREEK, FROM CEDAR HILLS BOULEVARD
TO HIGHWAY 217, ZMA 2011-0002**

WHEREAS, the Council has considered a proposed legislative zoning map amendment to the Beaverton Development Code, Ordinance No. 2050, applying the SC-S (Station Community - Sunset) zoning to six (6) parcels located generally along Barnes Road, east of Cedar Hills Boulevard, in response to a Land Use Board of Appeals (LUBA) order remanding Ordinance No. 4580 so as to better demonstrate that the SC-S zoning is the most closely approximate City zoning district to the former Washington County zoning for the same area; and

WHEREAS, pursuant to Section 50.50.2-5 of the Development Code, the Beaverton Community and Economic Development Department provided the required public notice for the Zoning Map Amendment application; and,

WHEREAS, pursuant to Section 50.50.6 of the Development Code, the Beaverton Community and Economic Development Department on October 23, 2012, published a written staff report and recommendation seven calendar days in advance of the scheduled public hearing before the Beaverton City Council on October 30, 2012; and,

WHEREAS, on October 30, 2012, the City Council conducted a public hearing for ZMA 2011-0002 and, at the conclusion of the hearing, continued the hearing to November 13, 2012 on the limited issue of how transportation capacity for the required residential density in the SC-S zone would be preserved in the conditional use planned unit development review and decision process required for all development in that zone; and,

WHEREAS, at the conclusion of the November 13, 2012 hearing, the City Council voted to approve the proposed amendment to the Zoning Map as specified in the staff report dated October 23, 2012; and,

WHEREAS, the City Council relies on the facts and findings on the related matter of ZMA 2011-0002 as they relate to the issues raised in this zoning map amendment, including, but not limited to the Council's interpretation that the SC-S zoning district is the most closely approximate City zoning district to the former Washington County zoning; and,

WHEREAS, the City Council adopts as to approval criteria the facts and findings described in the staff report dated October 23, 2012 and the supplemental findings dated December 11, 2012; and

WHEREAS, the City Council continues to rely upon and reaffirm their findings made in adopting Ordinance No. 4580 and include those findings for approval by reference herein; now therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 2050, the Zoning Map, is amended to designate the properties on Map and Tax Lot Nos. 1S102B000500, 1S102CA00500, 1S102CA00600, 1S102CB00100, 1S103A002200, and 1S103AD00600 Station Community - Sunset (SC-S), as shown on Exhibit "A" attached to this Ordinance and incorporated herein by this reference.

First reading this 11th day of December, 2012.

Second reading this 8th day of January, 2013.

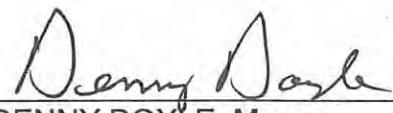
Passed by the Council this 8th day of January, 2013.

Approved by the Mayor this 9th day of January, 2013.

ATTEST:

APPROVED:


CATHY JANSEN, City Recorder


DENNY DOYLE, Mayor



DEPT OF
JAN 14 2013
LAND CONSERVATION
AND DEVELOPMENT

MEMORANDUM

City of Beaverton

Community and Economic Development Department

To: Plan Amendment Specialist, DLCD
From: Leigh Crabtree, Associate Planner
Date: January 11, 2013
Subject: Notice of Adoption for Ordinances 4597, 4598, 4599
LUBA Remand of Ordinance No. 4580

Please find in this packet the DLCD Form 2 Notice of Adoption for City of Beaverton Ordinances 4597, 4598, and 4599 along with the respective Agenda Bills, inclusive of Staff Reports and other supporting documentation.

These Ordinances were passed by Beaverton City Council via Second Reading on January 8, 2013 and signed by Mayor Denny Doyle January 9, 2013.

The Ordinances respond to the State of Oregon Land Use Board of Appeals Remand (LUBA 2012-021) of City of Beaverton Ordinance 4580.

SUPPLEMENTAL FINDINGS ON APPEAL

ZMA2011-0002, ORDINANCE NO. 4580

The matter came before the City Council on October 30, 2012 for public hearing on remand of Ordinance 4580 by the State of Oregon Land Use Board of Appeals (LUBA) for additional findings as to how the Station Community – Sunset (SC-S) zoning district complies with the “most closely approximate” criterion for this rezone of annexed areas having County zoning designations. The City Council opened the hearing, accepted testimony, and continued the hearing to November 13, 2012 on the limited issue (at the continued hearing) of how transportation capacity for the required residential density in the SC-S zone would be preserved in the conditional use planned unit development review and decision process required for all development in that zone.

This ZMA came before the City Council as a Legislative Amendment for which the criteria for approval are set out in Development Code Sections 40.97.15.4.C.1-5. City Council’s review of the remand issue was limited in this hearing to Development Code Section 40.97.15.4.C.3.

The City Council adopts the following supplemental findings in support of its decision to re-enact Ordinance No. 4580 as further amended at the close of the hearing and as set out in Ordinance 4580 as now reenacted.

“Most Closely Approximate” Criterion. The Urban Planning Area Agreement (UPAA) between the County and the City is a three pronged criterion. The City Council finds that the three prongs for residential density, use provisions, and

development standards are not equally weighted, in so far as the City is required to satisfy Title 1 of Metro's *Urban Growth Management Functional Plan* and *Regional Functional Plan Requirements*.

Density. The City Council finds that the 1,899 dwelling units required through implementation of the SC-S zoning district satisfy the aggregate requirements for residential density under the prior County zoning for the subject parcels and that review of all development within the SC-S zoning district, excepting Sign Permits, must account for the construction of 1,899 dwelling units. LUBA had found that "the city could reasonable rely on the increased density that would be required under BDC 20.20.40 to conclude that the SC-S zone more closely approximates the county TO:R40-80 and TO:R80-120 designations with regard to density, so long as the BDC 40.15.15.4(A)(2) one-half acre exception is eliminated and BDC 20.20.40.4 is amended to make clear that the transportation capacity necessary to serve any undeveloped 1,899 residential units must be accounted for and preserved in any PUD applications for approval of non-residential development." The Council's separate decisions on TA2012-0004 and TA2012-0005, respectively amend Development Code Sections 40.45.15.4(A)(2) and 20.20.40.4 to respond to LUBA's direction.

Although Section 3.07.120.B of Metro's *Regional Functional Plan Requirements* for Title 1 does not require minimum dwelling unit density for mixed-use zones, the County had adopted minimum density requirements for development of the subject parcels and required that non-residential uses could only be approved

only if combined with residential uses. The SC-S zoning district requires development of a minimum of 1,899 residential dwelling units, the same as the minimum residential density under County zoning, equivalent to 30 units per gross acre or 48 units per net acre. A possible alternative zoning district to the proposed SC-S zoning for the subject parcels is the Station Community - High Density Residential (SC-HDR) zoning district. The SC-HDR zoning district does not require development of residential dwelling units. However, if residential development is proposed, the minimum density requirements of 24 (or 30) units per net acre must be met. Amending the SC-HDR zoning district to require the residential density required under SC-S zoning would still allow for NO residential development for parcels within the SC-HDR zoning district. The City Council finds that the residential density requirements of the SC-S zone and the SC-HDR zone are not equivalent and that the SC-HDR zoning district does not most closely approximate the residential density required under county zoning.

Testimony by persons in opposition at the hearing asserted that SC-S zoning does not most closely approximate county zoning because the former does not expressly proscribe the location of the residential uses and would allow all residential use to be located in only a limited area of the zoning district. The Council finds, to the contrary, that county zoning requires that most of the residential uses be located over the subject parcels north of Barnes Road, with only 350 of the 1,899 dwelling units required to be south of Barnes Road. The Council finds also that the word "residential" in the title of the county TO-R zoning districts

does not in itself make the city SC-HDR(residential) zoning district a closer match. In fact the TO:R zoning districts allow for development of a few institutional and park non-residential uses without residential development, and they also allow for retail or office uses when proposed together with residential uses. The SC-HDR zoning district, by comparison, allows for a multitude of non-residential uses without any requirement for residential development. The SC-S zoning district expressly requires 1,899 dwelling units.

As to the testimony expressing concern about the theoretical potential of 10,960,500 square feet of non-residential development in the SC-S zone, the Council finds that that figure simply is a carry-over from the maximum amount of floor area allowed under the county zoning. The actual amount of non-residential development to be constructed in the SC-S zone will be determined through Conditional Use - Planned Unit Development application(s). This application will require the submission of a Transportation Impact Analysis (TIA). A TIA will determine the 'trip budget' or the number of trips that can be accommodated within the planning area including the required 1,899 dwelling units. The TIA will account for the vehicle trips that result from the construction of 1,899 dwelling units and these vehicle trips will be subtracted from the 'trip budget' leaving a balance of trips that can then be absorbed by non-residential development, additional residential development, or a mix of both. The balance of trips and proposed mix of uses will govern the amount of floor area that can be accommodated within the SC-S zoning district. The SC-S zoning district does not require

development of 10,960,500 square feet of non-residential development and the amount of development that may be approved within the planning area is strictly limited by what can be accommodated when the 1,899 dwelling units are accounted for in a TIA.

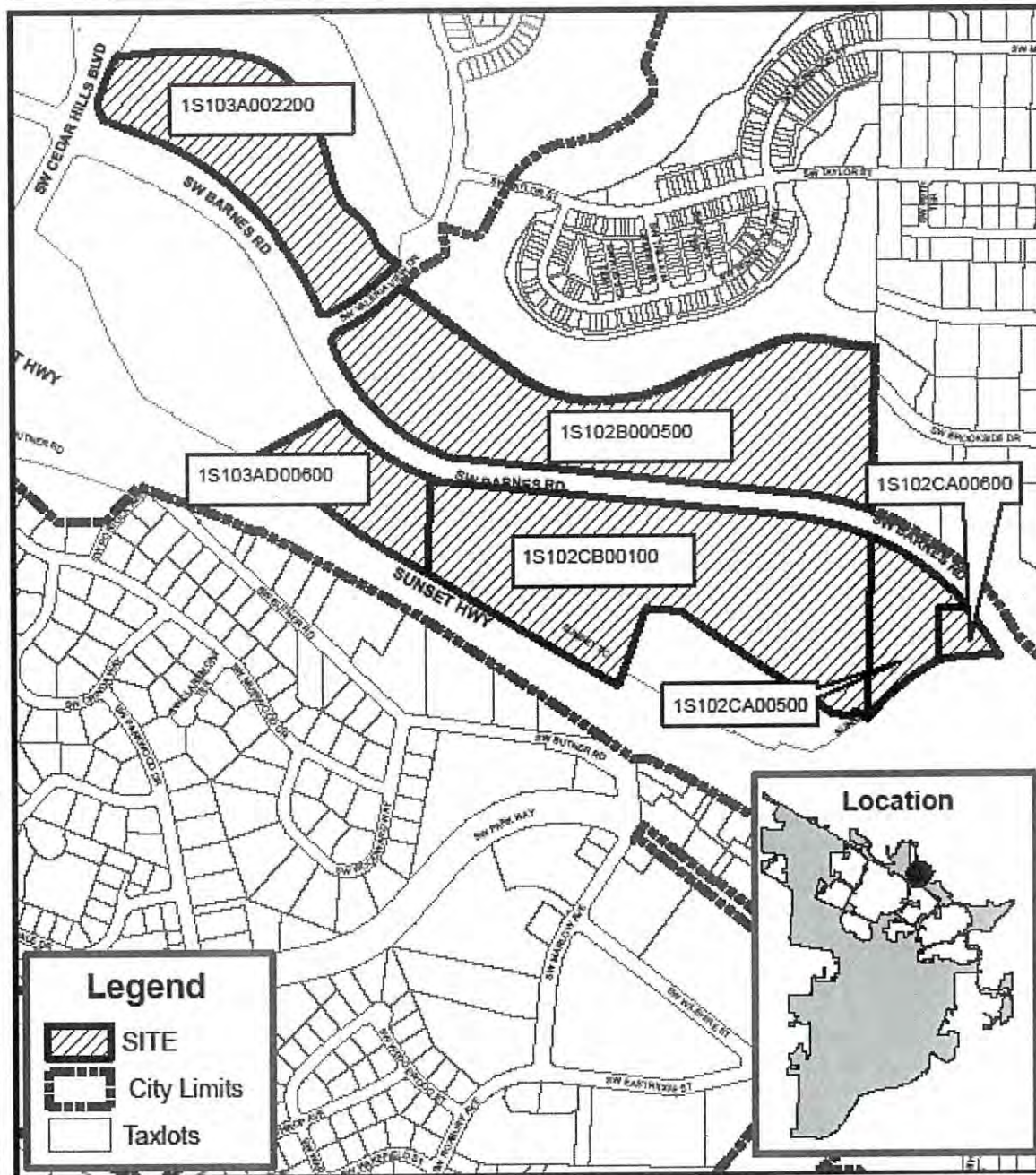
Use Provisions. The persons speaking in opposition to this ZMA have alleged, as they argued at LUBA, that the SC-HDR zone most closely approximates the county zoning as to allowed uses. The Council finds to the contrary that the SC-S zone requires a minimum number of residential units across the zone whereas the SC-HDR zone only requires an application to include residential units when proposing certain other uses. The SC-HDR and SC-S zoning districts both allow for many uses that do not include a residential component but the SC-S zone (alone of the two) requires minimum residential development zone-wide. The former County zoning requires the same residential density, only in a different form, for example, commercial and residential uses in the same structure. Both the SC-S zone and County zoning thus require true multiple-use development.

