

ORDINANCE NO. 1043

AN ORDINANCE ANNEXING INTO THE CITY OF STAYTON CERTAIN REAL PROPERTY LOCATED ON FERN RIDGE ROAD AND CHANGING THE ZONING OF THE PROPERTY FROM MARION COUNTY URBAN TRANSITIONAL (UT) TO CITY OF STAYTON MEDIUM DENSITY RESIDENTIAL (MD)

WHEREAS, Gene Jones has initiated annexation of that certain real property located in the southwest quarter of Section 2, Township 9 South, Range 1 West, Willamette Meridian, Marion County, Oregon, more particularly described in Exhibit A attached hereto and incorporated herein, and further illustrated on a surveyor's plat shown in Exhibit B attached hereto and incorporated herein, and shown as Parcels 500 and 600 on the excerpt of Marion County Assessor's Map 091W02 shown in Exhibit C attached hereto and incorporated herein;

WHEREAS, at the time of application, Robert H. Miller, trustee of the Robert H. Miller Trust, Beverly M. Cox and Richard F. Cox, trustees of the Beverly M. Cox Living Trust, Dan Wagner, Christine L. Miller, Margaret A. Williams, and Ronald J. Williams and Margaret A Williams, trustees of the Williams Living Trust, joint owners of the property, had consented to the annexation of the property;

WHEREAS, on October 14, 2019, pursuant to ORS 222.125 and Stayton Municipal Code (SMC) Section 17.12.210, Gene Jones filed with the City of Stayton, Oregon, an annexation application, an application for Comprehensive Plan Amendment from Residential to Commercial, and a request to assign Interchange Development zoning to the annexed territory with the intent to develop a recreational vehicle park;

WHEREAS, a public hearing was held on the application before the Stayton Planning Commission on December 9, 2019 and the hearing was continued until January 27, 2020;

WHEREAS, on January 14, 2020, the applicant withdrew the application for Comprehensive Plan Amendment, and requested Medium Density Residential zoning be applied to the annexed territory with the intent of constructing a mobile home park;

WHEREAS, following the January 27, 2020 public hearing, the Planning Commission recommended to the City Council that the territory be annexed into the City Limits and that Medium Density Residential Zoning be applied to the annexed territory;

WHEREAS, the Stayton City Council held a public hearing as required by law on March 2, 2020;

WHEREAS, at the March 2, 2020, public hearing before the City Council, the applicant requested that City Council apply High Density Residential zoning to the property to allow for the development of multi-family dwellings;

WHEREAS, on March 2, 2020, the City Council continued the public hearing until April 6, 2020 to allow the submission of a conceptual plan for a multi-family development;

WHEREAS, on March 8, 2020, Govern Kate Brown issued Executive Order No 20-03 declaring an emergency throughout the state of Oregon due to the Coronavirus outbreak and on March 12 issued Executive Order No 20-05 prohibiting large gatherings due to the Coronavirus outbreak;

WHEREAS, on July 9, 2020, the applicant purchased the property and is now the owner of the property as the trustee of the Jones Living Trust;

WHEREAS, as a result of the COVID-19 pandemic the continuation of the hearing on the application was postponed until October 11, 2021;

WHEREAS, the territory to be annexed is contiguous to the City Limits on three sides;

WHEREAS, the Stayton City Council makes further findings of fact regarding the application as contained in Exhibit D attached hereto and incorporated herein;

WHEREAS Chapter 51 of the Oregon Laws of 2016 requires the City Council to finalize the annexation and not forward the application to the voters of the City as required by the City Charter and SMC Section 17.12.210.2.a.2);

WHEREAS, the Stayton City Council concludes, based on the findings of fact contained in Exhibit D, that the application meets the criteria for approval in SMC 17.12.210.5; and

WHEREAS, the Stayton City Council concludes, based on the findings of fact contained in Exhibit D, that the appropriate zoning for the territory to be annexed is Medium Density Residential in order to assist the City meet its goal of between 5 and 6 housing units per acre of land zoned residential, and to meet the housing needs projected in the Stayton Comprehensive Plan.

