CU 18-025

City of Aurora Record Submittal

June 13, 2018.

**Introduction**

The City of Aurora thanks the county staff, the hearings officer and the applicant's representative for raising important topics at the June 6 hearing, which we would like to respond to and address below. As a preliminary matter, the city would like to focus on the substantive aspects of this appeal, and takes this opportunity to withdraw the request for reimbursement of fees and costs, and the request to void the application due to incomplete and inaccurate information.

At the conclusion of the hearing, the record was held open for all parties to submit additional testimony and evidence until June 13th. The applicant's representative reported that the applicant will not submit any additional evidence or testimony; however, if that changes and the county accepts additional evidence or testimony from the applicant, the city would appreciate an opportunity to respond, pursuant to ORS 197.763(6)(c).

This narrative and the attached exhibit comprise the City of Aurora's record submittal, and will answer the following questions.

1. Is the application for a rural or urban use?

2. Is land in the UT-20 zone rural, urban or urbanizable?

3. What is the intent of the city comprehensive plan?

4. Can the county delegate its legislative authority to the city, so that the city comprehensive plan can specify what land uses are allowed in the county UT-20 zone?

5. Is the application for a development or a use; and what level of detail is required for the county to adopt adequate findings and conclude that the conditional use criteria and the development standards are satisfied?

6. Can the waivers of remonstrance for annexation and connection to city sewer service be postponed or eliminated?

7. Can the decision assume the industrial use will not increase traffic beyond the capacity of existing roads, without knowing what types of businesses will occupy the building, and without a traffic study?

8. Does the approval of the industrial use in the UT-20 zone follow the Transportation Planning Rule?

9. Is the decision consistent with the city TSP and state administrative rules for coordinated transportation planning?

10. Is the decision consistent with the UGMA provisions on annexation prior to development?

11. Procedurally, what is the correct method to revise the site plan and remove the conditions of approval that cap the number of employees and require a waiver of remonstrance for annexation?

**1. The distribution warehouse is an urban use.**

The proposed and approved use is a wholesale health supplement business in a 15,000 square foot warehouse. The words "wholesale", "warehouse", "industrial" and "distribution" do not appear in the text of the UT-20 farm zone that lists the conditional uses. MCC 16.13.020.

The applicant's representative testified that there may be light industrial tenants as well, and asks that the number of employees not be limited. The warehouse and light industrial uses are urban because it is of a kind and intensity characteristic of urban development in nearby cities.

The county interpretation that the intensity of the use does not require urban services is not supported by substantial evidence in the record because the applicant representative's testimony is clear that the applicant intends for more people to work on the site than presumed in the decision. Nor is the purported reliance on a septic system conclusive in determining the use us rural. A 15,000 square foot, multi-tenant industrial building is an urban use that requires urban services, and cannot be approved on this urbanizable property without annexation into the city.

**2. The UT-20 zone is an urbanizable zone.**

Goal 14 states:

> **Urban Growth Boundaries**
>
> Urban growth boundaries shall be established and maintained by cities, counties and regional governments to provide land for urban development needs and to identify and separate urban and urbanizable land from rural land.

In other words, there are three types of land; rural which is outside UGBs, and two types of land within UGBs, urban and urbanizable. Goal 14 further describes urbanizable land.

> **Urbanizable Land**
>
> Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services. Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.

The Urban Growth Management Agreement between the city and county identifies land within "the UGB as urbanizable." UGMA, Section I.1. The subject property is available for urban development such as industrial warehouse and distribution, only when the development is consistent with the city plans for the provision of urban facilities and services, such as streets, water and sewer. In the interim, the subject property is in a farm zone, consistent with ORS 215.203. MCC 16.13.000.

The applicant's representative testified at the hearing that the applicant does not intend to develop consistent with city plans for annexation and the provision of urban services. (June 6, 2018 appeal hearing audio file, at 0:56:45.) The decision is contrary to Goal 14, because it does not maintain the subject property for planned urban development.

The decision utilizes the overlap in these definitions to selectively apply different features of rural land, urban land, and urbanizable land and zoning. The county policy is that all land within a UGB is urban land, notwithstanding that the subject property is zoned UT-20, a farm zone. The county interpretation is that the proposed use is a rural use, notwithstanding this is urban land. Third, the decision states that because the land is identified in the city comprehensive plan as urbanizable and future industrial, it has authority to approve the industrial use, even though that use is not allowed in a farm zone, and the applicant opposes a requirement to annex at some time in the future. The decision is contrary to Goal 14.

**3. The intent of the city comprehensive plan is for the property to remain in a farm zone until annexed.**

As the city understands the hearings officer comments, the county implements the city comprehensive plan on the basis of the intent of that plan. MCC 16.01.030. The intent of the city comprehensive plan is that the property will retain farm zoning "until annexed by the City. At that time, the City will zone the property consistent with its plan designation." City of Aurora Comprehensive Plan Update 2009, page 84 (attached).

Clearly the city intends that farm zoning will apply until annexation, and only upon annexation will industrial zoning, along with its list of allowed land uses, be applied. The decision is not consistent with the intent of the city comprehensive plan and therefore is not consistent with the text of MCC 16.01.030.

**4. Reliance on the city comprehensive plan is a delegation of the county's legislative authority.**

Reliance on the city comprehensive plan to specify what land uses are allowed in the county UT-20 zone (under MCC 16.01.030) is a delegation of the county's legislative authority to the city that is contrary to Article I, section 21 of the Oregon constitution. This is impermissible because it allows the city to legislate what uses are allowed in the county zones.