The SC-S zone also does not **require** construction of non-residential uses and only allows for same up to a maximum floor area that matches the (calculated) maximum floor area allowed under the former County zoning. The actual amount of non-residential development that can be accommodated within the SC-S zone will be limited by the traffic capacity of the transportation system for the planning area at the time development is proposed after accounting for the vehicle trips to be generated by the required residential units. Scenario 2 of Exhibit 4 to the October

30, 2012 staff report estimates the maximum floor area of all development within the SC-S zone. Assuming a total of 3,000,000 square feet of development, non-residential development is theoretically limited to 1,101,000 square feet, of which 80 percent or 880,800 square feet could be developed in the SC-S zoning district prior to completion of the required 1,899 residential dwelling units. These limits are only theoretical as they do not take into account the land values and the physical site constraints in the area as additional controls on the feasibility of vertical construction to create floor area. In other words, the potential for non-residential development in the SC-S zone is not unlimited as the opponents have argued.

As to industrial land uses, the Council relies on testimony that describes how industrial uses allowed in the SC-S zoning district are, "...small components of businesses that occupy office buildings."

VICINITY MAP



**PETERKORT STATION CPA / ZMA 2011-0002
PROPOSED ZONE & COMP PLAN MAP CHANGE**

**COMMUNITY AND ECONOMIC DEVELOPMENT
Planning Division**

11/9/11

Tax Lot #'s
VARIOUS

Application #
CPA/ZMA2011-0002



AGENDA BILL

Beaverton City Council
Beaverton, Oregon


SUBJECT: A Public Hearing to Consider a LUBA
Remand of Ordinance No. 4580 Peterkort
Station Community – Sunset Zoning Map
Amendment, ZMA 2011-0002, as it relates
to Ordinance No. 4578, TA 2012-0005

FOR AGENDA OF: 10-30-2012 **BILL NO:** 12217

Mayor's Approval: 

DEPARTMENT OF ORIGIN: CEDD 

DATE SUBMITTED: 10-23-2012

CLEARANCES: City Attorney 
CAO
Planning

PROCEEDING: PUBLIC HEARING

EXHIBITS: A. Proposed City Zoning, SC-S
B. N/A
C. Ordinance No. 4580
D. Staff Report dated 10-23-2012
E. Staff Memo dated 10-23-2012

BUDGET IMPACT

EXPENDITURE REQUIRED \$x	AMOUNT BUDGETED \$x	APPROPRIATION REQUIRED \$x
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RECOMMENDED ACTION:

City Council conducts a public hearing to review additional findings and readopt Ordinance No. 4580 with additional findings but without further amendments* to the Development Code text for the SC-S zoning district as were adopted by Ordinance No. 4578 (*other than the amendments to be considered in TA2012-0004). Withdrawal of TA2012-0005.

HISTORICAL PERSPECTIVE:

In 2012, City Council adopted Ordinance No. 4578 to amend the Development Code text as to requirements for development within the Station Community – Sunset (SC-S) zoning district, and it adopted Ordinance No. 4580 to amend the Zoning Map to apply SC-S zoning to certain properties. The Council actions followed a Planning Commission public hearing on those text and zoning map amendments. LUBA in its Opinion and Order No. 2012-020 remanded a correction to the Development Code that is addressed concurrently through TA 2012-0004 and remanded Ordinance No. 4580 (the Zoning Map amendment) to the City for further consideration of whether the application of SC-S zoning to the area in question complied with a City Development Code criterion and Comprehensive Plan guidance for the Zoning Map amendment. The criterion in question requires that the City adopt city zoning for annexed areas that, to a certain extent, most closely approximates county zoning as to density, use provisions and standards.

INFORMATION FOR CONSIDERATION:

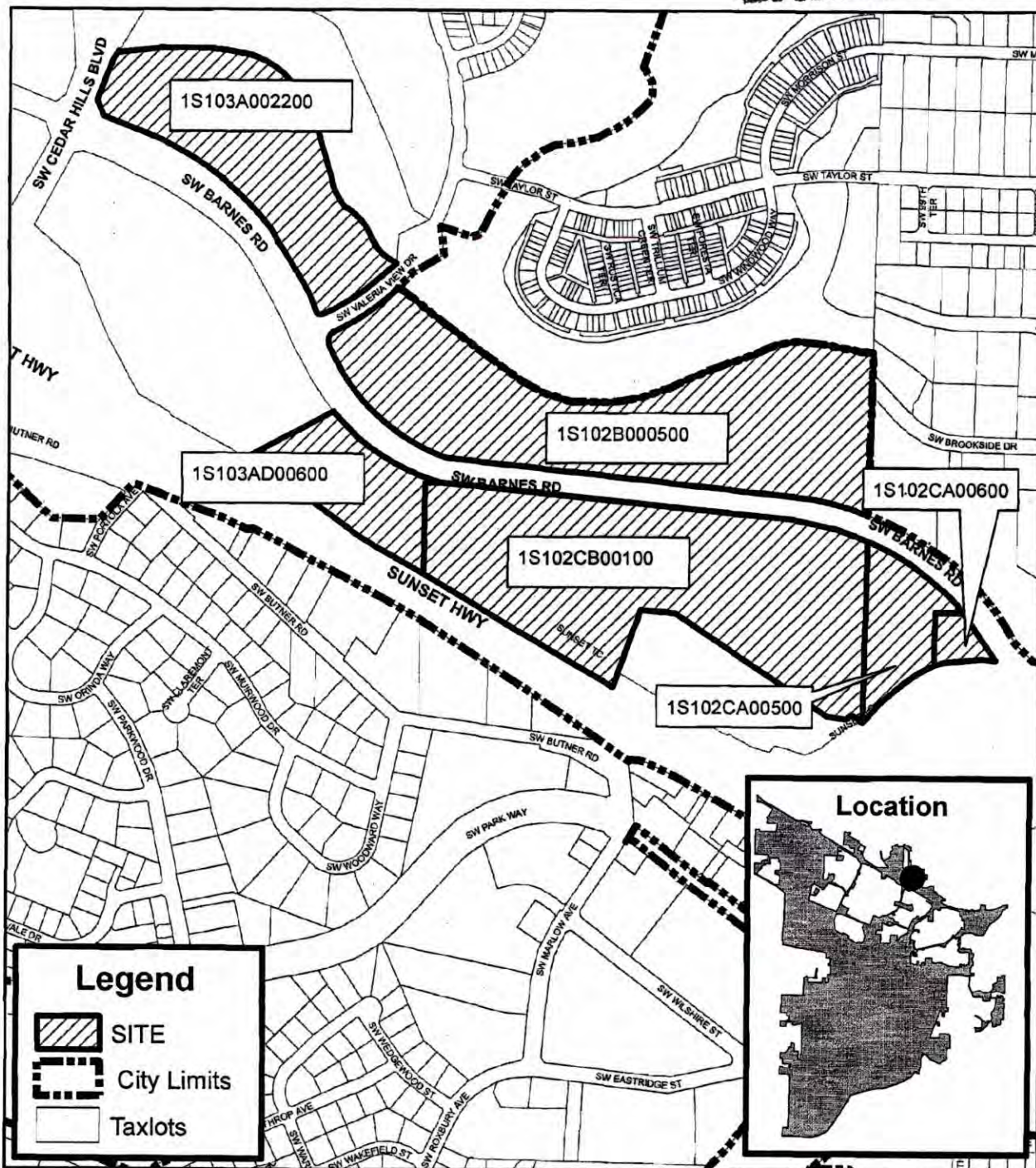
LUBA in its Opinion and Order directed that the City consider whether further amendments to the text of the SC-S zoning provisions are appropriate so as to meet the "most closely approximate" criterion above. LUBA directed particular attention to a list of uses that are permissible in the SC-S zone but that would be not permitted or restricted under the county zones and under the city's SC-HDR zone.

The approval criteria for the ZMA proposal are contained in Section 40.97.15.4.C of the Development Code of the City of Beaverton and Comprehensive Plan Section 3.15, Urban Planning Area Agreement. Additional findings on remand will focus on approval criteria 40.97.15.4.C.3.

Agenda Bill No: 12217

VICINITY MAP

EXHIBIT A



PETERKORT STATION CPA / ZMA 2011-0002
PROPOSED ZONE & COMP PLAN MAP CHANGE
COMMUNITY AND ECONOMIC DEVELOPMENT
Planning Division

11/9/11

Tax Lot #'s
VARIOUS

Application #
CPA/ZMA2011-0002



EXHIBIT C

ORDINANCE NO. 4580

AN ORDINANCE AMENDING ORDINANCE 2050, THE ZONING MAP TO APPLY THE CITY'S STATION COMMUNITY - SUNSET (SC-S) ZONING DISTRICT TO SIX PARCELS LOCATED NORTH OF HIGHWAY 26, SOUTH OF JOHNSON CREEK, FROM CEDAR HILLS BOULEVARD TO HIGHWAY 217 IN NORTHERN BEAVERTON, ZMA2011-0002

- WHEREAS,** the City Council finds that pursuant to Development Code Sections 50.45.2 through 50.45.14, the City provided notice of the Planning Commission initial hearing to consider this zoning map amendment (ZMA); and
- WHEREAS,** the Planning Commission conducted a public hearing on December 7, 2011, to consider the proposed amendment, the submitted staff report and exhibits, three supplemental memoranda, and written and oral testimony provided at the hearing; and
- WHEREAS,** the Planning Commission after that hearing recommended that the Council adopt the proposed ZMA, as per the Commission's Use Order No. 2274, dated December 15, 2011; and
- WHEREAS,** an appeal of the Planning Commission's recommendation was filed on December 27, 2011; and
- WHEREAS,** the City Council conducted a public hearing on February 7, 2012, to consider an appeal of the Planning Commission's recommendation, the record of the Planning Commission hearing, the submitted staff report and exhibits, one memorandum, written testimony provided from January 31, 2012 through February 7, 2012, revisions to the proposed Development Code text, Peterkort Area Frequently Asked Questions, Peterkort History, Peterkort Fast Facts, Peterkort Community Concerns, and the written and oral testimony submitted at the hearing; and
- WHEREAS,** the Council finds that the criteria for this decision and the findings in support of that criteria are as shown in the staff report of November 30, 2011, a memorandum of December 5, 2011, two memoranda of December 7, 2011, the Planning Commission's Land Use Order No. 2274 of December 15, 2011, the staff report of January 31, 2012, the revised Development Code text, the matters submitted for the record between the time of the Commission's order and the Council hearing on the appeal, and the supplemental findings attached to this Ordinance as Exhibit "B" and incorporated by this reference; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

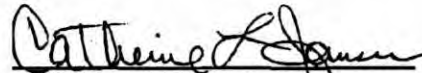
- Section 1.** Ordinance No. 2050, the Zoning Map, is amended to designate the properties on Map and Tax Lot 1S102B000500, 1S102CA00500, 1S102CA00600, 1S102CB00100, 1S103A002200 and 1S103AD00600 Station Community - Sunset (SC-S), as shown on Exhibit "A" attached to this Ordinance and incorporated by this reference.

First reading this 28th day of February, 2012.

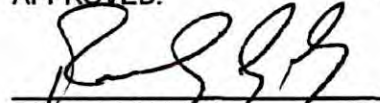
Passed by the Council this 5th day of March, 2012.

Approved by the Mayor this 6th day of March, 2012.

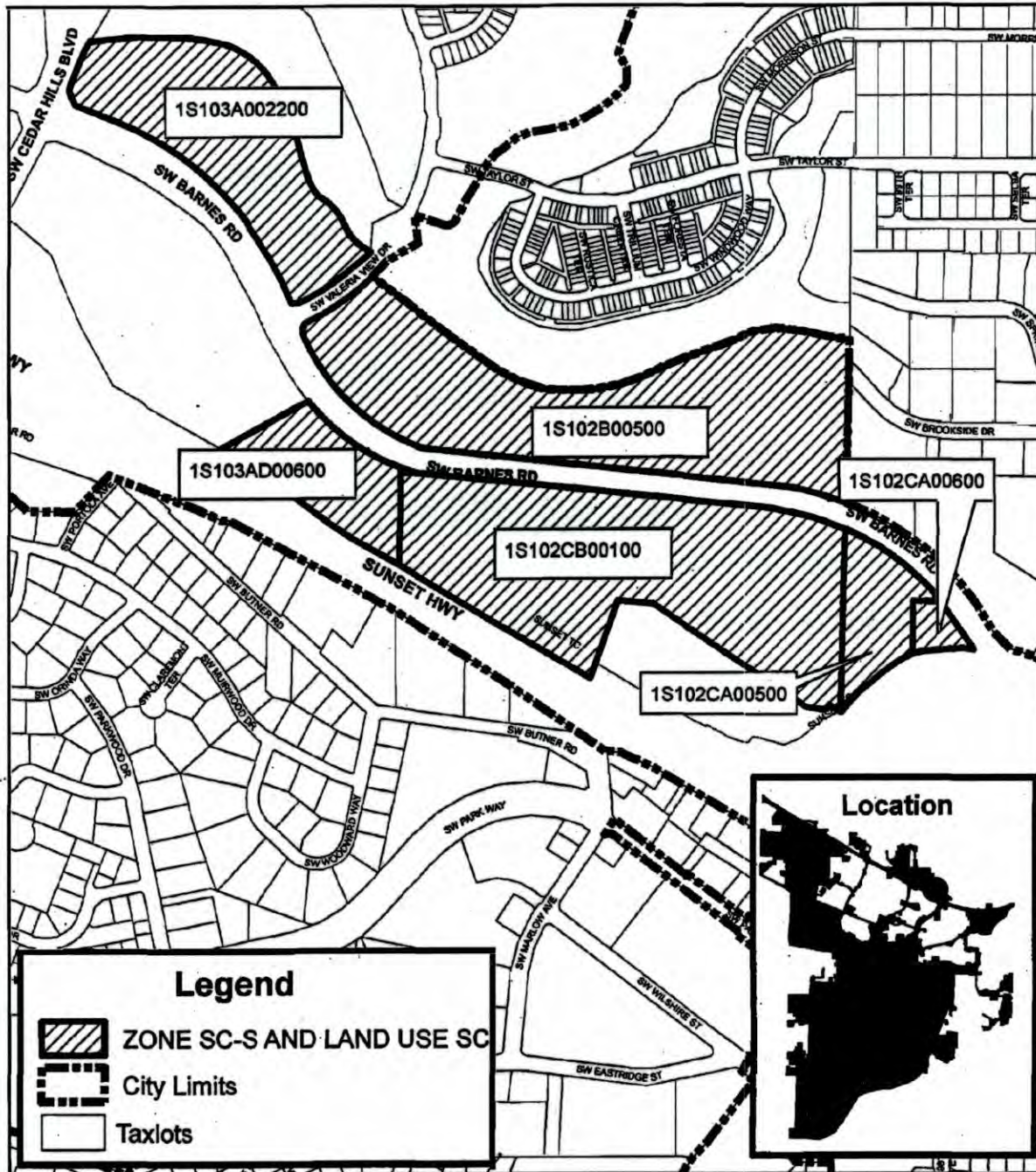
ATTEST:


CATHY JANSEN, City Recorder

APPROVED:


DENNY DOYLE, Mayor by
RANDY EALY, Mayor Pro Tem

PROPOSED CITY ZONES AND LAND USE



PETERKORT CPA/ZMA 2011-0002
PROPOSED ZONE AND LAND USE MAP CHANGE
COMMUNITY AND ECONOMIC DEVELOPMENT
Planning Division

Tax Lot #'s
VARIOUS

**Application nr
ZMA2011-0002**



EXHIBIT B

Ord. No. 4580

SUPPLEMENTAL FINDINGS ON APPEAL

ZMA2011-0002, ORDINANCE NO. 4580

The matter came before the City Council on February 7, 2012, for public hearing on an appeal of the Planning Commission's Recommendation to Approve ZMA2011-0002 Peterkort Station Community - Sunset Zoning Map Amendment. The Notice of Appeal contends that the amendment does not satisfy the City's Development Code Sections 40.97.15.4.C.3-4. Those Development Code sections state approval criteria for a Discretionary Annexation-Related Zoning Map Amendment, including (at C.4) "consisten[cy] with the Washington County-Beaverton UPAA." In fact this ZMA came before the Planning Commission and the Council as a Legislative Zoning Map Amendment for which the criteria for approval are set out in other Development Code Sections, namely Sections 40.97.15.2.C.1-8. Those criteria include conformance with applicable policies of the City's Comprehensive Plan, which would include the city-county Urban Planning Area Agreement in Plan Chapter 3.15 (discussed below) among other policies

The City Council adopts the following supplemental findings in support of its decision to deny the appeal and to enact the zoning map amendment as further amended at the close of the hearing and as shown in Ordinance 4580.

At the hearing the testimony concerning Comprehensive Plan and Development Code sections cited above, centered instead on the following issues:

State of Oregon, Statewide Planning Goals, Goal 1 Citizen Involvement and Goal 2 Land Use Planning. The Council finds that the review process for this ZMA

included notice mailed 45-days prior to the initial hearing to the chairs of Citizen Participation Organization (CPO) 1, Central Beaverton Neighborhood Association Committee (NAC), and the Beaverton Committee for Citizen Involvement (BCCI). A second notice was mailed 20-days prior to the initial hearing to the chairs of CPO 1, Central Beaverton NAC and BCCI. The Council finds that under the Washington County Comprehensive Framework Plan (Policy 2) and the county Community Development Code (Section 107) a CPO serves a county comprehensive planning function similar to the function of the City BCCI and NACs. The City was entitled under its ORS Chapter 195 coordination agreement with the County to rely upon the County to further communicate with its CPOs regarding this ZMA and other City land use planning proposals and enactments. The Council finds that neither state law nor the City Development Code require a community planning process for a zoning map amendment. The noticing requirements of the City's Development Code have been acknowledged by DLCD to meet Goal 1 and Goal 2.

State of Oregon, Statewide Planning Goals, Goal 12 Transportation. The Council finds that the TPR analysis studied development capacity levels to determine compliance with the rule, namely, whether a land use proposal will affect the transportation system beyond what existing regulations allow, and whether or not mitigation is required. The concurrent text amendment for the SC-S zoning district limits residential and non-residential development to align with Washington County's current regulations. Mitigation through development limitations results in compliance with the TPR.

The Council finds that staff from Washington County, the Oregon Department of Transportation (ODOT), the Oregon Department of Land Conservation and Development (DLCD), Metro, and TriMet were included in review of the ZMA for TPR compliance and that, prior to City's notice to DLCD of this ZMA, all those agencies agreed that the TPR calculations were correct.

The Council finds that the derived development capacity was determined given a number of variables. County regulations do not include a maximum FAR, rather an applicant is to start with the minimum FAR and may propose as much floor area as available within the capacity of the transportation system. County regulations do regulate maximum height except for unlimited height in the Sunset district. County staff directed City staff to calculate capacity from gross acreage. The approach to this TPR analysis was a worst-case scenario, not reasonable worst-case as would be determined from net acreage. Thus the concurrent text amendment sets a maximum FAR based on regulated maximum height over gross acreage. The Council relies on city staff statements that there was no dispute about the maximum numbers and that the County staff had more concern over the minimum residential density requirement.

The Council finds that the difference in horizons and performance measures for the County and the City Transportation System Plans (TSPs) is not relative to this ZMA. The County's TSP horizon is the year 2020 versus the City's TSP horizon year of 2035; this difference in TSP years is not an issue with this proposal, as the City has already shown compliance with TPR by mitigating the significant effect

with development limitations. The City's level of service and performance standards are more stringent than the county's in that potential development levels are less than allowed through the county's standards and are reviewed at the time of a development application.

Metro, Urban Growth Management Functional Plan, Title 1. The Council finds that in the 1990's with adoption of the 2040 Plan, Metro allocated jobs and dwelling units among regional jurisdictions. Many jurisdictions applied higher densities within Station Areas and Town Centers. These design types applied a certain number of people per acre in a mix of jobs and housing, with no prescribed ratio of jobs to housing. Washington County for its part found it necessary to add housing density and applied its highest residential density zoning to the area around the Sunset Transit Center. Metro accepted the county's planning for this Station Area.

Comprehensive Plan Chapter 3.15, Urban Planning Area Agreement (UPAA) The Council finds that determining the most closely approximate zoning initially relied on land use analysis of the county CDC in comparison to the City's Development Code and available City zoning districts. This analysis included specific attention to minimum densities with calculations under County zoning based on gross acreage, per the direction of County staff. The Council finds that the concurrent text amendment results in a 'net zero' translation in density from County zoning to City zoning through the carry-over of County minimum residential density requirements over the Station Community - Sunset (SC-S)

zoning district. By requiring a specific minimum residential dwelling unit count over the parcels proposed for application of SC-S zoning, the City is ensuring a mix of uses over the subject parcels.

The appellant and others suggested City zoning districts that they contend are the "most closely approximate" to county zoning. The Council finds that in order to satisfy the minimum density requirements under county zoning, the City would have to modify the text of those other City zoning districts and thus affect properties throughout the City now within those zoning districts. For example, use of the City's Station Community - High Density Residential (SC-HDR) zoning district in place of the proposed SC-S zoning district would require a doubling of the residential dwelling unit requirement for the SC-HDR zone. The City instead chose to modify the SC-S zone in order to approximate existing County land use regulations and as no other existing city zoning district matches the density or intensity of the county zone.

The Council finds that the SC-S zoning district is a multiple-use zoning district and, as amended, requires 1,899 dwelling units residential and allows for other uses. The SC-S zoning district will not require residential development at or near the Sunset Transit Center, however, the SC-S zoning district does allow for dense multiple-use development around the Sunset Transit Center that is transit supportive.

Other Contentions. The appeal contends that the proposals did not satisfy Titles 1, 6, 7 and 12 of Metro's *Urban Growth Management Functional Plan*,

Chapters 3, 5, 6, and 9 of the *Comprehensive Plan for the City of Beaverton*, and Section 40.97.15.4.C. of the *Development Code of the City of Beaverton*. In response the Council cites the supplemental findings for Ordinance No. 4578, the supplemental findings for this Ordinance No. 4580, and the findings provided in the Staff Report to City Council dated January 31, 2012 as adequately addressing the appellant's argument with regard to each of those UGMFP Titles and Comprehensive Plan Chapters.



EXHIBIT D

STAFF REPORT

HEARING DATE: October 30, 2012

TO: City Council

STAFF: William J. Scheiderich, Assistant City Attorney
Steven A. Sparks, AICP, Principal Planner
Leigh M Crabtree, Associate Planner

PROPOSAL: **ZMA2011-0002 Peterkort Station Community – Sunset Zoning Map Amendment, Land Use Board of Appeals Remand of Ordinance 4580**

LOCATION: North of Highway 26, south of Johnson Creek, along both the north and south sides of Barnes Road from Cedar Hills Boulevard to Highway 217. The subject parcels are specifically identified as the following Washington County Assessor's Map and Tax Lots: 1S102B000500, 1S102CA00500, 1S102CA00600, 1S102CB00100, 1S103A002200, 1S103AD00600.

SUMMARY: An appeal of City Council's adoption of Ordinance Number 4580 was filed with the State of Oregon Land Use Board of Appeals (LUBA). On August 22, 2012 LUBA remanded a portion of Ord. No. 4580. LUBA has directed the City to provide additional findings that explain how the City's proposed application of the SC-S zoning district complies with the "most closely approximate" criterion.

APPLICANT: City of Beaverton

DECISION CRITERIA: The Zoning Map Amendment will be reviewed per the provisions of Development Code Sections 50.85 through 50.88. Approval Criteria for the ZMA are listed in Section 40.97.15.4.C of the Development Code; review of the application in light of the LUBA remand is limited to criterion 40.97.15.4.C.3.

RECOMMENDATION: **APPROVAL of ZMA2011-0002 (Peterkort Station Community-Sunset), reenact Ordinance Number 4580 with additional findings in support of approval.**

WITHDRAWAL of TA2012-0005 (Text Amendment to Development Code Section 20.20. Multiple Use Zoning Districts).