NOW THEREFORE, the City of Stayton ordains:

**Section 1.** Pursuant to ORS 222.125, the Stayton City Council hereby proclaims the annexation to the City of Stayton, Oregon, of territory in the southwest quarter of Section 2, Township 9 South, Range 1 West, Willamette Meridian, Marion County, Oregon, the legal description of which is described in Exhibit A, which is attached hereto and by reference incorporated herein.

**Section 2.** Pursuant to ORS 222.005 the Stayton City Recorder shall provide by certified mail to all public utilities, telecommunication facilities, and franchise holders operating within the City a written notice of each site address to be annexed as recorded on the Marion County assessment and tax rolls a legal description and map of the proposed boundary change, and a copy of this Ordinance. This notice shall be mailed within ten (10) working days of the passage of this Ordinance.

**Section 3.** Pursuant to ORS 222.010 the Stayton City Recorder shall, within ten (10) days of the passage of this Ordinance, send to the Marion County Clerk and Marion County Assessor a report of the annexation including a detailed legal description of the new boundaries established by the City.

**Section 4.** Pursuant to ORS 308.225(2) the Stayton City Recorder shall provide to the Oregon Department of Revenue a copy of this Ordinance, containing the legal description and map of the territory being annexed.

**Section 5.** Pursuant to ORS 222.177 the Stayton City Recorder shall provide to the Oregon Secretary of State a copy of this Ordinance, containing the legal description and map of the territory being annexed, and a copy of documents indicating consent of the property owners.

**Section 6.** The Stayton Official Zoning Map is hereby amended to include the annexed territory as Medium Density Residential, with the Natural Resources Overlay District applying within 100 feet of Lucas Ditch.

**Section 7.** Upon adoption by the Stayton City Council and the Mayor's signing, this Ordinance shall become effective 30 days after the date of signing and then only if no appeal to the Oregon Land Use Board of Appeals (LUBA) is timely filed. In the event of a timely appeal to LUBA, this decision shall not become effective until the LUBA appeal is finally resolved, including any appeals from the decision of LUBA.

ADOPTED BY THE CITY COUNCIL this Eighteenth day of October, 2021.

CITY OF STAYTON

Signed: \_\_\_\_\_, 2021

BY: \_\_\_\_\_  
Henry A Porter, Mayor

Signed: \_\_\_\_\_, 2021

ATTEST: \_\_\_\_\_  
Alissa Angelo, City Manager Pro Tem

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## EXHIBIT A, Annexation Area

Commencing at a 3" Brass Cap being the section corner of Sections 2, 3, 10, and 11, located in the Southwest quarter of Section 2, Township 9 South, Range 1 West, of the Willamette Meridian, City of Stayton, Marion County, Oregon, Thence North 00°50'03" West 30.00 Feet to the True Point of Beginning; thence along the North right of way line of Fern Ridge Road North 89°01'20" East 901.88 feet to a 3/4" iron rod at the Southwest corner of a Tract recorded in Reel 3640, Page 012, Marion County Deed Records; thence along the west line of said Tract North 00°58'13" West 705.01 feet to a 3/4" iron pipe on the Southerly right of way line of North Santiam Highway No. 22; thence along the said right of way line the following three calls, North 61°16'37" West 13.96 feet to a 5/8" iron rod; North 66°09'53" West 400.51 feet to a 5/8" iron rod; North 63°18'29" West 591.00 feet; thence South 00°50'03" East 1154.46 feet to the Point of Beginning and containing 19.10 acres of land more or less.

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EXHIBIT B, Map of Annexation Area