The land uses allowed in the unincorporated areas of Marion County are limited to those uses proscribed in ORS Chapter 215 and its administrative rules. Those regulations do not provide authority for a county to delegate legislation proscribing

what land uses are allowed within a county zone, even a county zone that is within a city urban growth boundary.

**5. The application is for development of a new use.**

At the hearing, the applicant's representative insisted the application was only for a "use", and not for "development", and therefore it was not necessary to provide more information regarding the "development" such as architectural or civil engineering drawings, a traffic study, or a septic approval as part of this application. That is a false dichotomy because the industrial use does not exist separately from the industrial development, such as a building, site improvements and utilities necessary for the use to operate.

For that reason, the UT-20 zone requires compliance with numerous "development" standards. MCC 16.13.100. There is no authority in the zoning code to approve an industrial use without also reviewing and approving the various physical and operational elements of the industrial development, and making findings based on substantial evidence that both the conditional use criteria and the applicable development standards are satisfied.

The applicant's representative testified that the site plan in the record is not accurate. Apparently the building will be located further west on the site, outside of the area designated as future commercial on the city comprehensive plan map. As the city understands the testimony, the existing dwelling, which lies on the portion of the property designated by the city as future commercial, may be utilized for office use. There is insufficient evidence in the record regarding the location and size of the building, the parking, stormwater facilities, or the future collector street, and the potential future use of the existing dwelling.

As a different applicant representative wrote, "the applicant has chosen to not employ the services of an engineer or architect at this time." Since the design is not complete and the businesses that will occupy the structure are not certain, it is not possible to measure the impacts on traffic, or the sewer and water needs. Because the minimalist site plan is not accurate, and there are not other drawings of any kind, there is not substantial evidence in the record that a reasonable decision maker could rely on to find compliance with the approval standards and criteria.

**6. The decision, and the applicant's request to waive the condition requiring a waiver of remonstrance for annexation, conflict with county requirements for on-site sewage disposal.**

The zoning code requires completion of several items "prior to the approval of a use". MCC 16.13.320.E. The city requires the execution of an agreement to connect to the city sewer when the system comes to within 300 feet of the property and can provide gravity service, pursuant to MCC 16.13.320.E.5. The city also requires a signed remonstrance agreement for future annexation and connection to water and sewer service, pursuant to MCC 16.13.320.E.6. The decision does not comply with applicable provisions of the land use regulations requiring these items to be complete prior to the approval of this conditional use, and requiring them to be consistent with city requirements.

These county code provisions are consistent with Implementation Guideline 6 of Goal 14 which provides for a detailed management program to assign respective implementation roles and responsibilities to the city and county. The decision impairs the city's assigned role under MCC 16.13.320.E.5-6, and thereby is contrary to Goal 14.

The interpretation that compliance can be postponed to a later proceeding is inconsistent with the express language of MCC 16.13.320.E. The decision prejudices the substantial rights of the city and other interested parties because postponement of these sewer requirements to a later proceeding denies them an opportunity to receive notice, to comment, and to participate in a land use review of the on-site sewage disposal system.

**7. The decision fails to ensure the proposed industrial use will not increase traffic beyond the capacity of existing roads.**

A conditional use cannot increase traffic beyond the capacity of existing roads. MCC 16.13.030.A. In this instance, there is not a traffic study or other evidence in the record that the proposed development will not increase traffic beyond the capacity of existing roads, so this criterion is not satisfied. The staff finding is conclusory and indicates a traffic study can be made a condition of approval. Given the applicant representative's hearing testimony, the uses of the proposed structure are not certain. The decision approved a warehouse with five employees, however the new testimony is that the building may include different industrial uses and tenants with many more employees.

Until the proposed use is clarified, it would be premature to perform a traffic study. The decision is not supported by substantial evidence in the record.

The decision that compliance can be postponed to a later proceeding is inconsistent with the express language of MCC 16.13.030.A, which requires a finding on traffic capacity "in order to grant approval for a conditional use", because the decision approves the conditional use application before traffic capacity is analyzed. The decision prejudices the city and other interested parties because postponement of traffic analysis to a later proceeding denies them the opportunity to receive notice, to comment, and to participate in a land use review of traffic capacity.

**8. The approval of industrial and commercial uses in the UT-20 zone is not consistent with the Transportation Planning Rule.**

At the hearing, and apparently in response to the city's comment that in order to approve an industrial use in the UT-20 zone, a zoning text or map change was required, the county staff indicated the county disagrees because that would require a traffic study. (June 6, 2018 appeal hearing audio file, at 0:28:35.) That is precisely the point.

The TPR requires that amendments to local zoning be analyzed, and if they significantly affect a transportation facility, the local government must adopt specified measures to manage the increased traffic. OAR 660-012-0060(1). Therefore changes to the UT-20 zone text to allow commercial and industrial uses, or a zoning map change to allow commercial and industrial uses, would require a traffic study and TPR compliance. As the city understands the hearing testimony, county policy is that commercial and industrial uses can be allowed in the UT-20 zone without an amendment to the zoning text or map change to avoid the traffic analysis that would normally be required by the TPR. This policy is an interpretation which is contrary to the TPR, which is a state administrative rule implemented by MCC 16.13.030.A.

**9. The decision is not consistent with the state transportation planning administrative rules that are implemented by the county zoning code and the Aurora Transportation System Plan.**

Broadly speaking, the state administrative rule on transportation planning requires "coordinated land use and transportation plans". OAR 660-012-0000(3)(a). A local government TSP "establishes land use controls". OAR 660-012-0010(1). The county

shall protect transportation corridors for their identified functions, have a process for coordinated review of land use decisions, and apply conditions to development proposals to protect transportation corridors. OAR 660-012-0045(2)(d-e).