STAFF REPORT

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TO: City Council

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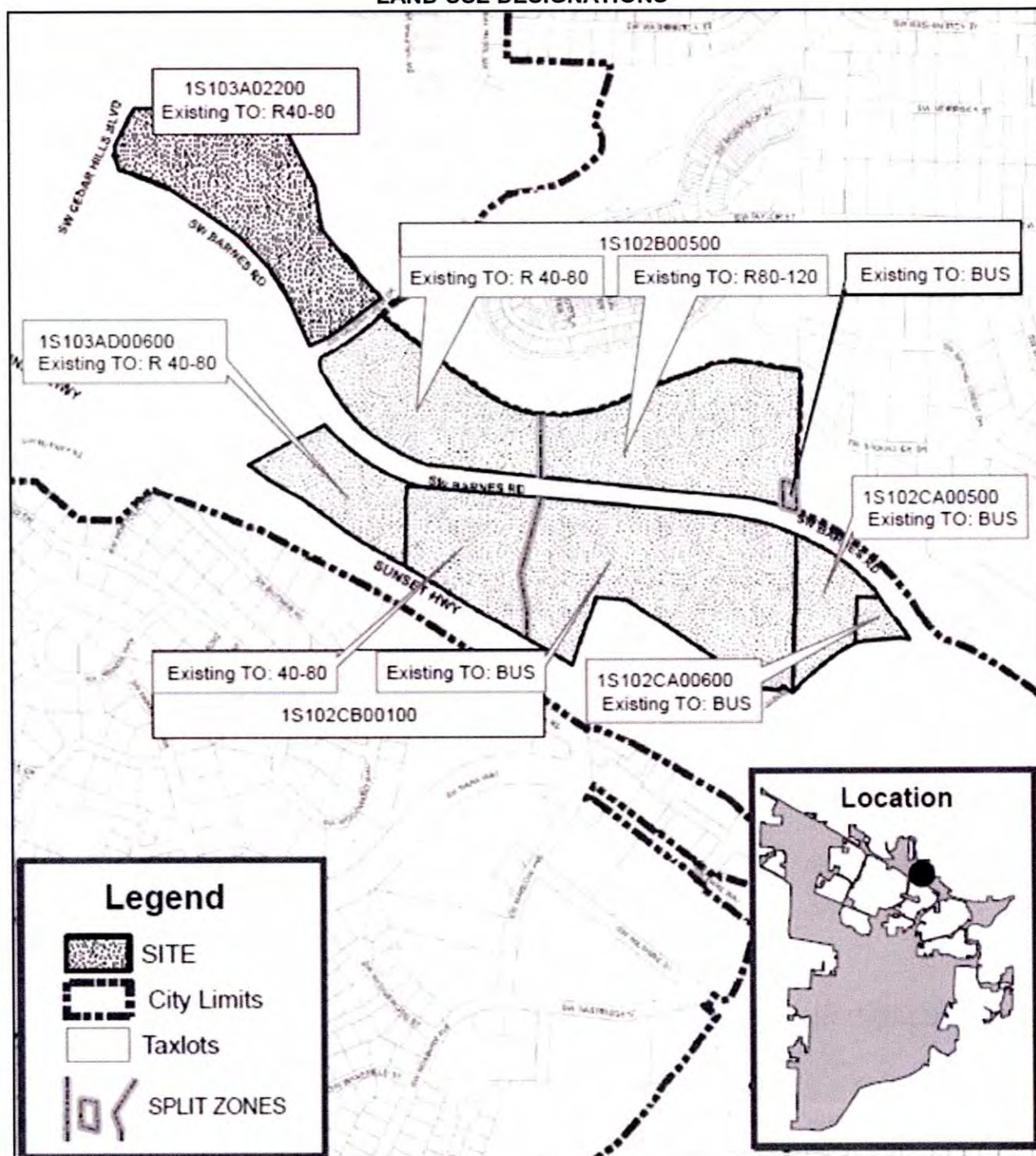
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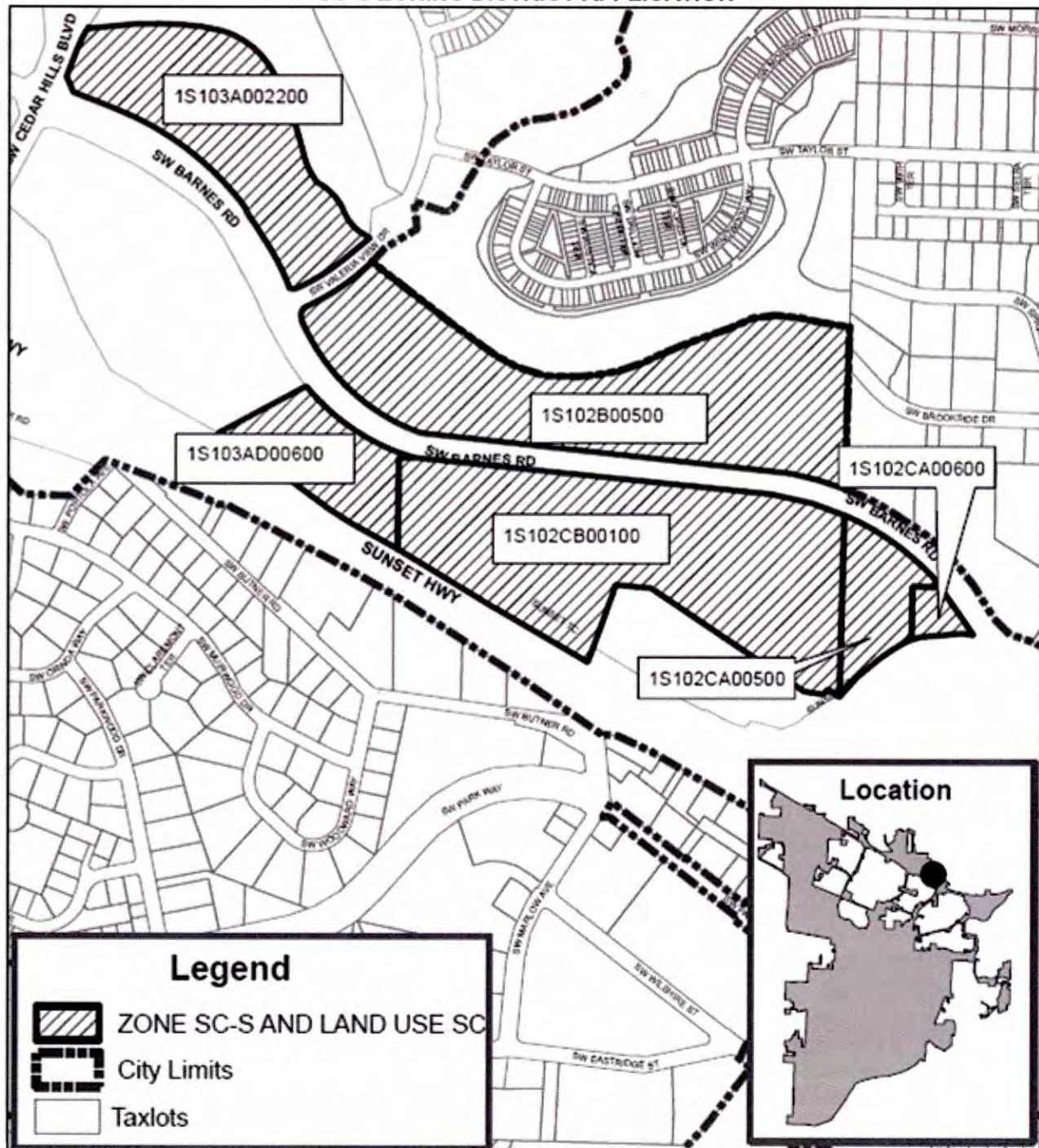
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WASHINGTON COUNTY LAND USE DESIGNATIONS



ORDINANCE No. 4580, ZMA2011-0002
CITY OF BEAVERTON
SC-S ZONING DISTRICT APPLICATION



**LUBA 2012-020 REMAND of Ordinance No. 4580
ZMA2011-0002, Peterkort Station Community – Sunset
Zoning Map Amendment**

In October 2011 the City initiated a set of five applications to apply City land use designations and zoning districts for 13 parcels that had been annexed to the City near the Sunset Transit Center, commonly known as the Peterkort rezoning, and including a text amendment as to the provisions of the SC-S zoning district. On December 7, 2011, the Planning Commission after public hearing recommended approval of all five applications. On February 7, 2012, the City Council heard a *de novo* appeal and approved all five applications, including additional amendments to the SC-S zoning provisions.

On August 22, 2012, LUBA in its Opinion and Order for 2012-020 decided appeals of four of those five enactments (the ordinance enacting SC-S zoning text amendments was not appealed to LUBA) and remanded Ordinance 4580, ZMA2011-0002 for further findings regarding the "most closely approximate" criterion in the City's land use plan and development code for approving the map amendment. A ZMA is the process by which the City applies City zoning to replace County zoning. Staff proposes the following additional findings as to how the Council interprets this provision of its Plan and Code and as to how the city's SC-S zone is the "most closely approximate" to the density, uses and standards allowed under the former County zoning for this area.

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ANALYSIS AND FINDINGS
On REMAND of ZMA2011-0002 Station Community–Sunset Zoning Map Amendment

Staff presents, below, suggested Council findings as to the following criterion for approval of this ZMA. The same criterion is separately stated in the Development Code and the Comprehensive Land Use Plan as follows:

Section 40.97.15.4 of the *Development Code of the City of Beaverton* provides:

- “C. Approval Criteria.** In order to approve a Discretionary Annexation Related Zoning Map Amendment application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
- 3. The proposed zoning designation most closely approximates the density, use provisions, and development standards of the Washington County designation which applied to the subject property prior to annexation.”**

Section 3.15 of the Comprehensive Plan sets out the City-County Urban Planning Area Agreement (UPAA), which reads in relevant part as follows:

“II.D: The CITY and COUNTY agree that when annexation to the CITY takes place, the transition in land use designation from one jurisdiction to another should be orderly, logical and based upon a mutually agreed upon plan. Upon annexation, the CITY agrees to convert COUNTY plan and zoning designations to CITY plan and zoning designations which most closely approximate the density, use provisions and standards of the COUNTY designations. Such conversions shall be made according to the tables shown on Exhibit “B” to this Agreement.

“IIA (mis-numbered in original document, should be IIIA) Special Policies: The CITY recognizes and supports the COUNTY’s Community Plans and land use designations and agrees to convert COUNTY land use designations to CITY land use designations upon annexation in accordance with Exhibit “B” of this Agreement. In addition, the COUNTY will advise the CITY of adopted policies which apply to the annexed areas and the CITY shall determine whether CITY adoption is appropriate and act accordingly.”

Exhibit “B” to the UPAA does not list County-City zoning conversions for the County zoning districts that are at issue in this ZMA. The Council finds that it thus must interpret the criterion set out above as to what City zoning will “most closely approximate” County zoning. The City acknowledges LUBA’s finding that this criterion does not require that the city create new- or modify existing City zoning code to match existing County zoning code.

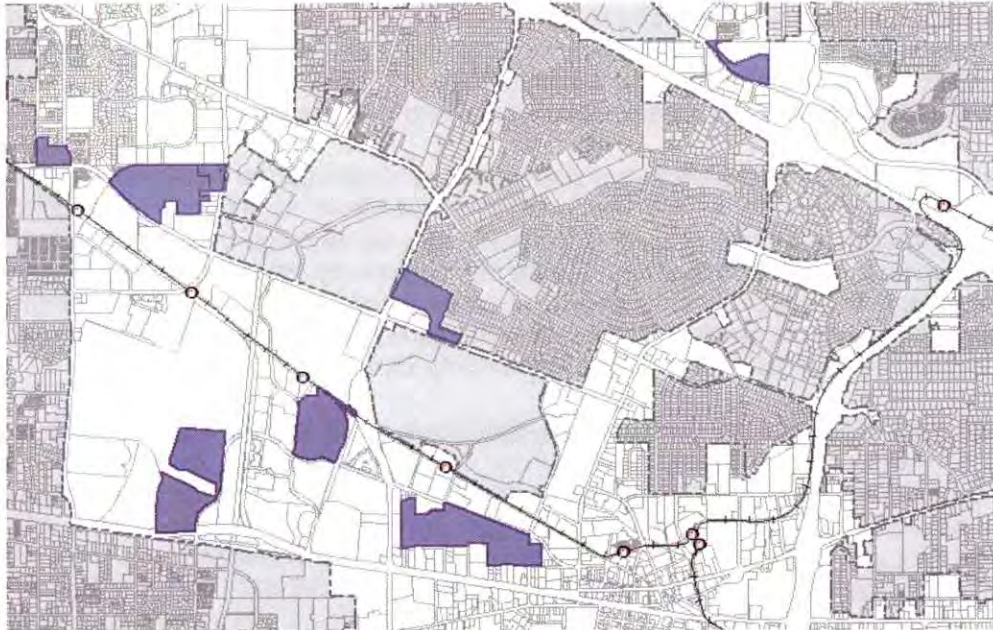
City Interpretation of “Most Closely Approximates” Criterion

Density. Metro Urban Growth Functional Plan Title 1 proscribes the regional housing capacity to be assured by county and city zoning. Those requirements are attached as Exhibit 3 to this report. As stated in the purpose and intent, Title 1 requires that “each city and county maintain or increase its housing capacity.....” The County had adopted zoning designations for the area in question that require residential density ranging from 40 to 80 units and from 80 to 120 units to the gross acre. This residential density is higher than any other zoning designation in Washington County and was acknowledged by Metro during the County’s planning efforts in the 1990’s.

Once a jurisdiction has committed to a specific distribution of their “fair share” of housing capacity through zoning, reductions in the acknowledged capacity may only occur under Sec. 3.07.120 of the Regional Functional Plan. That Plan provision is not relevant here because the City is not proposing a reduction to the acknowledged density for the subject parcels. On annexation, a City assumes the acknowledged

housing capacity for that property. The City's SC-S zone now matches the minimum housing capacity acknowledged for the area to be zoned SC-S. The Council finds that the City's SC-HDR zone, by comparison, does NOT "more closely approximate" the required residential density for this area, and the Council finds that this criterion must be interpreted so as to comply with the requirements of other applicable law, namely, Title 1 of the Metro Functional Plan. Thus the Council interprets this criterion as requiring that the conversion from county- to city zoning must first and foremost result in no net loss of residential housing capacity.

By comparison, the SC-HDR zoning district now applies over multiple areas in the City, as depicted below (darkest shaded areas are zoned SC-HDR):



Map of parcels that currently carry the SC-HDR zoning district within the City of Beaverton

As is further explained below, the SC-HDR zoning district does not require ANY residential development. The SC-HDR zoning district, like many other zoning districts in the City's Development Code, allow for residential development along with a number of other allowed and conditional uses that could be approved on an SC-HDR parcel. The minimum density requirement only applies when an application proposes residential development. Many of the existing SC-HDR parcels have been developed with lower housing density than is required in the SC-S zone and as such have been acknowledged for Title 1 compliance. Amending the SC-HDR zoning district provisions is an exercise which the Council finds is NOT required under the UPAA, and LUBA has so affirmed. Amending the SC-HDR zone to match the higher residential density required under county zoning for the area in question could result in non-conforming residential density for property zoned SC-HDR zoning district elsewhere in the City. The Council interprets the "most closely approximate" criterion as not requiring the creation of non-conforming uses in existing city zoning districts. Creation of non-conforming uses is not favored, as per the following provisions of the City's Development Code:

BDC 30.05.1. "Within the districts established by this ordinance or amendments that may later be adopted there may exist lots, structures, uses of land and structures, and characteristics of use which were lawful before the effective date of this ordinance, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments. **It is the intent of this ordinance to permit these non-conformities to continue until they are removed, but not to encourage their perpetuation.** [emphasis added] It is further the intent of this ordinance that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses not permitted elsewhere in the same district except as specifically provided elsewhere in this ordinance."

BDC 30.05.2. "Nonconforming uses are declared by this ordinance to be incompatible with permitted uses in the district involved."

BDC 30.10.3. "A lawful use which would have been allowed pursuant to a master site plan or other development plan approved prior to the effective date of this ordinance..., which has become a nonconforming use by this ordinance... may be allowed, completed, or altered as the case may be, as a conditional use, notwithstanding its nonconforming character.... Nonconforming uses are not favored by the City and therefore, the application for a conditional use permit pursuant to this section may be denied as inappropriate under the circumstances...."

The Council finds that nonconforming status created by a change in zoning district provisions as to density and uses often causes financial issues for the property owner, as any financing or refinancing that may be associated with the property may be denied by the financier. This is due to the lack of predictability associated with rebuilding the use if the structure is damaged or destroyed.