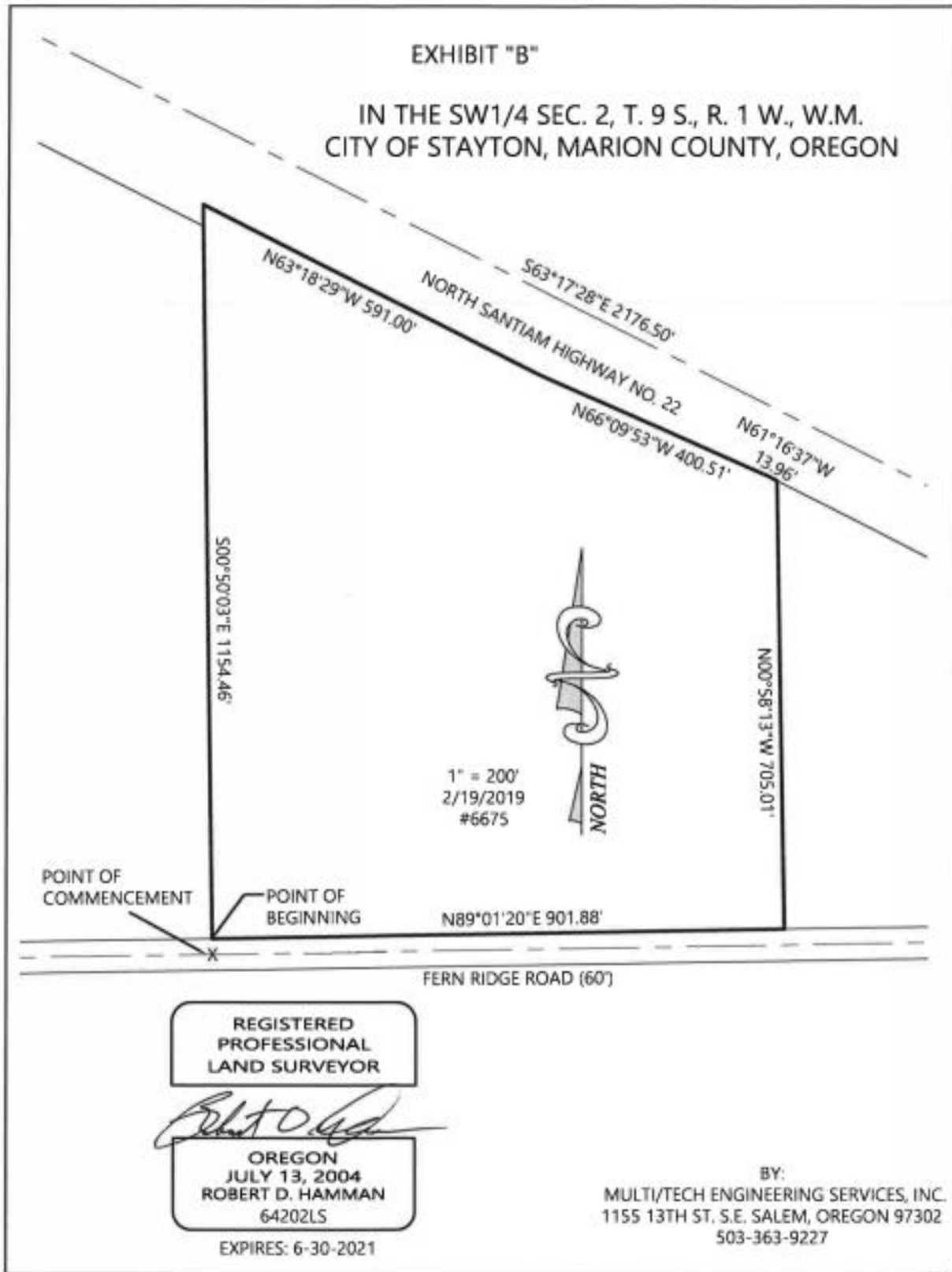
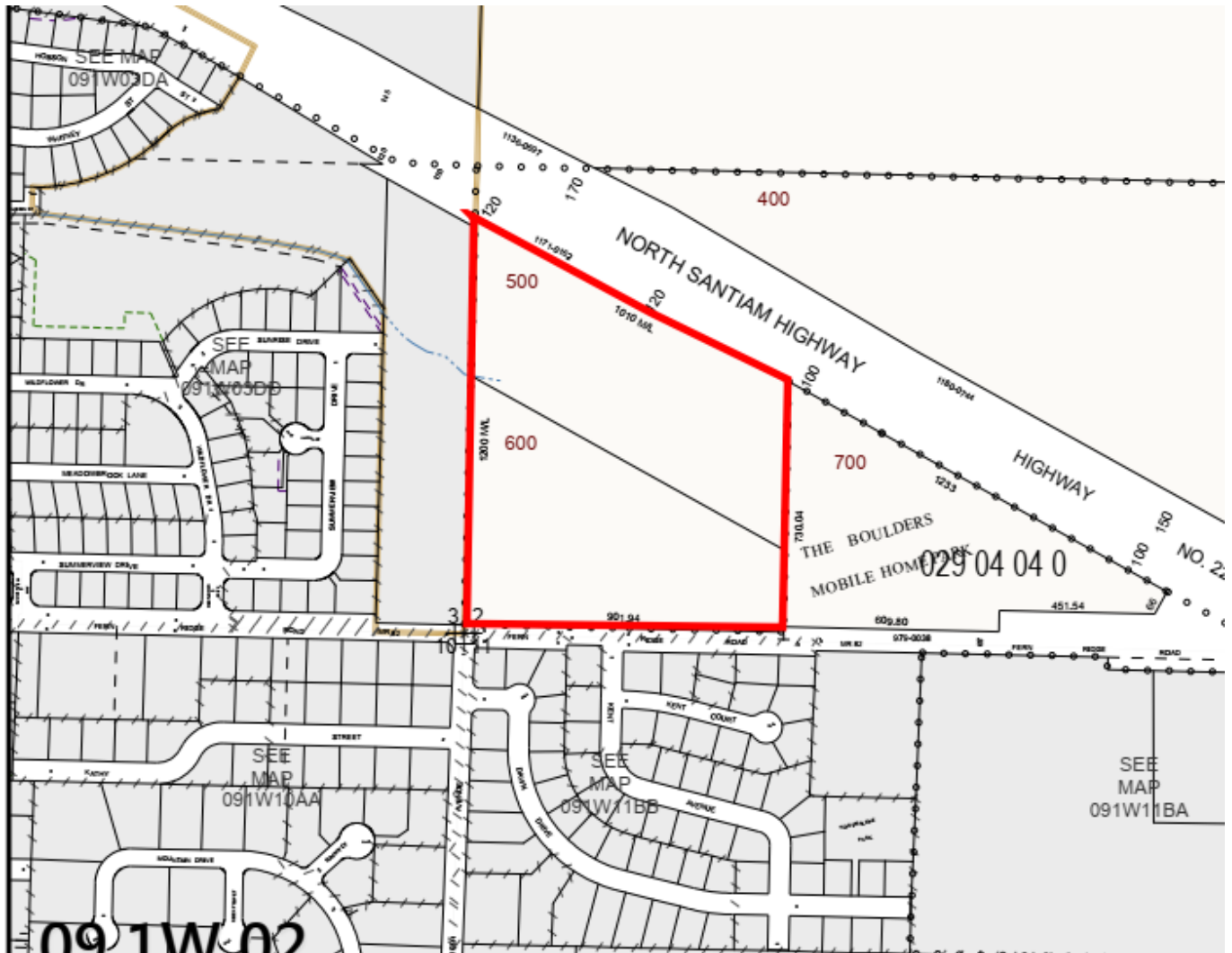