Implementation item 4 of Goal 12 requires "a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal." Pursuant to OAR 660-012 and Goal 12, the city's Transportation System Plan describes a future city collector street that is likely on the subject property.

The city acknowledges the delay in informing the county about this future street. Because that information is now in the record, the hearings officer's decision, if it denies the appeal, must apply a condition to account for this future right-of-way and transportation corridor which is intended to carry traffic from the subject property. As written, the decision does not comply with UGMA Section III.3, MCC 16.13.030.A, or the OAR 660-012 provisions cited above. To the extent that the county interprets its zoning code to mean that the city's TSP and planned future street are not applicable to this application, the decision is inconsistent with the purpose of the traffic capacity criterion, and is contrary to state land use Goal 12 and the rules in OAR 660-012 which MCC 16.13.030.A implements.

**10. The decision is not consistent with the Urban Growth Management Agreement and the state administrative rule which the agreement implements.**

One purpose of the UGMA is to "[p]romote the retention of lands in resource production in the urban growth boundary until provided with urban services and developed." UGMA, Recital 3. The decision is not consistent with this purpose because it converts the subject property from resource use to urban industrial use before the property is provided with urban services and developed. This purpose is implemented by Section I.9 of the UGMA, which requires annexation prior to conversion to an urban use, in large part because of transportation issues. The decision approves an urban use prior to annexation which is not consistent with the UGMA.

**11. For the applicant to amend the conditions of approval, a new application is required.**

The county zoning code recognizes that sometimes project plans change following a land use approval, and expressly provides for amendments to conditions. MCC 16.46.050. Amendments require a new application and new notice, following the same conditional use procedures as the original application. MCC 16.46.050.A, C, and F.

At the time of this writing, the applicant does not intend to submit additional evidence to support the request for deletion of these conditions, and the city believes there are not any amendments to the existing conditions, or new conditions, that could be applied to make the application satisfy the development standards and conditional use criteria. A new application is required.

**Conclusion**

The hearings officer properly indicated that participants should describe their issues with sufficient specificity to afford the other parties an adequate opportunity to respond to each issue. The city has endeavored to provide sufficient detail on its issues to ensure the other parties have all the information necessary to understand the city's positions and reasoning. It respectfully requests that the decision on this appeal respond to each issue raised in the city's correspondence, and thanks the hearings officer in advance for the considerable effort that will be required to do so.

the City limits and then carefully and incrementally expand public facilities and services into the UGB.

Almost all property in the southern portion of the UGB has direct access to Highway 99E, a regional transit way. Similarly, the northwest portion is bounded by Ehlen Road, which provides access to I-5 via the Hubbard Cut-Off Road (Highway 551) and Ehlen Road.

Currently, the statute and administrative rules require that cities establish UGBs that accommodate the projected 20-year growth. There is sufficient vacant and redevelopable acreage within the UGB to accommodate projected year 2029 residential land needs, using the present land use designations on the comprehensive plan map and the Land Use Inventory shown on Tables 3A and 3B above. Additional commercial and industrial lands may become necessary to provide employment for the community.

Within the City limits, zoning designations for all property are identical to the corresponding comprehensive map designations. However, property outside the City is now zoned urban transition farm (UTF) by Marion County and will retain that zoning until annexed by the City. At that time, the City will zone the property consistent with its plan designation.

## B. Growth Management Framework

While the City wants continued growth to occur, it does not desire to be overwhelmed by development activities. There is a desire to manage growth so that it can be assimilated and properly served with appropriate urban services and facilities. Therefore the City establishes the following growth management framework:

### 1. Public facilities service capacity.

The basic policy is to provide orderly, efficient, and cost effective urban services to support growth over the next 20 years. Further, it is the intent of the City to ensure adequate public facilities and services are provided to support full density development of all or a significant percentage of all the Net Buildable Lands presently located within the current City limits before allowing future annexation.

As shown in the Annexation Criteria below, a three tier priority system shall manage sequencing of future annexations. However, in order to allow annexation there must be sufficient sewer and water system service capacity to serve all net buildable lands inside the City, plus the proposed annexation area. No reserve system service capacity needed to serve the existing City limits shall be allocated to serve an area to be annexed.

CU 18-025

City of Aurora Appeal

June 6, 2018.

**Introduction**

The City of Aurora appreciates the interest of Mr. Bickell and Ms. Hoefling in bringing a business to the Aurora area. As they search for a location, we hope they will consider the available properties within the city limits. Unfortunately, the city is unable to support the application to locate outside the city limits.

The decision is incorrect because it applies a patchwork of regulations from the City of Aurora Comprehensive Plan, the Marion County Industrial Commercial Zone, and the Marion County Commercial zone, to this application in the Marion County UT-20 zone, which is a farm zone that prohibits industrial use.

**The proposed wholesale health supplement business is a warehouse and distribution center that is an industrial use that is not allowed in the UT-20 zone.**

The UT-20 zone is a "farm zone, consistent with ORS 215.203." MCC 16.13.300. It is classified by Marion County as resource land. MCC 16.13.300.B.

ORS 215.203(1) restricts the use of farm-zoned land to farm use although ORS 215.283(1) lists the nonfarm uses that are allowed subject to state administrative rules. One permitted nonfarm use is "a facility for the processing of farm crops." ORS 215.283(1)(r). However, the applicant states: "[a]ll products received by the business are prepackaged from the manufacturers." The proposed use is not a facility for the processing of farm crops.