City staff calculated the Functional Plan-required minimum residential density for this area as instructed by the County; the County acquiesced in that calculation as did Metro, as shown in the original local record of this ZMA. To be specific, City staff calculated the residential density requirements of County Code CDC 375 Table A in conjunction with the Cedar Hills – Cedar Mill Community Plan for Area of Special Concern (ASC) 11, as instructed by Washington County staff in light of Metro's UGMFP Title 1 requirements. The Council finds that the 1,899 minimum residential dwelling units required for the SC-S zone (BDC 20.20.40) are equal to or higher than the density required under County zoning

Exhibit 4, attached, shows the residential density that would result under three different scenarios for the area in question under current County zoning, under City SC-HDR zoning, and under City SC-S zoning. For each mix of zoning, the exhibit shows development of (1) minimum residential density with minimum floor area (if not satisfied by residential floor area), (2) minimum residential density with a total of 3,000,000 square feet of floor area, and (3) maximum residential density (5,115 dwelling units) with maximum floor area (10,960,500 square feet) per Development Code Section 20.20.40.2. The 3 million square feet maximum developable floor area in scenario (2) derives from evidence in the original record of this ZMA submitted by the Transportation Consulting Group (Ex. 6 to February 7, 2012 Agenda Bill). This evidence is discussed further under the "Uses" element of the "most closely approximate" criterion, below.

Exhibit 4 shows that even the maximum residential density allowed under SC-HDR zoning will not satisfy the minimum residential density required under County TO:R40-80 and TO:R80-120 zoning. Instead, the minimum residential density would have to be accommodated on properties near the transit station now zoned County TO:BUS. If those properties were then rezoned as City SC-S, the balance of 1,899 dwelling units not buildable on the properties rezoned SC-HDR would use up the floor area and transportation capacity otherwise allowable for non-residential uses that should be included in true mixed use development. The SC-S zoning as proposed by this ZMA instead allows for a more even distribution of residential dwelling units than would be allowed by the maximum residential density under SC-HDR. The Council thus finds that SC-S zoning is more closely approximate to the residential density required under County's zoning (in turn required for Metro Title 1 compliance) than the SC-HDR zoning district and better preserves the intent of the county's transit-oriented mixed use zoning. The Council notes that the County acquiesced in the rezoning to SC-S, not SC-HDR.

Floor Area as Another Element of Approximating Density. County zoning for the area in question requires 0.80 and 1.0 FAR. The SC-HDR zoning district requires 0.40 FAR and the SC-S zoning district requires 0.60 FAR. The Council finds that the SC-S zoning district FAR is more closely approximate to County's zoning as to this element of density than is the SC-HDR zoning district FAR.

“Most Closely Approximate” Allowed Uses. The Council interprets the “most closely approximate” criterion for this ZMA as requiring that the Council give first priority to preserving the housing density that was required by the County so as to comply with Metro’s Functional Plan. The Council finds that approximating the uses allowed and restricted under county zoning is secondary to preserving that residential density. As to uses, the Council adopts the following findings as to whether, how and why the uses to be allowed under SC-S zoning most closely approximate the uses under county zoning after giving priority to preserving residential density, and considering that the City interprets the “most closely approximate” criterion (as did LUBA) as not requiring that the City create a new zoning district or amend the provisions of an existing zoning district. The SC-S zoning provisions as were enacted by City Ordinance 4578 were not appealed to LUBA. Thus as to this “uses” element of the “most closely approximate” criterion, the Council will limit its findings to a response to LUBA’s suggestion that the City reconsider whether certain SC –S zone allowed uses are most closely approximate to county allowed uses.

The land use table of BDC 20.20.20 includes 13 uses for which LUBA noted that the SC-HDR zone seems to more closely approximates county TO:R40-80 and TO:R80-120 zoning regulations. Those 13 uses are listed in Exhibit 5 to this report and the full list of uses is listed in Exhibit 6. The comparison to uses allowed under county zoning is in the same order as in County Code CDC 375 Table A. Exhibit 4 to this report shows that the amount of non-residential development in each zoning scenario is directly related to the amount of residential development proposed. In scenario (2), which assumes 3,000,000 square foot maximum developable area, less than 37 percent of the floor area is non-residential development.

Residential Development Requirement. The County’s TO:R40-80 and TO:R80-120 zoning districts require development of residential dwelling units; the amount of non-residential floor area allowed is determined based upon the amount of residential floor area proposed. The City’s SC-S zoning district requires development of at least 1,899 residential dwelling units through build out of the area zoned SC-S. The SC-HDR zoning district allows for development of residential dwelling units OR commercial uses OR civic uses OR multiple uses; residential development is not required. The Council finds that the SC-S zone, in requiring certain minimum residential use, is thus more closely approximate to county zoning as regards to “uses” than is the city’s SC-HDR with its allowance for NO residential use.

Commercial Uses. The County code limits retail business in the TO:R40-80 and TO:R80-120 zoning districts to no more than 10 percent or 10,000 square feet of a development; no other commercial uses are allowed. For the SC-HDR zoning district, City code similarly limits some commercial uses to multiple use developments when they include a residential component, as follows:

- 10,000 square feet of Eating and Drinking Establishments*,
- 10,000 square feet of Retail Trade*,
- 10,000 square feet of Commercial Amusement*, and
- 5,000 square feet of Rental Businesses*

for a total of 35,000 square feet. (Uses marked with an asterisk are those for which LUBA has asked the city to reconsider in finding what city zoning most closely approximates county zoning.)

However, other commercial uses are allowed in the SC-HDR zoning district that are not limited by requirements for multiple use and residential development, including:

- Child Care Facilities,
- Residential Care Facilities,
- Financial Institutions,
- Live/Work Uses,
- Service Business/Professional Services,
- Vehicle Sales or Lease, and
- Vehicle Rental*.

Conditional Commercial uses in the SC-HDR zoning district that are not limited by requirements for residential development include:

- Hospitals,
- Parking as the Principal Use,
- Temporary Living Quarters, and
- Minor Automotive Service.

As to the sub-set of 10 commercial uses within the '13 More Specific Uses,' in most of these cases the SC-HDR restrictions limit the size of specific uses. These SC-HDR use restrictions seem to mimic the County's use restrictions for the applicable TO:R zoning designations. However, the County applies two of their more limiting use restrictions per development in the zone and the City applies use restrictions per use, cumulatively. Coupled with the other outright allowed commercial uses in the SC-HDR zoning district, the SC-HDR zoning district allows for a much higher level of commercial capacity than the 10 limited commercial uses identified by LUBA.

For the SC-S zoning district, non-residential development is limited, but not through use restrictions. The residential 1,899 dwelling unit requirement of Section 20.20.40.2 for the SC-S zoning district has the effect of the 1,899 dwelling units absorbing transportation capacity for a development, thereby limiting the amount of non-residential development that can be accommodated in this planning area.

Meeting Facilities* and Drive Up Window Facilities* are prohibited in the SC-HDR zoning district, but are permitted in the SC-S zoning district. Regarding Drive Up Window Facilities, in the SC-HDR zone walk-ups are permitted and in the SC-S zone the use is prohibited within ¼ mile of a LRT station platform and within 30 feet of a Major Pedestrian Route. These prohibitions in the SC-S zone limit the use of Drive Ups throughout the subject parcels given the Major Pedestrian Route designations in the area.

As noted above, the SC-HDR zoning district does not require residential development to be built. In that respect as with other respects, the Council finds that SC-HDR is not most closely approximate to county transit oriented residential zoning. The SC-S zone requires a minimum residential density equal to county's minimum residential density across the area to be rezoned SC-S.

Office Uses. The County's CDC limits office uses in the TO:R40-80 zoning district to no more than 50 percent of the total gross floor area of all development on the property and in the TO:R80-120 zoning district to no more than 25 percent of the total gross floor area of all development on the property. These offices uses include Professional, Financial, Insurance, Real Estate, Medical Office and Clinics, Service Businesses, and Administrative.

In the SC-HDR zoning district, City Code limits Office and Medical Clinic uses to multiple use development not to exceed 50 percent of the residential floor area and limits Service Business / Professional Services uses to multiple use development not exceed 25 percent of the total square footage of the development. Financial Institutions and Minor Animal Care Clinics are not limited in the SC-HDR zoning district.

The City does not limit the amount of Office use in the SC-S zoning district. The Council interprets the "most closely approximate" criterion as to "uses" to mean that the types of uses allowed should approximate and not necessarily match the list of permitted and restricted uses under county zoning. The Council interprets the criterion as allowing instead for a "close approximation" in the larger sense of allowing uses that meet the purpose of mixed use, transit-oriented zoning, including commercial, office and industrial employment. Section 375-1 of the County Development Code states in part, "The purpose of the transit oriented districts is to limit development to that which (1) has a sufficient density of employees, residents or users to be supportive of the type of transit provided to the area; (2) generates a relatively high percentage of trips serviceable by transit; (3) contains a complementary mix of land uses; (4) is designed to encourage people to walk; ride a bicycle or use transit for a significant percentage of their trips. The Council finds that having office uses as allowed by the SC-S zoning will fulfill the County's purpose statement of Section 375-1 and the City's goal of creating a vibrant high density community in the SC-S zone.

Industrial Uses. Neither the County TO:R40-80 and TO:R80-120 zoning designations or the City SC-HDR zoning district allow for industrial uses. The SC-S zoning district does allow for development of the following industrial uses: Manufacturing, Fabricating, Assembly Processing, and Packing wholly within an enclosed structure, Warehousing as an accessory use not to exceed 25 percent of the primary use, and Printing, Publishing, and Book Binding. The Council finds that including industrial uses in the SC-S zoning district allows for a range of economic development and employment opportunities near the station. The Council finds that modern-day "industrial" uses such as research and development in association with office uses and the local medical services industry are incompatible with transit-oriented residential, commercial and office uses. On the contrary, the Council finds that county code with its prohibition of "industrial uses" in this area dates back to over a decade and does not recognize a modern trend of co-location of office and light industrial uses nor the fact that zoning that allows for industrial-uses allows for greater employment opportunity, one of the purposes of mixed-use zoning. Section 9.1.2 of the City's Comprehensive Land Use Plan states in part, "A deficiency in the amount of land dedicated to industrial employment...undermines the city's efforts to achieve a balance between the number of jobs and the number of housing units it is able to support. Maintaining this balance is important because...the City can provide an environment conducive to working within close proximity to where one lives.....The Economic Development Strategic Plan recognizes the City's shortage of industrial land as a constraint and as a result, stresses a need to maximize the use of industrial land for high-density office type jobs in order to realize significant employment increases."

The Council finds that to allow such industrial uses in a transit-oriented mixed use zone is more consistent with the City's Comprehensive Plan than to disallow such uses and also serves the purposes of such zoning under both the county and city code, namely, dense employment opportunities close to housing and close to public transit. In that sense the SC-S zone as it allows these industrial uses, on a macro- and not a micro scale, does "most closely approximate" the uses provided for under county zoning

Institutional, Parks, and Civic Uses. County's TOR:40-80 and TO:R80-120 zoning designations allow for Churches (with shared parking for other uses and on parcel less than seven acres in size) and Public Buildings through the County's Type III process. Neighborhood Parks (I or II), Special Recreation Uses (III) and Accessory Recreation Uses (II) are also allowed. The SC-HDR and SC-S zoning districts allow most institutional, park and civic uses identically. The SC-HDR and SC-S zoning districts also allow Commercial Schools, Educational Institutions, Passenger Railroad Tracks and Facilities, Social Organizations, and Transmission Lines.

Institutional, Parks, and Civic uses differ between the SC-HDR zoning district and the SC-S zoning district only as to Hospitals (conditional in SC-HDR and permitted in SC-S), Recreational Facilities (conditional if over two gross acres in SC-HDR and permitted in SC-S), Social Organizations (conditional if building is more than 10,000 square feet in SC-HDR, otherwise permitted in both), and Transit Centers (conditional in SC-HDR and permitted in SC-S). As any and all development in the SC-S zone requires a conditional use/planned unit development application and review process, the Council finds that these distinctions between SC-S and SC-HDR zoning will have no practical difference.

As to the "Standards" Component. The Design Review criteria in City's development code are the same for development within the SC-HDR and SC-S zoning districts. LUBA did not instruct that the city reconsider the "approximation" between county and city design standards. As noted above, the cumulative and more restrictive design standards that obtain under city code for development within a PUD and along major pedestrian routes make it more likely that city's design standards will fully achieve the purposes of mixed use development. The Council finds that additional analysis as to this component of the "most closely approximate" criterion are unnecessary.

Transportation Impact Analysis (TIA) and Transportation Capacity Relative to SC-S Zoning. The CU/PUD process required for all land divisions and all development on all property within the SC-S zone will preserve transportation capacity for the minimum residential density. A CU/PUD application requires

Facilities Review Committee comment and allows for conditions. City Code Section 40.2.C includes the following criterion for approval: "The proposed development is consistent with all applicable provisions of Chapter 60, (Special Requirements) and all improvements, dedications, or both required by the applicable provisions of Chapter 60 are in place." Applicable provisions of Chapter 60 (Special Requirements) include Section 60.55, Transportation Facilities. An applicant must provide a Traffic Impact Analysis (TIA) when development will generate 200 vehicles or more per day. The TIA must address existing transportation conditions, forecast future traffic, determine the traffic impacts associated with a proposed development, identify mitigation needs, and make recommendations. An approved CU/PUD permit limits the trips to be generated by the development.