EXHIBIT C, Excerpt From Marion County Assessors Map 091W02  
Showing Territory Being Annexed



## EXHIBIT D, CITY COUNCIL FINDINGS OF FACT

### LAND USE FILE #11-07/19

#### A. EXISTING CONDITIONS

1. At the time of application, the owners of the property were the Robert H Miller Trust, Beverly M Cox Living Trust, Dan Wagner, Christine L Miller, Margaret A Williams, and Williams Living Trust.
2. The applicant is Eugene Jones, who had submitted a copy of a sales agreement when the application was filed and at the time of decision is the owner of the property, as trustee of the Jones Living Trust.
3. The property can be described as Township 9, Range 1 West of the Willamette Meridian, Section 2, Tax Lots 500 and 600. Tax Lot 600 is addressed as 13601 Fern Ridge Rd, Stayton.
4. The property is currently outside of the City Limits and zoned Marion County Urban Transition (UT-20). The property is designated as Residential by the Stayton Comprehensive Plan Map.
5. The property is located on Fern Ridge Rd and also has frontage on State Highway 22. The property is approximately 19.1 acres in area with approximately 902 feet of frontage on Fern Ridge Rd.
6. State Highway 22 is a limited access highway and there is no access permitted from the property to State Highway 22.
7. The property to the west is inside the City Limits, is zoned Public/Semi-Public, was annexed in 1977, and is developed as a church. The properties to the south and across Fern Ridge Rd are located inside the City Limits, are zoned Low Density Residential, were annexed in 1953, and are developed with single family detached dwellings. The property to the east is located inside the City Limits, is zoned Medium Density Residential, was annexed in 1992, and is developed as a mobile home park. The property to the north and across State Highway 22, is outside of the city limits and outside of the Stayton Urban Growth Boundary, is zoned Exclusive Farm Use by Marion County, and is farmland.
8. The property is currently vacant, with only a small storage building on the property.
9. The property is traversed by Lucas Ditch.