The decision correctly classifies the proposed use as a warehouse and distribution center, which is not listed as a permitted use or as a conditional use in the UT zone. MCC 16.13.010 and .020. A warehouse and distribution center is also not allowed as a permitted use or as a conditional use in a farm zone by state statute or administrative rule. ORS 215.203(2)(a) and .283(1); OAR 660-033-0120 Table.

The decision wrongfully applies the use regulations and development standards of the CO and IC zones, which could only be applied in the UT-20 zone if there were a comprehensive plan map amendment, a zone change, and exceptions to Goals 3 and 14. ORS 197.610 through 197.625; ORS 197.732(2); OAR 660-004-0010; OAR 660-014-0030 and -0040; and OAR 660-018.

The decision hybridizes two county zones and the city comprehensive plan, and simultaneously disregards the applicable UT-20 zone and state farm use regulations, which is not authorized by the text of the zoning code, state statute, or state administrative rule. MCC 16.13.020.Q; ORS 215.203(2)(a); ORS 197.283(1); and 660-033-0120 Table.

**The proposed warehouse and distribution center use violates Urban Land Use Goal h and Urban Growth Policies 1 and 3 of the County Comprehensive Plan.**

The Urban Growth policies of the county comprehensive plan are intended to facilitate an orderly transition to efficient urban development. MCC 16.13.300. Development of industrial land use is intended to only occur "within urbanized areas unless an industry specifically is best suited to a rural site." Comprehensive Plan, Urban Land Use Goal h.

The proposed wholesale health supplement business is classified as industrial use SIC 51 – Wholesale Trade – Nondurable Goods in the Standard Industrial Classification Directory. It is similarly classified in the zoning code. MCC 16.09.010.33. The subject property is outside the city limits, and lacks public water and sewer service, and therefore the site is not within an urbanized area.

The decision does not identify any reasons or evidence to explain why this industry – the wholesale distribution of health supplements – is best suited to a rural site. The city believes this industrial use is best suited to an urban site because it bears no relation to the commercial agricultural enterprises in the area. For these reasons, the decision violates Urban Land Use Goal h.

Urban Growth Policy 1 states:

> The type and manner of development of the urbanizable land shall be based upon each community's land use proposals and development standards that are jointly agreed upon by each city and Marion County and are consistent with the LCDC Goals.

For this application, clearly the city and county do not agree how this urbanizable land should be developed. The city challenges the county's application of industrial and commercial zoning to the UT-20 zone as being inconsistent with the county's own code and state land use regulations. LCDC Goal 14 states: "Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services." The city comment letter explained that annexation was appropriate and consistent with city plans for the provision of

urban facilities and services. The decision is not consistent with those plans. It approves the industrial use without any provision for public water or sewer service, or even verification of appropriate private sewer service.

In addition, Goal 14 allows industrial development on certain lands *outside* urban growth boundaries. It does not authorize industrial development on property within an urban growth boundary that is outside a city. The decision violates Policy 1 and Goal 14.

Urban Growth Policy 3 is that development of the urban area "should proceed from its center outward." The decision approves the opposite; that is, an industrial use outside the city limits and urban area notwithstanding the availability of vacant industrial land within the city. This violates Policy 3.

**The Industrial Commercial (IC) zone is not the most restrictive zone consistent with the applicable comprehensive plan designation.**

The decision wrongfully applies the City of Aurora's comprehensive plan designation of future industrial to this county land use application, as the justification for approval of the proposed industrial use. This misconstrues MCC 16.13.020.Q, which conditionally allows uses that are allowed "in the most restrictive zone…consistent with the land use designation." There is no finding regarding what the county comprehensive plan designation is, nor any explanation of why the decision uses the city's designation for this land use application outside the city limits. The decision posits that the most restrictive "zone" in this instance is IC because that county zone is consistent with the city comprehensive plan designation, but does not explain why the city comprehensive plan designation is used instead of the county designation.

This is erroneous for several reasons. First, the county comprehensive plan designation is resource land. MCC 16.13.300.B. The most restrictive zone for this designation is UT-20, a farm zone, and the warehouse and distribution center for prepackaged products is prohibited in a farm zone. ORS 215.203(2)(a) and .283(1); OAR 660-033-0120 Table. Even the zoning code text prohibits the application of less restrictive use regulations from a different base zone. "In the event of a conflict between a provision of this chapter and a more restrictive provision of this title applicable to a particular lot, structure or use, the more restrictive provision shall apply." MCC 16.13.100.

Second, there is no text in MCC 16.13 to support reliance on city comprehensive plan designations to effectively change the allowed uses and development standards in the

UT-20 zone. The text includes several references to "city zoning regulations upon annexation" but does not state that city comprehensive plan designations will be applied to an application in the UT-20 zone prior to annexation. Nor does the text state that depending on the city comprehensive plan designation, the county may approve uses allowed in different zones and apply development standards from different zones, instead of applying the use restrictions and the development standards of the UT-20 zone.

Third, the UT-20 zone use and development standards apply, together with additional standards and regulations referenced in MCC Chapter 16.24 and 16.26 through 16.34 apply. MCC 16.13.100. The decision wrongly applies the very different and less restrictive use regulations and development standards of the IC zone in MCC 16.09 and the CO zone standards in MCC 16.06 to this application. The subject property is not within the CO or IC zones and application of their regulations to this application is not consistent with the text of the applicable UT-20 zone standards in MCC 16.13.