When a property owner has vested in its CU/PUD approval, the trips allowed by the land use permit must then be accounted for in all following development and land division applications for property within the SC-S zone. Any proposed change to the approved CU/PUD prior to or after vesting requires additional land use review as a Minor (Type 2) or Major (Type 3) Modification of a Conditional Use. Both types of review allow for additional TIA analysis. The Council finds that BDC 20.20.40 (SC-S zoning provisions) as now enacted "make clear that the transportation capacity necessary to serve any undeveloped 1,899 residential units must be accounted for and preserved in any PUD applications for approval of non-residential development" as LUBA has asked. BDC 20.20.40.3 requires an applicant to demonstrate "that the minimum and maximum development targets identified in Section 20.20.40.2 have been or will continue to be satisfied on the properties that comprise the SC-S zoning district." The current requirements of 20.20.40 in conjunction with the other development application requirements, described above, require an accounting for the transportation capacity for 1,899 dwelling units, a "development target." The Council finds that the residential density requirement for the SC-S zoning district thus reduces the amount of transportation capacity available for non-residential uses, not the reverse.

Conclusion. The Council finds that, for the reasons identified in the Planning Commission staff report of November 30, 2011, Planning Commission Land Use Order No. 2274, the City Council staff report of January 31, 2012, Ordinance No. 4580, and in this staff report of October 23, 2012 the proposed Zoning Map Amendment satisfies the criterion that it apply city zoning that is most closely approximate to the density, uses and standards of county zoning. The Council interprets that criterion as one that must consider regional planning requirements, especially the preservation of housing capacity in the area affected by this rezone, and one that must be consistent with the city's comprehensive land use plan as to allowing industrial uses in areas zoned for transit oriented mixed use so as to create dense employment opportunities close to residential areas and close to transit facilities. The Council interprets the "most closely approximate" criterion as allowing the city to give last and least priority to matching the "standards" of county zoning and finds that the design standards of city code, the CU/PUD process that will apply as to all property zoned SC-S, and the cumulative design standards that will apply to this area given the transit facility and the presence of major pedestrian routes will equal or exceed county standards.

TA2012-0005 should be withdrawn for reasons stated in these findings as to ZMA2011-0002. The Council finds that the SC-S zoning district (as amended by TA2012-0004) more closely approximates County zoning for the subject parcels and no further amendments to the SC-S zoning district provisions are necessary or appropriate.

requirements is to assure that cities and counties have a significant amount of flexibility as to how they meet requirements. Performance standards are included in most titles. If local jurisdictions demonstrate to Metro that they meet the performance standard, they have met that requirement of the title. Standard methods of compliance are also included in the plan to establish one very specific way that jurisdictions may meet a title requirement, but these standard methods are not the only way a city or county may show compliance. In addition, certain mandatory requirements that apply to all cities and counties are established by this functional plan.

(Ordinance No. 97-715B, Sec. 1).

REGIONAL FUNCTIONAL PLAN REQUIREMENTS

TITLE 1: HOUSING CAPACITY

3.07.110 Purpose and Intent

The Regional Framework Plan calls for a compact urban form and a "fair-share" approach to meeting regional housing needs. It is the purpose of Title 1 to accomplish these policies by requiring each city and county to maintain or increase its housing capacity except as provided in section 3.07.120.

(Ordinance No. 97-715B, Sec. 1. Amended by Ordinance 02-969B, Sec. 1; and Ordinance No. 10-1244B, Sec. 2).

3.07.120 Housing Capacity

- A. A city or county may reduce the minimum zoned capacity of the Central City or a Regional Center, Town Center, Corridor, Station Community or Main Street under subsection D or E. A city or county may reduce its minimum zoned capacity in other locations under subsections C, D or E.
- B. Each city and county shall adopt a minimum dwelling unit density for each zone in which dwelling units are authorized except for zones that authorize mixed-use as defined in section 3.07.1010(hh). If a city or county has not adopted a minimum density for such a zone prior to March 16, 2011, the city or county shall adopt a minimum density that is at least 80 percent of the maximum density.
- C. A city or county may reduce its minimum zoned capacity by one of the following actions if it increases minimum zoned capacity by an equal or greater amount in other places

where the increase is reasonably likely to be realized within the 20-year planning period of Metro's last capacity analysis under ORS 197.299:

1. Reduce the minimum dwelling unit density, described in subsection B, for one or more zones;
2. Revise the development criteria or standards for one or more zones; or
3. Change its zoning map such that the city's or county's minimum zoned capacity would be reduced.

Action to reduce minimum zoned capacity may be taken any time within two years after action to increase capacity.

- D. A city or county may reduce the minimum zoned capacity of a zone without increasing minimum zoned capacity in another zone for one or more of the following purposes:
1. To re-zone the area to allow industrial use under Title 4 of this chapter or an educational or medical facility similar in scale to those listed in section 3.07.1340D(5) (b) (i) of Title 13 of this chapter; or
 2. To protect natural resources pursuant to Titles 3 or 13 of this chapter.
- E. A city or county may reduce the minimum zoned capacity of a single lot or parcel so long as the reduction has a negligible effect on the city's or county's overall minimum zoned residential capacity.
- F. A city or county may amend its comprehensive plan and land use regulations to transfer minimum zoned capacity to another city or county upon a demonstration that:
1. A transfer between designated Centers, Corridors or Station Communities does not result in a net reduction in the minimum zoned capacities of the Centers, Corridors or Station Communities involved in the transfer; and
 2. The increase in minimum zoned capacity is reasonably likely to be realized within the 20-year planning period of Metro's last capacity analysis under ORS 197.299
- G. A city or county shall authorize the establishment of at least one accessory dwelling unit for each detached single-family dwelling unit in each zone that authorizes detached single-family dwellings. The authorization may be subject to reasonable regulation for siting and design purposes.

(Ordinance No. 97-715B, Sec. 1. Amended by Ordinance No. 02-972A, Sec. 1; Ordinance No. 02-969B, Sec. 1; Ordinance No. 07-1137A, Sec. 1; and Ordinance No. 10-1244B, Sec. 2).

ZMA2011-0002 Peterkort Station Community Sunset Zoning Map Amendment
Density Scenario Comparison of County to SC-HDR/SC-S mix to SC-S

EXHIBIT 4

LAND INFORMATION TLID			Scenario 1 - Minimum WASHINGTON COUNTY minimum residential dwelling unit requirement satisfied as close to minimum floor area as possible							Scenario 2 - Minimum Residential, 3,000,000 sf Floor Area WASHINGTON COUNTY minimum residential dwelling unit requirement satisfied 3,000,000 square foot floor area maximum							Scenario 3 - Maximum Residential, Maximum Floor Area (BDC 20.20.40.2) WASHINGTON COUNTY maximum residential dwelling unit requirement (Station - fill balance to match 20.20.40.2 maximum) no maximum floor area (Station - fill balance to match 20.20.40.2 maximum)								
acres sf			RESIDENTIAL du	OFFICE sf	COMMERCIAL (retail) sf	CIVIC (other) sf	IND sf	total	RESIDENTIAL du	OFFICE sf	COMMERCIAL (retail) sf	CIVIC (other) sf	IND sf	total	RESIDENTIAL du	OFFICE sf	COMMERCIAL (retail) sf	CIVIC (other) sf	IND sf	total					
Gross																									
Net (Gross subtract Open Space, Slopes, Easements)																									
1S103A002200			Johnson Creek South - West Side (parcel 7)							Johnson Creek South - West Side (parcel 7)							Johnson Creek South - West Side (parcel 7)								
Gross	11.93	519,671	477	477,000	-	-	-	-	477,000	477	477,000	100,000	5,000	-	-	-	582,000	954	954,000	1,192,500	238,500	-	-	-	2,385,000
Net	9.21	401,188	1,000sf/du							415,737	1,000sf/du							582,000	1,000sf/du 50% of FA 10% of FA						
										min FA															
1S102B000500			Johnson Creek South - East Side (parcel 12)							Johnson Creek South - East Side (parcel 12)							Johnson Creek South - East Side (parcel 12)								
Gross	22.04	960,062	622	622,000	-	-	-	-	622,000	622	622,000	100,000	5,000	-	-	-	727,000	1,244	1,244,000	1,555,000	311,000	-	-	-	3,110,000
Net	15.74	685,634	1,000sf/du							460,830	1,000sf/du							727,000	1,000sf/du 50% of FA 10% of FA						
										min FA															
1S102B000500 see above			Holly District - (parcel 17)							Holly District - (parcel 17)							Holly District - (parcel 17)								
Gross			450	450,000	-	-	-	-	450,000	450	450,000	100,000	5,000	-	-	-	555,000	1,003	1,003,000	417,499	250,750	-	-	-	1,671,249
Net			1,000sf/du							384,025	1,000sf/du							555,000	1,000sf/du 25% of FA 10% of FA						
										min FA															
1S103AD00600			Hillside District (west)							Hillside District (west)							Hillside District (west)								
Gross	3.86	168,142	60	60,000	64,513	10,000	-	-	134,513	60	60,000	50,000	-	-	-	-	110,000	309	309,000	386,250	77,250	-	-	-	772,500
Net	1.46	63,598	1,000sf/du							134,513	1,000sf/du							110,000	1,000sf/du 50% of FA 10% of FA						
										min FA															
1S102CB00100 (Hillside)			Hillside District (east)							Hillside District (east)							Hillside District (east)								
Gross	3.35	145,928	140	140,000	-	-	-	-	140,000	140	140,000	50,000	-	-	-	-	190,000	268	268,000	50,000	67,000	-	-	-	385,000
Net	2.21	96,268	1,000sf/du							116,741	1,000sf/du							254,000	1,000sf/du 50% of FA 10% of FA						
										min FA															
1S102CA00500, 1S102CA00600, 1S102CB00100			Station District							Station District							Station District								
Gross	21.98	957,449	150	150,000	424,469	191,490	191,490	-	957,449	150	150,000	351,600	167,200	167,200	-	-	836,000	1,337	1,337,000	245,051	527,350	527,350	-	-	2,636,751
Net	20.49	892,544	1,000sf/du							957,449	1,000sf/du 40% of FA							836,000	1,000sf/du 40% of FA						
										min FA															
Aggregate Total																									
Gross	63.16	2,605,324	1,899	1,899,000	488,982	201,490	191,490	-	2,780,962	1,899	1,899,000	751,600	182,200	167,200	-	-	3,000,000	5,115	5,115,000	3,846,300	1,471,850	527,350	-	-	10,960,500
Net	49.11	2,042,964	2,469,294							2,780,962	2,469,294							3,000,000	10,960,500						
										min FA															

10/23/2012 4:30 PM

375 Table A. Permitted and Prohibited Uses in Transit Oriented Districts

WASHINGTON COUNTY LAND USE DISTRICTS			
USE	TO:BUS	TO:R40-80	TO:R80-120
375-7 Use Limitations			
Commercial Uses	(1)	(3)	(3)
1. The total gross floor area of commercial uses on a development site in the TO:BUS District shall not exceed forty (40) percent of the total gross floor area of all development on the development site, excluding floor area for hotels and associated conference rooms.			
3. Commercial Uses shall be permitted in the TO:R24-40, TO:R40-80 and TO:R80-120 Districts through a Type III procedure only if: (1) It can demonstrate they primarily serve adjacent residences and offices; (2) They are located on the first floor of a multi-story building; and (3) The proposed site is located at the intersection of an Arterial street and a Collector street, an Arterial street and a Special Area Collector, an Arterial street and a Special Area Commercial Street, a Special Area Collector and a Collector, or a Special Area Collector and a Special Area Neighborhood Route; or The proposed site is located on an Arterial, a Collector, a Special Area Collector, a Special Area Commercial Street, or a Special Area Neighborhood Route and is located across the street from lands designated either TO:RC or TO:BUS. When all these criteria are met, up to ten (10) percent of the total gross floor area of a development, not exceeding ten-thousand (10,000) square feet, may be used for commercial uses.			
Retail Business < 5,000 sq. ft. floor area (23.b.)	II	III	III
Retail Business > 5,000 sq. ft. floor area	II	N	N
23.b. Accessory outdoor seating related to the principal eating or drinking establishment use may be permitted, provided that the outdoor space is placed within a common open space. Sidewalks may be utilized for accessory outdoor seating if they meet the unobstructed width standards set forth in Section 431-5.1 B.(4) and approval is obtained fro the Operations Division Manager. In addition, the area devoted to the accessory outdoor seating does not exceed: (1) an area greater that the equivalent of (15) percent of the dining, drinking, or both floor area; or (2) seven-hundred and fifty (750) square feet. If outdoor seating is to exceed either fifteen (15) percent of the dining drinking, or both floor area or seven-hundred and fifty (750) square feet, the additional area in excess of seven-hundred and fifty (750) square feet must provide additional parking at a ratio as provided by the appropriate zoning district. (NOTE: The are devoted to accessory outdoor seating areas may be excluded fromthe development's total gross floor area for purposes of determining compliance with the FAR requirements.)			
Retail Business < 5,000 sq. ft. floor area (23.b.)	II	III	III
Retail Business > 5,000 sq. ft. floor area	II	N	N
Food Market (5)	II	N	N
5. N/A, applies only to TO:RC District 23.b. Accessory outdoor seating related to the principal eating or drinking establishment use may be permitted, provided that the outdoor space is placed within a common open space. Sidewalks may be utilized for accessory outdoor seating if they meet the unobstructed width standards set forth in Section 431-5.1 B.(4) and approval is obtained fro the Operations Division Manager. In addition, the area devoted to the accessory outdoor seating does not exceed: (1) an area greater that the equivalent of (15) percent of the dining, drinking, or both floor area; or (2) seven-hundred and fifty (750) square feet. If outdoor seating is to exceed either fifteen (15) percent of the dining drinking, or both floor area or seven-hundred and fifty (750) square feet, the additional area in excess of seven-hundred and fifty (750) square feet must provide additional parking at a ratio as provided by the appropriate zoning district. (NOTE: The are devoted to accessory outdoor seating areas may be excluded fromthe development's total gross floor area for purposes of determining compliance with the FAR requirements.)			
Theaters (not including drivein theaters)	II (10)	N	N
10. Theaters in the TO:BUS District shall meet the following development standards: (1) Ground coverage for the theater building shall not exceed seventy-thousand (70,000) square feet; and (2) The theater building shall not contain more than three-thousand five-hundred (3,500) seats for viewing.			
Vehicle Rental Without Storage Facilities	II	N	N