#### B. PROPOSAL

The proposal is to annex approximately 19.1 acres of land into the City. The applicant had also applied for a Comprehensive Plan Map amendment from Residential to Commercial. The application for Comprehensive Plan Map amendment was withdrawn on January 14, 2020. Though the applicant has not submitted an application for development approval, the application for annexation was accompanied by a conceptual plan for a recreational vehicle park. With the withdrawal of the Comprehensive Plan Map amendment application, the applicant submitted a conceptual plan for the future development of a mobile home park. At the City Council's March 2, 2020 public hearing, the applicant announce his desire to construct a multi-family development. A conceptual plan for a multi-family development was submitted on March 12, 2020.

### C. AGENCY COMMENTS

The following agencies were notified of the proposal: City of Stayton Public Works, Stayton Cooperative Telephone Company, Pacific Power, NW Natural Gas, Stayton Fire District, Marion County Public Works, Marion County Planning Division, Santiam Water Control District, Oregon Department of Transportation, and the North Santiam School District.

Marion County Planning Division replied with no comment. Comments were received from the Stayton Public Works Department through the City Engineer, from the City's transportation engineering consultant, and from Marion County Public Works. These comments are incorporated into the findings below. The comments from Marion County Public Works addressed future development of the property and were not relevant to this application.

### D. PUBLIC COMMENTS

The Planning and Development Department notified all owners of property within 300 feet of the subject property at least twenty days prior to the December 9, 2019 public hearing. The applicant posted a city-supplied sign on the property. Written comments from one individual were received prior to that public hearing. Where these comments addressed the review criteria for the applications, they are reflected in the findings below, but the comments mostly addressed future development of the property and stormwater impacts.

Testimony was received from 13 individuals at the December 9, 2019 public hearing. All members of the public spoke in opposition to the Comprehensive Plan Map amendment and the establishment of commercial use on the subject property. Whereas the application for Comprehensive Plan map amendment has been withdrawn, the details of that testimony is not included below.

Following the December 9, 2019 public hearing, written comments were received from the Fair Housing Council of Oregon and Housing Land Advocates. These comments were regarding the Comprehensive Plan map amendment and therefore are not detailed below, as that application has been withdrawn.

The Planning and Development Department notified all owners of property within 300 feet of the subject property at least ten days prior to the January 27, 2020 continuation of the public hearing. The applicant posted a city-supplied sign on the property.

Testimony was received from eight individuals at the January 27, 2020 continuation of the public hearing. No testimony was expressed directly opposed to the annexation. Testimony was offered regarding the requested zoning, with concern being expressed regarding the development of duplexes, about the applicant again changing their plans, about the impact of development on the footpath in the nearby neighborhood, and about possible stormwater impacts from development.

Notice of the City Council's March 2, 2020 public hearing was mailed to all owners of property within 300 feet of the subject property at least ten days in advance of the hearing. The applicant posted a city-supplied sign on the property.

Testimony was received from seven individuals at the public hearing and three people asked questions about the proposal at the hearing. Five of the individuals testifying at the hearing were opposed to the High Density Residential zoning and the annexation. The nature of the testimony opposed focused on the criteria regarding compatibility with neighborhood. Two individuals offered general testimony.

Two letters were received after the March 2, 2020 public hearing, one from the applicant and one from a member of the public. The letter from the applicant did not address the criteria of approval and the letter from the public addressed future impacts of development.