Fourth, the UT-20 text does list development standards from many other chapters that apply in the UT-20 zone, such as standards in the chapters on floodplains, the greenway, airports, geologic hazards, parking, etc. These chapters are not base zones, and there is no authority in the text to apply use regulations and development standards from different base zones to an application in the UT-20 zone. Moreover, the enumeration of the development standards from other, non-base zone chapters that do apply to sites in the UT-20 zone (as per MCC 16.13.100) precludes the application of development standards from other chapters that are not referenced in the UT-20 zone text.

**The decision fails to protect the subject property and its neighbors for future urban use.**

The UT-20 zone, like innumerable zones inside UGBs and outside city limits throughout the state, is "intended to retain and protect for future urban use properties which are undeveloped or underdeveloped." MCC 16.13.000. This intention is expressed in the conditional use criterion that requires that the unused portion of the property has adequate development options. MCC 16.13.030.B. The city has planned a new right-of-way that may be obstructed by the proposed use. And the right-of-way may obstruct the unused portion of the property. Aurora TSP Figure 4-1. In the best case scenario, the necessary finding that the unused portion of the property has adequate development options can only be made after review of a detailed site plan that accounts for the future right-of-way. The finding on this criterion is not supported

by substantial evidence in the record, because the site plan is very vague, and does not show the city's proposed future street.

At the state level, the companion language is in Goal 14. "Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned." This is why holding zones such as UT-20 are created in the first instance. The decision fails to protect the subject property and its neighbors for future urban use.

**The proposed warehouse and distribution use cannot be approved because there is not a favorable site evaluation from the county sanitarian.**

The decision is a land "use" approval. A favorable site evaluation from the county sanitarian is required prior to the approval of a "use". MCC 16.13.320.E. In this instance, the application does not include the mandatory favorable site evaluation, and therefore cannot be approved.

The decision states that county policy is to require septic approval as a condition of the building permit. A building permit approves a structure; it does not approve a land use, and therefore the policy and the resulting decision contradict the plain text of the code.

**Conclusion**

The City of Aurora appreciates the county's effort to assist this small business. Unfortunately, the decision relies on several inapplicable regulations instead of applying the regulations in effect. It utilizes regulations from the City of Aurora Comprehensive Plan, the Marion County Industrial Commercial Zone, and the Marion County Commercial zone, whereas it must apply only the regulations in the Marion County UT-20 zone, which is a farm zone that prohibits industrial use.

Taxlot
Public Road
Right-of-Way
City Limits
Urban Growth Boundary
Project at Intersection
Project along Roadway

NOTE: Identified new roadway alignments are conceptual only.

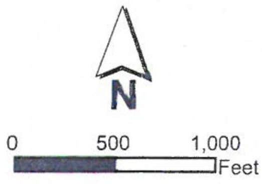


**Figure 4-1**
**Transportation System Improvement Projects**

City of Aurora, Oregon

| Map Key | Project Location | Project Description | Cost Estimates[1] | Priority |
|---|---|---|---|---|
| 5 | OR 99E and Liberty Street Intersection | Add 2nd eastbound left turn lane and corresponding receiving lane and channelize the southbound right turn lane | $611,000 | Low |
| 6 | Airport Road: City Limits to Ehlen Road | Phase 2: Improve to Minor Arterial standard | $1,022,000 | High |
| 7 | Airport Road and Kasel Court/Albers Way | Provide school bus stop with covered shelter and lighting | $6,000 | High |
| 8 | OR 99E and Bob's Avenue Intersection | Add southbound left turn lane | $142,000 | Low |
| 9 | OR 99E and Ottaway Road Intersection | Install turn lanes and intersection improvements including sidewalks, ADA ramps, crosswalks, and pedestrian crossing warning device | $311,000 | High |
| 10 | OR 99E and Ottaway Road Intersection | Install signal when warranted | $326,000 | Low |
| 11 | Ottaway Road and Liberty Street Intersection | Improve intersection to provide better sight distance | $46,000 | High |
| 12 | Ottaway Road: OR 99E to Liberty Street | Complete sidewalks | $263,000 | Medium |
| 13 | OR 99E at Ottaway Road and OR 99E at Liberty Street | Improve transit bus stops with covered shelters, lighting and bike racks | $13,000 | High |
| 14 | Main Street: Bob's Avenue to Ottaway Road | Complete sidewalks and add "sharrows" | $425,000 | High |
| 15 | Liberty Street | Install traffic calming measures per TSP measures | $137,000 | Medium |
| 16 | OR 99E: Bob's Avenue to Ottaway Road | Provide bike lanes and sidewalks | $856,000 | Low |
| 17 | New Collector Roadway: West Ottaway Road extension south to OR 99E | New Collector Roadway | $2,045,000 | Low |
| 18 | New Collector Roadway: Filbert Street extension to OR 99E | New Collector Roadway | $1,252,000 | Low |
| 19 | OR 99E: Ottaway Road to south UGB | Provide bike lanes and sidewalks | $1,322,000 | Low |
| 20 | Ehlen Road: UGB to Airport Road | Improve to Principal Arterial standard | $899,000 | Low |
| 21 | New Collector Roadway: Ehlen Road via Williams Court to Cole Lane | New Collector Roadway | $754,000 | Low |
| 22 | New Collector Roadway: West Ottaway Road north | New Collector Roadway | $1,639,000 | Low |
| | | **Total Cost** | **$13,851,000** | |

Notes:

(1) These cost estimates are for planning purposes only and do no include right-of-way costs and stormwater quality control or detention structures. Cost estimates were based on 2008 bid tab data. As costs for materials and labor are expected to generally increase over time, these estimates should be updated periodically.

(2) Existing funded project. Project budget figure provided by ODOT.