Chapter 20 LAND USES

CITY OF BEAVERTON ZONING DISTRICTS			
SC-HDR	SC-S	Category and Specific Use	
20.20.25. Use Restrictions			
63 Specific Uses listed in MU (13 is equivalent to 21% of the specific uses, 79% of the uses are not an issue for LUB/			
Commercial			
</			

375 Table A. Permitted and Prohibited Uses in Transit Oriented Districts

WASHINGTON COUNTY LAND USE DISTRICTS			
USE	TO:BUS	TO:R40-80	TO:R80-120
375-7 Use Limitations			
Office Uses	(12)	(13)	(13)
12. Where specified in a community plan, the percentage of gross floor area occupied by office uses in the TO:BUS District may be limited. 13. Office uses are permitted in the TO:R40-80 and TO:R80-120 Districts if located to allow shared parking with residences. The total gross floor area of office uses on a property in the TO:R40-80 District shall not exceed fifty (50) percent of the total gross floor area of all development on the property at build-out of an approved master plan, except where further limited by the applicable community plan. The total gross floor area of office uses on a property in the TO:R80-120 District shall not exceed twenty-five (25) percent of the total gross floor area of all development on the property.			
Professional Offices	II	II	II
Medical Offices and Clinics	II	II	II
Service Businesses (e.g., collection agencies, business management services)	II	II	II
Industrial Uses:			
Manufacturing	N	N	N
Warehouses	N	N	N
LEGEND and further information			
I = Permitted through a Type I process. If a use does not follow the minimum design standards in			
II = Permitted through a Type II process. If a use does not follow the minimum design standards in			
III = Permitted through a Type III process.			
() = Use or design limitation(s) specified in Section 375-7.			
N = Prohibited.			

Chapter 20 LAND USES

CITY OF BEAVERTON ZONING DISTRICTS			
SC-HDR	SC-S	Category and Specific Use	
20.20.25. Use Restrictions			
63 Specific Uses listed in MU (13 is equivalent to 21% of the specific uses, 79% of the uses are not an issue for LUB)			
Commercial			

WASHINGTON COUNTY LAND USE DISTRICTS			
USE	TO:BUS	TO:R40-80	TO:R80-120
Commercial Uses:			
	(1)	(3)	(3)
Retail Business < 5,000 sq. ft. floor area (23.b.)	II	III	III
Retail Business > 5,000 sq. ft. floor area	II	N	N
Food Market (5)	II	N	N
Bulk Product Sales	N	N	N
Hotels	II	N	N
Motels	N	N	N
Service Stations (7)	II	N	N
Car Washes	N	N	N
Storage Facilities (e.g., miniwarehouses, vehicle storage)	N	N	N
Short-Term Commercial Parking Facility	II (8)	N	N
Kennels	N	N	N
Commercial Schools (e.g., vocational, music, dance)	II	N	N
Vehicle Rental Without Storage Facilities	II	N	N
Theaters (not including drive-in theaters)	II (10)	N	N
Expansion of a Type II or III use			
Change of use for a Type II or III use			
Storage of materials and display of merchandise outdoors	N	N	N
Office Uses:			
	(12)	(13)	(13)
Professional Offices	II	II	II
Financial, Insurance, Real Estate Office	II	II	II
Medical Offices and Clinics	II	II	II
Veterinary Offices Without Outdoor Kennels	II	N	N
Service Businesses (e.g., collection agencies, business management services)	II	II	II
Administrative Offices	II	II	II
Expansion of a Type II or III use			
Change of use for a Type II or III use			
Residential Uses			
	(15)		
Detached Dwellings (30)	N	N	N
Duplexes and Triplexes	N	N	N
Townhouses and Rowhouses	II	II	II
Manufactured Homes	N	N	N
Low-Rise Apartments (12 stories)	II	II	II
Mid-Rise Apartments (35 stories)	II	II	II
High-Rise Apartments (6+ stories)	II	II	II
Day Care Facility Section 430-53.2 (27)	II	II	II
Group Care – Sections 430-53.1 and 430-53.4 (27)	II	II	II
Group Care Section 430-53.7 (32.a.)	N	II	II
Expansion of a Type I, II or III use			
Change of use for a Type I, II or III use			
Accessory Dwelling Units (Section 430-117.2)	N	N	N
Industrial Uses:			
	N	N	N
Manufacturing	N	N	N
Research and Development	N	N	N
Warehouses	N	N	N
Equipment Storage	N	N	N
Expansion of a Type I or III use	N	N	N
Change of use for a Type II or III use	N	N	N
Institutional Uses:			
	N	N	N
Hospitals	N	N	N
Churches (19)	II	III	III
Elementary Schools (20)	N	N	N
Schools (middle, high, colleges)	N	N	N
Public Buildings	III	III	III
Expansion of a Type II or III use			
Change of use for a Type II or III use			
Parks:			
	N	N	N
Regional	N	N	N
Community	N	N	N
Neighborhood Sections 430-97	I or II	I or II	I or II
Special Recreation Uses (21)	III	III	III
Accessory Recreation Uses (22)	II	II	II
Expansion of a Type I, II or III use			
Change of use for a Type I, II or III use			
Accessory, Secondary and Temporary Uses and Structures:			
	I or II	I	I
Accessory Uses and Structures (23.a. and 23.b.)	I	I	I
Temporary Uses and Structures (24)	I	I	I
Home Occupations (25)	N	I	I
Collocated antennas, excluding those antennas exempt pursuant to Sections 430-109.1 and 201-2 - Section 430-109.3 (26)			
	I	I	I
Facility 2 communication towers to a maximum height of onehundred (100) feet, excluding those towers exempt pursuant to Sections 430-109.1 and 201-2 - Section 430-109.4(26)	I	I	I
Facility 2 communication towers greater than onehundred (100) feet and up to twohundred (200) feet in height, excluding those towers exempt pursuant to Sections 430-109.1 and 201-2 - Section 430-109(26)	II	N	N
Facility 2 communication towers greater than twohundred (200) feet in height, excluding those towers exempt pursuant to Sections 430-109.1 and 201-2 - Section 430-109 (26)	III	N	N
Expansion of a Type I, II or III use			
Change of use for a Type I, II or III use			
Elementary Schools Accessory to a Campus Development (28)	N	N	N
375-5 Prohibited Uses			
375-5.1 Uses in each of the transit oriented districts that are identified in Table A as a prohibited use.	N	N	N

CITY OF BEAVERTON ZONING DISTRICTS			
SC-HDR	SC-S	Category and Specific Use	
P ¹³⁻²⁵	P ²⁵	14. Retail	A. Retail Trade
P ¹⁰⁻¹³	P	6. Eating and Drinking Establishments	
P ¹³⁻²⁵	P ²⁵	14. Retail	A. Retail Trade
P ¹⁰⁻¹³	P	6. Eating and Drinking Establishments	
P ¹³⁻²⁵	P ²⁵	14. Retail	A. Retail Trade
N	N	14. Retail	B. Bulk Retail
C ⁴¹	C ⁴²	17. Temporary Living Quarters	
C ⁴¹	C ⁴²	17. Temporary Living Quarters	
C ²⁵	N P C ¹⁷	18. Vehicles	B. Automotive Service, Minor
C ²⁵	N P C ¹⁷	18. Vehicles	B. Automotive Service, Minor
N	N	16. Storage	A. Self Storage
C	C	11. Parking as the Principal Use	
N	N	2. Animal	A. Animal Care, Major
P	P	19. Education	A. Commercial Schools
P ⁹⁻⁴⁶	P ²⁸	18. Vehicles	E. Rental
C ¹³	P	4. Commercial Amusement	
P ⁸	P	10. Office	
P	P	7. Financial Institutions	
P ⁸	P	3. Care	B. Medical Clinics
P	P	2. Animal	B. Animal Care, Minor
P ⁹	P	15. Service Business / Professional Services	
P ⁸	N	1. Dwellings	B. Detached
P ⁴	P	1. Dwellings	A. Attached
P ⁴	P	1. Dwellings	B. Detached
P ⁴	P	1. Dwellings	A. Attached
P ⁴	P	1. Dwellings	A. Attached
P	P	3. Care	C. Child Care Facilities
P	P	3. Care	D. Residential Care Facilities
P	P	3. Care	
N	P ²⁸	27. Manufacturing, Fabricating, Assembly, Processing, and Packing	
N	P	29. Warehousing ⁵⁵	
C ³⁹	N	16. Storage	B. Storage Yards
C	P	3. Care	A. Hospitals
P C ⁴⁸	P C ⁴⁸	20. Places of Worship	
P	P	19. Education	B. Educational Institutions
P	P	19. Education	
C	C	21. Public Buildings, Services and Uses	
P	P		A. Public Parks, Parkways, Playgrounds, and Related Facilities
P	P	23. Recreation	
P	P	23. Recreation	
C ⁵⁴	P	23. Recreation	B. Recreational Facilities
P	P	1. Dwellings	C. Home Occupation
W1	W1	30. New WCF	C. Replacement tower to provide collocation opportunity ⁶²
W2	W2	30. New WCF	D. Attachment of a new WCF to buildings or structures and utilize stealth design ⁶³
W1	W1	30. New WCF	E. Incorporation of WCF into the architectural features and utilize stealth design ⁶³
W1	W1	32. Collocation	A. New WCF on existing WCF tower
W2	W2	32. Collocation	B. New WCF inclusive of antennas on existing WCF tower exceeding height standard
W1	W1	33. Antennas	A. Attachment of antennas to WCF tower or pole structures other than used for cellular phone service

375-5.2 Structures or uses not specifically authorized by the applicable transit oriented district, unless the structure or use has substantially similar use and impact characteristics to a use listed as determined through the provisions of Section 202-2.2.	N	N	N
375-5.3 New Facility 3 and 4 Communication Towers.	N	N	N
375-5.4 New Broadcast Towers.	N	N	N
375-5.5 Telecom Hotels.	N	N	N

W3	W3	30. New WCF	A. Tower Construction
N	N	30. New WCF	B. Attachment to existing or new building or structure not using stealth design
W1	W1	30. New WCF	F. Attachment of WCF to existing structures ⁶⁴

City Land Uses NOT MATCHED TO County Land Uses			
C	C	1. Dwellings	D. Planned Unit Development
N ¹⁰	N P C ^{17 18}	5. Drive Up Window Facilities ¹⁴	
P	P	8. Live / Work Uses	
N	P	9. Meeting Facilities	
P ²⁷	P ^{28 29}	12. Rental Business	
N	N	13. Rental of Equipment Only	
N	N	18. Vehicles	A. Automotive Service, Major
N	N	18. Vehicles	C. Bulk Fuel Dealerships.
P ^{9 46}	P ^{28 47}	18. Vehicles	D. Sales or Lease
P	P	22. Railroad Tracks and Facilities	A. Passenger
N	N	22. Railroad Tracks and Facilities	B. Freight
P C ⁴⁸	P	24. Social Organizations	
C	P	25. Transit Centers	
C	C	26. Utilities	A. Utility Substations and Related Facilities other than Transmission Lines.
P	P	26. Utilities	B. Trans-mission Lines
N	P	28. Printing, Publishing, and Book Binding	
W2/ W3	W2/ W3	31. Equipment in Right-of-Way	A. Above-ground installation of equipment for WCF within right-of-
W3	W3	34. Satellite Antennas and Direct to Home Satellite Service	A. DHSS antennas >1 m. in diameter
W1	W1		B. Up to 2 antennas >2 m. in diameter
W2	W2		C. Up to 5 antennas >2 m. in diameter
W3	W3		D. More than 5 antennas >2 m. in diameter
W1	W1		E. Up to 2 antennas <5 m. in diameter
W2/ W3	W2/ W3		F. 3 to 5 antennas >5 m. in diameter
W3	W3		G. More than 5 antennas >5 m. in diameter

LEGEND and further information
I = Permitted through a Type I process. If a use does not follow the minimum design standards in Section 431, the use
II = Permitted through a Type II process. If a use does not follow the minimum design standards in Section 431, the
III = Permitted through a Type III process.
() = Use or design limitation(s) specified in Section 375-7.
N = Prohibited.

LEGEND and further information
P: Permitted
COMBINATION OF P: Permitted C: Conditional N: Prohibited
C: Conditional
All superscript notations refer to applicable Use Restrictions Section 20.20.25.
N: Prohibited



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August 31, 2012

VIA E-MAIL

Leigh Crabtree
Associate Planner
City of Beaverton
PO Box 4755
Beaverton, OR 97076-4755

**Re: Remand of City of Beaverton File Nos. APP 2011-0002, APP 2011-0003
and APP 2011-0004**

Dear Ms. Crabtree:

This office represents Providence Health & Services – Oregon ("Providence"). Providence participated in the above-referenced decisions. LUBA has remanded the decisions to the City of Beaverton. On behalf of Providence, I ask that I be given written notice of any public hearings scheduled on the remand and that I be given notice of the City decision on remand.