Notice of the City Council's October 11, 2021 continuation of the hearing was mailed to all owners of property within 300 feet of the subject property, and to all participants in the previous hearings at least twenty days in advance of the hearing. This notice informed recipients of the requested change to High Density Residential zoning and the intention to construct multi-family dwellings. The applicant again posted a city-supplied sign on the property.

Written correspondence was received prior to the public hearing objecting to High Density Residential zoning of property, indicating that it would not be compatible with the neighboring properties and expressing concern over duplex development if the property were zoned Medium Density. There was testimony at the public hearing from one individual in favor of the annexation, stating that growth is better in the urban growth area than in rural areas. There was testimony at the public hearing from seven individuals opposed to the annexation or to the requested High Density Residential zoning. Testimony at the public hearing questioned the need for the annexation in that the city has not grown at the rate the Comprehensive Plan projected and indicating that High Density Residential zoning would not be compatible with neighborhood of single family dwellings.

#### E. ANALYSIS

Annexation applications are required to satisfy approval criteria contained within Stayton Municipal Code (SMC) Title 17, Section 17.12.210. The amendment of the Official Zoning Map, required to assign a zone to the newly annexed territory, is required to satisfy the approval criteria contained within SMC Section 17.12.180.

#### F. REVIEW CRITERIA

**Section 17.12.180.6 Official Zoning Map Amendment Approval Criteria.** Pursuant to SMC 17.12.180.6.b the following criteria must be demonstrated as being satisfied by the application for Zoning Map amendment:

- 1) *The proposed zone is consistent with the Comprehensive Plan map designation for the subject property unless a Comprehensive Plan Map amendment has also been applied for and is otherwise compatible with applicable provisions of the Comprehensive Plan.*

Finding: The applicant has requested High Density Residential be assigned upon annexation. The property is designated Residential by the Comprehensive Plan Map. The Comprehensive Plan Map also indicates that a Natural Resource Protection Overlay District will be applied within 100 feet of Lucas Ditch.

- 2) *Existing or anticipated services (water, sanitary sewers, storm sewers, schools, police and fire protection) can accommodate potential development in the subject area without adverse impact on the affected service area.*

Finding: There is a 10-inch sewer main located partially within a utility easement on the subject property and partially within the Fern Ridge Rd right of way along the entire length of the subject property. There is a 10-inch and 12-inch sewer main located in a utility easement along the west side of the subject property. There is a 6-inch water main located on the south side of Fern Ridge Rd. The Public Works Department has commented that the Water Master Plan calls for construction of a 16-inch water main along the north side of Fern Ridge Road connecting to the existing 16-inch mains located in the street right of way to both the east and west of the subject property. The Stayton Fire District, North Santiam School District and the Stayton Police Department were notified of the application. No comments were received from these agencies.

- 3) *Existing or anticipated transportation facilities are adequate for uses permitted under the proposed zone designation and the proposed amendment is in conformance with the Oregon Transportation Planning Rule (OAR 660-012-0060).*

Finding: The City's 2019 Transportation System Plan assumed development of this property as residential.

- 4) *The purpose of the proposed zoning district satisfies the goals and policies of the Comprehensive Plan.*

Finding: Policy HO-1 calls for the City to encourage development of housing that meets the needs of all income groups of existing and future residents. The action to implement this policy is to assure that an adequate supply of land in all residential zones is available for development within the City. Staff reports that as of October 1, 2021 there are 62 vacant lots in the LD zone, of which 14 are large enough to be further divided and that there are 19 vacant lots in the MD zone, of which seven are large enough to be further divided. There are two vacant lots in the HD zone.

Further, the Comprehensive Plan notes that the established residential density guideline for Stayton is between 5 and 6 housing units per gross acre of residentially zoned land. During the period between 2000 and the drafting of the Comprehensive Plan the subdivisions recorded were at a density of only 2.8 units per acre. Since the time of drafting the comprehensive plan only three additional subdivisions have been platted, with a density of 4.2 units per acre.

The Housing Needs Analysis of the Comprehensive Plan projected that 69% of the new housing units during the planning period would be single family detached; 15% of the new housing units would be single family attached or duplexes; 14% of the new units would be multifamily; and that 2% would be mobile homes. Since 2010, there has been a net increase of 174 new housing units in the City. Of these 95% are single family detached, 3% are duplexes, and 2% are multi-family units.