(3) Project cost estimate provided by Marion County.

# APPEAL OF PLANNING DIVISION DECISION

Marion County Planning Division
5155 Silverton Rd. NE
Salem, Oregon 97305
(503) 588-5038

**Fee: $250**

| NAME(S): City of Aurora, attn: William Scott Jorgensen | ADDRESS, CITY, STATE, ZIP<br>21420 Main St.<br>Aurora, OR 97002 |
|---|---|
| DATE SUBMITTED:<br>May 9, 2018 | APPLICATION CASE NO:<br>CU18-025 |

**Do not double-side or spiral bind any documents being submitted**

**Notice of Appeal: Every notice of appeal should contain:**

1. How the decision is factually or legally incorrect; or
2. Present new facts material to the decision; or
3. The specific reasons for the appeal.

I/we are filing this appeal because (attach additional pages if needed):

The proposed industrial use is not allowed in the UT Zone, which is a "farm zone consistent with ORS 215.203." MCC 16.13.000.

The proposed use violates Urban Growth Policies 1 and 3 of the Comprehensive Plan.

The proposed use violates MCC 16.13.030 D because the most restrictive zone is not industrial.

The decision violates MCC 16.13.320.E.4 because the applicant has not provided a favorable site evaluation from the county sanitarian.

**FOR OFFICE USE ONLY:**

Appeal accepted by: ______________ Date: ______________

Case Number:

☐ Filing fee

☐ File attached

# RE: CU18-025

Gilman Fennimore [gfennimore@co.marion.or.us]
**Sent:** Thursday, May 03, 2018 8:31 AM
**To:** angela.carnahan@state.or.us; gordon.howard@state.or.us
**Cc:** Joseph Schaefer; Brandon Reich [BREICH@co.marion.or.us]; Scott Norris [SNorris@co.marion.or.us]; Warren Jackson [WJackson@co.marion.or.us]

Angela,

Your comments and concerns have been printed out and added to the file.

Joe
>>> "Carnahan, Angela" <angela.carnahan@state.or.us> 5/2/2018 5:00 PM >>>
Joe, we have concerns over these types of decisions from a statewide perspective because this land is essential for meeting future industrial needs of the city of Aurora, otherwise is defeats the purpose of UGB planning to provide for a 20 year need.
In addition, these types of decisions have the potential to necessitate UGB expansions in the future. That means more farmland taken out of production because the county is allowing urban uses in a UGB transition zone that is intended to be a farm zone consistent with ORS 215.203.
I'm copying your UT zone language here which makes it pretty clear that this zone is for holding and protecting. "The zone is appropriate in areas designated in the applicable urban area comprehensive plan for future urban residential development, but **may also be used to protect lands designated for future commercial, industrial or public uses**.....In areas planned for other uses **the zone is intended to retain lot sizes conducive to efficient development of planned uses** and prevent conflicts associated with development of additional dwellings."
Finally, I didn't see criteria in the zone that states anything about the property not being able to get annexed because it's not abutting city limits and therefore cannot get water/sewer services.
Best,
**Angela Carnahan** | Mid-Willamette Valley Regional Representative
Community Services Division
Oregon Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Direct Line: (503) 934-0056 | Cell: (971) 239-9448 | Fax: (503) 378-5518
angela.carnahan@state.or.us | www.oregon.gov/LCD

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**From:** Gilman Fennimore [mailto:gfennimore@co.marion.or.us]
**Sent:** Monday, April 30, 2018 4:08 PM
**To:** Carnahan, Angela <acarnahan@dlcd.state.or.us>
**Subject:** CU18-025

Angela,

See attached. There is a copy of the decision, comments that were received from the City of Aurora and lastly our Legal Counsel analysis of IGA pertaining to this application. If you have questions let me know.

Joe
503-566-4177

**Lisa Milliman - Re: CU18-025 city of Aurora comments**

**From:** Scott Norris
**To:** Lisa Milliman
**Date:** 4/24/2018 4:07 PM
**Subject:** Re: CU18-025 city of Aurora comments
**Cc:** Gilman Fennimore

1. In general, I think that we need to follow the IGA. If the IGA addresses a particular issue, we do what the IGA says. This is a perfect example of that. We don't control annexation into the city: The city does. We have a coordination role, but it is the city that decides what is annexed. Subsection III(3) of the IGA requires us to require compliance with city development standards "to the extent feasible." Us requiring annexation as a condition of approval of *our* land use action seems like a bit of a stretch to me. A nonremonstrance agreement seems much more "feasible" for our land use action.

Also: Requested conditions of approval are just that: *Requested.* As you rightly point out, while the property is in the UGB and not annexed, it is our land use decision, not the city's. The city can require whatever it wishes when the property is within city limits. But until then, we are the one with responsibility for land use decisions affecting this property, and it is us who has to defend what we do, not the city. Through the IGA, we have agreed on a set of rules for coordinating land use decisions with the city for property within the UGB. But the buck stops with us, at least until the land is annexed.

2. This is a tough question: Subsection III(3) requires us to require city development standards "to the extent feasible." So: Is us requiring a TIA when the city says that they would require a TIA if the property were within the city. This feels like one which the city is right to be asking for. Their code would require a TIA for a property like this within city limits, and it probably is not for us to say (through our LDEP) that it really isn't needed, when we committed ourself in the IGA to follow the city's development standards "to the extent feasible." I see this as something different from the annexation question: The city wouldn't require annexation for something that is already within the city, but it would require a TIA for a property like this that is already within the city.