Please place this letter in the official Planning Department file for this matter and before the City Council at any public hearing on remand. Please also add me to the mailing list for notice of the hearing and decision. Thank you in advance for your courtesy and assistance.

Very truly yours,

Michael C. Robinson

MCR:cfr

Cc: Client

38638-0076/LEGAL24555811.1

ANCHORAGE • BEIJING • BELLEVUE • BOISE • CHICAGO • DALLAS • DENVER • LOS ANGELES • MADISON • NEW YORK
PALO ALTO • PHOENIX • PORTLAND • SAN DIEGO • SAN FRANCISCO • SEATTLE • SHANGHAI • WASHINGTON, D.C.

Perkins Coie LLP

Henry Kane
12077 SW Camden Lane
Beaverton, OR 97008
(503) 643-4054
Oct. 3, 2012

RECEIVED

OCT 03 2012

City of Beaverton
Planning Services

Objections to the following October 30, 2012 hearings notices:

ZMA2012-0002, Ordinance No. 4580, Sunset Zoning Map Amendment

Text Amendment TA2012, BDC 20.20 – multiple use districts

TA2012-0004 Text Amendment to BDC 40.15.15.4.Conditional Use – PUD

TA2012-005 Text Amendment to BDC 20.20, Multiple Use Zoning Districts.

Greetings:

Motion

The above hearing notices do not comply with the following provisions of ORS 197.763, hence the notices are prejudicial and invalid and must be replaced by correct notices.

ORS 197.763(3) (a) – “Explain * * * the proposed use or uses which could be authorized;”

ORS 197.763(3)(c) – “Set forth the street addresses or other easily understood geographical reference to the subject property;”

ORS 197.763(g) – “Include the name of a local government representative to contact and the telephone number where additional information may be obtained;”

ORS 197.763(h) – “State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;”

ORS 197.763(3)(i) – “State that a copy of the staff report will be available for inspection at no cost and will be provided at reasonable cost at least seven days prior to the hearing and will be provided at reasonable cost ...”



Henry Kane, OSB 610450-Inactive

Henry Kane
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(503) 643-4054
Oct. 3, 2012

RECEIVED

OCT 03 2012

Steven Sparks
Beaverton Planning Director
PO Box 4755
Beaverton, OR 97076

City of Beaverton
Planning Services

Greetings:

Re: Public Records Law request for documents

Attached is a marked copy of the Planning Commission NOTICE OF CITY COUNCIL Text Amendment scheduled for hearing before the City Council on October 30, 2012.

The second paragraph of the Summary states: "The State of Oregon Land Use Board of Appeals (LUBA) in its Opinion No.2012-021 remanded * * *."

The final sentence of the second paragraph of the Summary states: "This hearing will consider City staff recommendations as to whether or not to revise the uses that would be permitted under SC-S zoning by revisions to Development Code Section 20.20."

1. Pursuant to the Public Records Law, and at my cost, I request a copy of the document that states "LUBA suggested that the City consider whether to revise the mix of permitted uses in the SC-S zone * * *."

2. Pursuant to the Public Records Law, and at my cost, I request a copy of the document that states: "* * * The City has been given direction to further address and clarify specific issues associated with adoption of Ordinance 4580."

3. Pursuant to the Public Records Law, and at my cost, I request a copy of the documents described as follows: "This hearing will consider City staff recommendations as to whether or not to revise the uses that would be permitted under SC-S zoning by revisions to Development Code Section 20.20."

4. Pursuant to the Public Records Law, and at my cost, I request a copy of the LUBA rule that authorizes a public body on remand to conduct a hearing up to 90 days after the date of the LUBA remand order.



Henry Kane, OSB 610450-Inactive

Henry Kane
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(503) 643-4054
Oct. 15, 2012

Mayor Denney Doyle and Council

Chair and Commissioners
Beaverton Planning Commission
Planning Services Director Steven Sparks
Associate Planner Leigh Crabtree
Beaverton City Attorney William Kirby
PO Box 4755
Beaverton, OR 97076

Re: **ZMA2012-0004 Text Amendment Peterkort Station Community –
Sunset Zoning Map Amendment Ordinance No. 4580**

Hearing on remand scheduled for 6:30 p.m. Tuesday, October 30, 2012

Introduction

Page 38, lines 16-20 of the LUBA order on remand concludes:

"Ordinance 4580 is the ordinance that applied city SC-S zoning to six parcels. Ordinance 4580 is the subject of LUBA Bi, 2012-021. Our resolution of the First Assignment of Error requires that we remand Ordinance 4580. We deny Petitioners' remaining assignments of error. We therefore affirm 4579, 4581 and 4582, which are the subject of LUBA Nos. 2912-020, 2012-022 and 2012-0223."

This document is filed before the 5:00 pm Monday, October 15, 2012 filing deadline. Opponent Kane expects the staff report to respond to all issues raised in this document. When there is a duty to respond, as in the remand at bar, silence in the staff report admits the merits of the contents of this document.

Motion of Opponent Henry Kane to Reschedule Remand Hearing

Opponent Henry Kane moves the Beaverton Planning Commission to reschedule the Peterkort application on remand to a date after October 30, 2012, to give a 20-day notice of the rescheduled hearing, publish a notice of hearing complying with the notice provisions of ORS 197.763 and publish the notice in a newspaper of general circulation in the City of Beaverton: *The Beaverton Valley Times*.

The above motion is based on Hausam v. City of Salem, 179 Or App 417, 423, 37 P3d 1039 (2001), below.

Oregon Land Use Law is a publication of the Oregon State Bar. Page 14-25 of the 2010 edition states:

"In Hausam v. City of Salem, 178 Or App 417, 423, 37 P3d 1039 (2001), * * * the action on remand was characterized as a 'new phase' of the case. Thus, the evidentiary hearing on rebuttal could not be counted as one of two or more evidentiary hearings for purposes of ORS 197.763(3)(f)."

The Internet report on Hausam v. City of Salem, held at 178 Or App at 423:

"In this case, the city's compliance with the remand is a new phase of the case requiring one or more evidentiary hearings. This hearing was not simply another in a string of announced evidentiary hearings on the initial application.

(no paragraph)

Consequently, we conclude that the city is obligated to provide 20 days' notice of the new evidentiary hearing under ORS 197.763(3)(f)(A)."
(emphasis added)

The remanded Land Use Decision Lacks Required Findings of Fact

The remanded Beaverton land use order is long on unsupported generalities and short on required findings of fact.

Pages 14-107 of the 2010 edition of the Oregon State Bar volume on Land Use states:

"* * * Findings ensure that applicable legal standards have been addressed and show that the decision complies with the applicable law. '[F]indings must (1) identify the relevant approval standards, (2) set out the facts which are (2) believed and relied upon, and (3) explain how those facts lead to the decision on compliance with the approval standards.'"

Citations include the leading case of South Sunnyside Neighborhood League v. Board of Comm'rs, 280 Or 3, 20-21, 569 P2d 1063 (1977)."

Inadequate findings include "Findings that amount to mere generalities and conclusions without a sufficient statement of the facts on which they are based."

Sunnyside Neighborhood v. Clackamas Co. Comm. held at 280 Or 21:

"We wish to make clear that by insisting on adequate findings of fact we are not simply imposing legalistic notions of proper form, or setting an empty exercise for local governments to follow.

(no paragraph)

No particular form is required and no magic words need be employed. What is needed for adequate judicial review is a clear statement of what, specifically the decision-making body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based. Conclusions are not sufficient." (emphasis added)

The Oregon Supreme Court held at 280 Or 23:

"* * * we find them to be inadequate to permit a proper review of the order of amendments to the plan map."

The City Erred by Not Requiring the Mandatory Traffic Impact Analysis and Requiring Remedial Action to Reduce Peterkort Development Congestion On and Near Barnes Road and Highway 217

The Planning Commission and City Council erred by not requiring the Peterkort applicant to produce the mandatory Traffic Impact Analysis of the effect of the approved plan on traffic in the vicinity of the Peterkort property.

Both bodies ignored the uncontradicted testimony of the adverse effects of the proposed Peterkort development on motor vehicle traffic congestion in and near the proposed Peterkort development.

Opponent Kane lived in the Cedar Hills neighborhood between 1955 and 1965 and in the Oak Hills planned community between 1965 and 1973. Opponent Kane states as a fact that during rush hours in the vicinity of the Peterkort property the stop-and-go traffic is about Level of Service 5 -- maximum delay.

The City Erred in Not Including in the Approval Order that the Peterkort Owners Would Not Object to Selling Peterkort Land to Reduce Barnes Congestion

The City Erred in Not Zoning Some Land in the Peterkort Applications for Residential Development

The City Erred by Failing to Comply with Statewide Planning Goal 2, the Metro UGMFP Titles 1, 6, 7, and 12

The City Erred by Not Requiring Residential Housing Near the TriMet Transit Center

Note. The homeowners adversely affected by the remanded order at bar include the Cedar Mill and other homeowners that seized the microphone from a Wal-Mart attorney who refused to answer relevant questions about the Wal-Mart application.

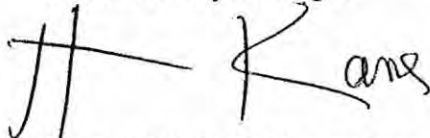
The City Council reversed the Planning Commission's approval of the Wal-Mart application. To this day the former Wal-Mart site is undeveloped.

Opposition would be less or not exist if the City Council decision complies with the Washington County-Beaverton annexation agreement and Oregon and Metro land use housing and traffic rules.

I do not speculate on what adversely affected Cedar Mill area homeowners would do if the City approves the Peterkort application without requested amendments to protect livability and property values.

The City should apologize for keeping the Peterkort application secret for some 16 months, then conducting the Planning Commission hearing without giving opponents sufficient time to prepare for the hearing on complicated land use issues.

Former Mayor Rob Drake's secrecy about forced annexation was a factor in his defeat some years ago.

A handwritten signature in black ink, appearing to read 'H Kane', with a stylized 'H' and a cursive 'Kane'.

Henry Kane, OSB 610450-Inactive

Henry Kane
12077 SW Camden Lane
Beaverton, OR 97008
(503) 643-4054
Oct. 22, 2012

RECEIVED

OCT 22 2012

City of Beaverton
Planning Services

Beaverton Mayor Denny Doyle and Council
Beaverton Community Development Department
City Attorney William Kirby
Planning Director Steve Sparks
Associate Planner Leigh Crabtree
PO Box 4755
Beaverton, OR 97076

Mintz v. City of Beaverton, ZMA2012-0002 Peterkort Station Community
Sunset Zoning Map Amendment Ordinance No. 4580.
Remanded August 30, 2012.

Motion

Pursuant to ORS 197.763(6)(a)(b), Opponent Henry Kane moves the Beaverton
City Council to keep the record open seven days after close of initial testimony.

Approval of the motion is mandatory.

A handwritten signature in black ink, appearing to read 'H Kane', is written over a horizontal line.

Henry Kane, OSB 610450-Inactive
Opponent on Remand

Henry Kane
12077 SW Camden Lane
Beaverton, OR 97008
(503) 643-4054
Oct. 22, 2012

RECEIVED
OCT 22 2012
City of Beaverton
Planning Services

Fax: 503 847 3407 and mail

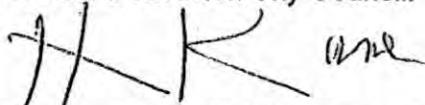
Robert W. Hermann
Washington County District Attorney
150 N First Ave., Suite 300 MS40
Hillsboro, OR 97124

Greetings:

Attached is a copy of petitioner's October 3, 2012 Public Records Law request to Steven Sparks, City of Beaverton planning director. Mr. Sparks has not responded.

Pursuant to ORS 192.250, and at Petitioner Henry Kane's cost, petitioner moves Washington County District Attorney Robert W. Hermann to order Beaverton Planning Director Steven Sparks to produce documents numbered 1-3 in the attached letter to Mr. Sparks by noon Wednesday, Oct. 24, 2012, or show cause why they should be withheld.

The documents are relevant to a land use hearing scheduled for October 30, 2012 before the Beaverton City Council.


Henry Kane, OSB 610450-Inactive

C: Planning Director Steven Sparks
Beaverton City Attorney William Kirby

Encl.



EXHIBIT E

MEMORANDUM

City of Beaverton

Community and Economic Development Department

To: City Council
From: Leigh Crabtree, Associate Planner
Date: October 23, 2012
Subject: LUBA Remand of Ordinance No. 4580 *LM*
Henry Kane Motion to Leave the Record Open of October 22, 2012

Attached to the staff reports associated with the Land Use Board of Appeals remand of Ordinance Number 4580 the Council will find correspondence from Henry Kane. In the correspondence Mr. Kane makes many assertions. Staff wish to respond to one issue raised by Mr. Kane in his letter dated October 22, 2012.

The City Council's public hearing on October 30, 2012 is not the initial evidentiary hearing on this matter and this text amendment has been a legislative, not a quasi-judicial process. As noted in the reports, this matter was the subject of earlier public hearings before the Beaverton Planning Commission and City Council. Therefore, the City Council is under no statutory obligation to hold the record of this proceeding open for any additional time nor to grant a continuance, although those options are available to the Council on its own initiative.

Beaverton

COMMUNITY AND ECONOMIC DEVELOPMENT
PO BOX 4755
BEAVERTON OR 97076-4755

First Class Mail
ComBasPrice



ATTN: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND
CONSERVATION AND DEVELOPMENT
635 CAPITOL ST NE, SUITE 150
SALEM, OR 97301-2540

DEPT OF

JAN 14 2013

LAND CONSERVATION
AND DEVELOPMENT