Since the time this application process began, staff has held three preapplication meetings on potential multifamily developments. One application has been submitted and is pending before the Planning Commission for 99 apartments. The other two developments, should they be constructed, would be for approximately 180 apartments. In addition, the Planning Commission has approved an 18-unit duplex development.

- 5) *Balance is maintained in the supply of vacant land in the zones affected by the zone change to meet the demand for projected development in the Comprehensive Plan. Vacant land in the proposed zone is not adequate in size, configuration or other characteristics to support the proposed use or development. A Zone Map Amendment shall not eliminate all available vacant land from any zoning designation.*

Finding: The Comprehensive Plan projects that 69% of the new housing units will be single-family detached, 15% of the new housing units will be single-family attached or duplexes, and that 13% will be multifamily. The existence of significant wetlands on the property requires that it be developed in accordance with the Master Planned Development standards of the Code. This provides the opportunity for a mix of housing types to be developed, regardless of the zone assigned by the City Council. As an annexation of territory into the City, there will not be any available vacant land in a zoning designation affected by this action.

- 6) *The proposed zone amendment satisfies applicable provisions of Oregon Administrative Rules.*

Finding: Notice of the proposed amendment was provided to the Department of Land Conservation and Development on October 29, 2019, more than 35 days prior to the Planning Commission's first hearing.

- 7) *The physical characteristics of the property proposed for rezoning are appropriate for the proposed zone and the potential uses allowed by the proposed zone will not have an adverse impact on the surrounding land uses.*

Finding: The property is gently sloping and would allow for a wide variety of development opportunities. Though the applicant has not submitted a concurrent application for site plan review approval, the applicant has indicated an intent to develop a multifamily development and submitted a conceptual plan for that development. The property is traversed by Lucas Ditch and has a seasonal drainage swale feeding Lucas Ditch. The Local Wetland Inventory indicates significant wetlands are on the property along Lucas Ditch and the seasonal drainage from Fern Ridge Rd to Lucas Ditch. The presence of significant wetlands requires any land division to be designed under the master planned development standards of the code. The master planned development standards provide the opportunity for reduction in lot size and width requirements and for a mix of housing types to be developed.

The property to the west is a church. The land adjacent to Highway 22, on the northeast of the highway, is farmland. The property to the east is a mobile home park. To the south, across Fern Ridge Rd, are single family dwellings.

Testimony provided at the hearing was that High Density Residential zoning would not be compatible with surrounding land uses.

**Annexation Criteria.** Pursuant to SMC 17.12.210.4 the following criteria must be demonstrated as being satisfied by the application:

- a. *Need exists in the community for the land proposed to be annexed.*

Finding: The 2013 Stayton Comprehensive Plan update included a Buildable Lands Inventory (BLI). The 2013 BLI provides the following information on projected growth and need for additional land in the community. At that time there were 114 lots comprising 106 acres of vacant land inside the City limits in the Low, Medium, and High Density Residential Zones. The projected population for the City in 2030 (at a growth rate of 1.7%) was 11,359 people, requiring an additional 1,281 dwellings. To meet that need, the City Comprehensive Plan indicates the expected need of additional 320 acres of residential land to be annexed into the City. Since the time that analysis was conducted, the City has annexed 43 acres of residential land.

Staff has calculated approximate information on current buildable lands as follows. As of October 1, 2021 there were are currently 83 vacant lots totaling 104 acres within the City limits that are residentially zoned.

Only two subdivisions have been platted in the past 5 years. Three subdivisions have been platted in the past 10 years. The total number of lots in each and the current status are shown in the table below.

Recent Subdivisions in Stayton

Subdivision Name	Year Platted	No of Lots	Existing Homes	Vacant Lots
Phillips Estates, Phase 2	2014	26	5	21
Wildlife Meadows	2017	44	46	0
Lambert Place	2020	51	45	6

In addition, there is a possible third phase of the Phillips Estates subdivision, accounting for a potential of 10 lots, and the Virginia Terrace subdivision with four lots, that have received preliminary plan approval from the Planning Commission but not yet been platted with Marion County.