3. It is the county's land use decision, not the city's (unless they'd like to proceed with annexation, of course). So the decision maker has to be us (the planning director), and not the city. We can't have the city being the one deciding if our condition of approval has been satisfied or not.

4. No. Subsection III(3) requires us to follow the city's *development* standards. Not its *procedural* standards. Our procedural standards are the ones that apply, not the city's.

5. Sounds like we have a solution in search of a problem here. I think we can simply require satisfaction of the city's parking requirements and be done with this one.

6. I think they have a point here: Our code (at MCC 16.13.320(E)) requires the septic conditions be met "prior to the approval of a use...relying on an on-site system for wastewater disposal." It is arguable whether conditioning septic approval is the same as requiring septic conditions to be met "prior to the approval of [the] use."

7. The IGA does not require us to get back to them before prior to issuing a decision, and remember: Recommended conditions are just that - recommended. Not required (unless required by the IGA). It would be a nice thing to do to get back to them with our responses before issuing our decision. But I assume that there is a 150 day clock ticking on this, and there is a risk to us in engaging in a running debate with the city. While we could take some time I suppose to honor their request, we need to be mindful of whatever time deadline may be hanging over our heads.

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>>> Lisa Milliman 4/23/2018 12:44 PM >>>

Scott,

The city of Aurora has an extensive list of requested conditions for a wholesale distribution business proposed for property inside Aurora's UGB in a UT zone. I have attached the comments and the UGB agreement for your information.

Specifically, I would like to bounce some thoughts on how to address the comments in the decision.

1. While Aurora wants annexation and city land use approvals prior to development, the intergovt. agreement (IG) states that the County retains responsibility for regulating development prior to annexation (I.1. and I.4. of agreement). The property does not abut the city limits. Does the county approval have to require annexation as a condition of approval? I propose a nonremonstrance agreement for annexation and development that meets city development standards, as required in III.3. of the IG.

2. The city wants a Transportation Impact Study prior to land use approval. LDEP feels that a TIA is not warranted in this case and that the average trips per day that would be generated by the proposed use would be in the neighborhood of 20 trips. Should a TIA be a condition of approval because Aurora wants one?

3. ODOT commented that there is no access permit for the property onto HWY 99E adn there would be a condition requiring a permit or a waiver from ODOT, whichever ODOT would want. Aurora wants driveway and parking to city standards. It looks the like the IG allows for the imposition of city standards in III.3. The city comments at the top of page 4 that they believe the city standards aren't met according to their review of the application. A condition of approval could require compliance with applicable standards. To whose satisfaction: County Planning Director or city of Aurora?

4. Aurora wants County to require approval by city prior to our approval, including public notice, but the IG says this proposal would be subject to County regulations. This does not have to be a condition of approval, does it?

5. While the county can require compliance with city regulations, a requirement for parking for patrons (see Aurora comments bottom of page 3 in c)) is not necessary if there are no customers coming to the property. A condition could say they have to provide parking for customers if they have any. The applicants are willing to provide the 10 spaces suggested by the city.

6. In the City comments on page 4, e) wants septic approval prior to approval by the county. We usually make septic permits a condition of approval, which I propose addresses this concern.

7. The city wants the county to respond to these comments prior to issuing the decision. We are over 30 days since the application was received because the city took almost 30 days to make comments and the clock is ticking. Is this necessary?

Thanks for your opinion on this. I look forward to your response.

Lisa

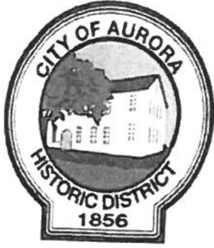
Response to City of Aurora concerns:

1. The business will employ 3 to 5 employees
2. No water will be used in the business other than required by bathrooms for employees.
3. All products received by the business are prepackaged from the manufacturer and are made into orders that are sent to retailers by way of UPS/FedEx or company van.
4. The business is planning on using the existing well on the property for the restrooms.
5. The business will use the existing septic system if possible. If not possible there is sufficient are undeveloped on the parcel to accommodate a new septic system.
6. There is an existing driveway that serves the existing dwelling that will be upgraded to accommodate the commercial traffic to the site. All work will be coordinated with the county as well as ODOT.
7. Because this is just a conceptual plan and the applicant has only an earnest money agreement that will expire in the next few weeks, the applicant has chosen to not employ the services of an engineer or architect at this time. Either or both will be employed once the final plans for the business are ready for the building permit review process.
8. Yard setbacks for the UT zone. Front 20' plus 70 feet from centerline of 99E. Side 5'. Rear 30 feet for any building over 15 feet in height. The proposed building will comply with all of these setbacks.
9. The City of Aurora has setbacks in the listed in their Commercial and Industrial Zone Code that have no minimum front, side or rear except where buffering a residential zone which is 50 feet. The proposed development does not buffer any residential zones so no setbacks are required to meet city code.

We believe we have addressed all of the concerns expressed as of this time and if there is a need for additional information please contact me and I will address them.

Norman Bickell

Nbickell0027@aol.com




# City of Aurora

FOUNDED IN 1856
"National Historic Site"

April 17, 2018

Lisa Milliman, Marion County Planning Division
5155 Silverton Road NE, Salem OR 97305
lmilliman@co.marion.or.us
(ph) 503-588-5038

RE: CASE: Conditional Use 18-025 for a wholesale health supplement business in UT-20 located at 20567 Highway 99E (Map 041W14D Lot 900)

Thank you for allowing the City of Aurora to provide comments on the proposed conditional use 18-025 and for granting the review a 30-day review extension in compliance with the Aurora/Marion County Urban Growth Boundary Coordination Agreement. We also received the revised site plan and additional comments from the applicant's representative on March 30, 2018.