Though there are 83 parcels totaling 104 acres in the City and residentially zoned, staff estimates that there are only 45 parcels totaling 52 acres of vacant property within the City limits that is residentially zoned and reasonably available for development. Lack of utility availability, ownership by a governmental entity, wetlands and floodplain issues and the inability of the owner of the Phillips Estates subdivision to provide adequate stormwater facilities constrain the ability of the remaining land to be available for development. Within the LD zone there are 25 lots reasonably available for development. In the MD zone there are 18 vacant lots. There are two vacant lots in the High Density Residential Zone. With a combined 9 acres, they have the potential capacity for 120 to 150 dwelling units.

The City's growth rate from the 2000 Census to the 2020 Census has been at an average annual rate of about 1.0%, with a population change of 1,426 people. As reflected in the Comprehensive Plan, the Marion County Coordinated Growth projection for 2030 is 11,360, reflecting a 1.7% average annual growth rate for the next twenty years. At a 1.7% growth rate from the 2020 Census population of the City, there would be the need for 412 new dwellings units over the next 10 years. At an average of 5 units per acre for single family development, there would be the need for all of the existing reasonably available vacant land in the City and 60 acres of land beyond the reasonably available vacant land to accommodate this number of homes.

Testimony at the public hearing questioned the need for the annexation stating that the City has not grown as fast as the Comprehensive Plan projected. However, the City is obligated to follow the adopted growth projections in the Comprehensive Plan.

*b. The site is or is capable of being serviced by adequate City public services, including such services as may be provided subject to the terms of a contract annexation agreement between the applicant and the City.*

Finding: There is a 10-inch sewer main located partially within a utility easement on the subject property and partially within the Fern Ridge Rd right of way along the entire length of the subject property. There is a 10-inch and 12-inch sewer main located in a utility easement along the west side of the subject property. There is a 6-inch water main located on the south side of Fern Ridge Rd. The Public Works Department has commented that the Water Master Plan calls for construction of a 16-inch water main along the north side of Fern Ridge Road connecting to the existing 16-inch mains located in the street right of way to both the east and west of the subject property. The Public Works Department has also commented that dedication of right way will be required at the time of development, in that the existing Fern Ridge Rd right of way does not meet Public Works Design Standards for a major collector street.

*c. The proposed annexation is property contiguous to existing City jurisdictional limits.*

Finding: The property is adjacent to the existing City Limits on three sides. The Foothills Church property was annexed in 1977. The Boulders Mobile Home Park property was annexed in 1992. The north half of the Fern Ridge Rd right of way was annexed in 2014.

*d. The proposed annexation is compatible with the character of the surrounding area and complies with the urban growth program and the policies of the City of Stayton.*

Finding: The surrounding area is developed with residential properties and a church. The property to the west is zoned Public/Semi-Public and is developed as a church. The properties to the south and

across Fern Ridge Rd are zoned Low Density Residential and are developed with single family detached dwellings. The property to the east is zoned Medium Density Residential and is developed as a mobile home park. The property to the north and across State Highway 22, is zoned Exclusive Farm Use, and is farmland. The applicant requests the property be zoned High Density Residential and intends to develop the property as a multifamily development.

Testimony was offered at the public hearing that High Density Residential zoning would not be compatible with the existing single-family neighborhoods.

*e. The annexation request complies or can be made to comply with all applicable provisions of state and local law.*

Finding: The criteria of ORS 222 apply to the adoption of an annexation ordinance. The property owner has consented to the annexation. Chapter 51 of the Oregon Laws of 2016 requires a city to annex the territory without submitting the proposal to the electors if 1) the territory is within the urban growth boundary, 2) the territory will be subject to an acknowledged comprehensive plan, 3) the territory is contiguous to the city limits, and 4) the proposal conforms to all other requirements of the city's ordinances. The City of Stayton Comprehensive Plan was acknowledged in 2013 and subsequent amendments acknowledged as they have been adopted. The territory to be annexed is within the City's urban growth boundary. The territory is contiguous to the city limits on three sides. The other findings contained herein demonstrate the requirements of the City's Code have been met.

*f. If a proposed contract annexation, the terms and conditions, including the cost of City facility and service extensions to the annexed area shall be calculated by the Public Works Director.*

Finding: The proposed annexation is not a contract annexation.