We have reviewed the criteria for a conditional use as outlined under 16.13.020(Q) and would like to provide the following comments to the criteria in *italics* below. We also ask that the letter be entered into the application record.

**Marion County Urban Transition Zone (MCUTZ) section 16.13.020(Q) Uses allowed outright or conditionally in the most restrictive zone, other than medical marijuana processor or medical marijuana producer, consistent with the land use designation.**

*City response: According to Marion County Planning, the most restrictive zone is the Marion County Industrial Commercial (IC) zone. Please specify which use the subject application is proposed to be permitted under.*

*In the application, the applicant states that the use is permitted in the Aurora Municipal Code (AMC) section 16.14030.F. as a conditional use. However, **without a conditional use permit through the City of Aurora, the use is not permitted.** We consider the proposed use and application an "urban" use that would more appropriately be sited on land annexed to a city and provided with city services. The proposed use could be considered a permitted use under both our Commercial, pending a CUP permit, and/or Industrial zones and **we encourage Marion County to require annexation and City land use approvals prior to development.***

**Marion County Urban Transition Zone (MCUTZ) 16.13.030 Conditional Use Criteria:**



21420 Main Street • Aurora, OR 97002 • (503) 678-1283 • Fax (503) 678-2758

**MCUTZ 16.13.030.A The use will not increase traffic beyond the capacity of existing roads.**

*City response: The proposed structure is estimated at 15,000 square feet. According to the Aurora Municipal Code (AMC) criteria for Site Development Review – which the proposed development would be subject to were it located within the city limits- a structure of this size may be subject to a Traffic Impact Analysis (TIA). Without a TIA, we cannot determine if traffic will be increased "beyond the capacity of existing roads." The applicant states their preference is not to hire an architect or civil engineer but this **DOES NOT** relieve the applicant of demonstrating compliance with this requirement.*

*Please also confirm ODOT will provide comments on this application, specifically traffic and road capacity and impacts, in advance of a determination by Marion County on this application.*

***MCUTZ 16.13.030.B If the use will remain after the area is urbanized it will be located in such a manner that any significant unused portion of the property has adequate development options.***

*City response: The proposed development, as submitted, will be located on portions of the lot with a Comprehensive Plan/Zone designation of Commercial (western portion) and portions of the lot with a Comprehensive Plan/Zone designation of Industrial under the Aurora Comprehensive Plan map (proposed development has a 70-foot front setback). In addition, we do not believe the proposed development location provides for any significant unused portions of the property to have adequate development options as, were the property annexed into the City of Aurora, greater density and smaller setbacks would be permitted on the property.*

*Under AMC 16.14.040.D of the Aurora Commercial zone code, "no building within 100 feet of a residential zone shall exceed 35 feet in height." The subject property is located within 100 feet of residentially zoned property (ODOT ROW is 80 feet and property directly to the east and across Highway 99E has a Comprehensive Plan designation of Residential). **The proposed height was not provided in the subject application and we cannot determine whether compliance with the Aurora Municipal Code (AMC) would be met at a future date.***

*AMC 16.56 Gateway Standards apply to structures and property within 100 feet of the first tier of buildings, whichever is greater, from the ROW of Highway 99E. As such, 16.56.050.A "structures containing commercial uses shall have no minimum front setback and a maximum 10-foot landscaped setback". **Upon future annexation, the subject development as proposed would be non-compliant to current property along Highway 99E in the City of Aurora.***

**MCUTZ 16.13.030.C The use and related structures and improvements meet the development standards of the most restrictive zone consistent with the applicable comprehensive plan designation; or the city concurs and, if the city requests, conditions are imposed that require the structures and improvements to be brought into conformance with city zoning regulations upon annexation.**

*City response: The City of Aurora requests that Marion County require annexation of the property to the City of Aurora prior to development in order to ensure structures conform with city zoning regulations. Conformance with city zoning regulations can only be assured via annexation of the property prior to development AND local land use procedures and approvals such as local conditional use permit approval and site development review.*

**MCUTZ 16.13.030.D The most restrictive zone used in the applicable comprehensive plan designation lists the proposed use as a permitted or conditional use; or the city concurs and, if the city requests, conditions are imposed which require that the use be brought into conformance with city zoning regulations upon annexation.**

*City response: Require Annexation and ask Marion County to make an interpretation on whether annexation would be prohibited., SDR and CUP permit through City of Aurora.*

*While we understand the proposed facility is listed as a potentially conditionally permitted use under the UT-20 Marion County zoning, we also wish to provide the following additional comments/concerns for consideration of the application:*

a) *Traffic- We believe a Traffic Impact Analysis for impacts, potential mitigation, and proportional share costs to City and ODOT roadways should be required prior to any land use approval on the subject property. In addition, no information on the current drive access and proposed improvements nor parking was provided on the site plan. At a minimum, we would like to see driveway access and parking standards be built to City of Aurora Municipal Code and ODOT standards.*

b) *The proposed use/development would require a CUP permit if it were located within the Aurora city limits. CUP review in Aurora requires notification and an opportunity for comments to be received from* ***property owners within 200 feet*** *of the subject proposed (as would be required under city SDR and CUP).*

   *Without an opportunity for local property owners to comment, we don't know if additional conditions of approval should be recommended such as: restrictions to the hours of operation; lighting plans; etc. We request Marion County provide an opportunity for property owners within 200 feet (or more) an opportunity to review and comment on the pending application.*

c) *In compliance with AMC 16.42 for Off-Street Parking and Loading Requirements, a 15,000 sq ft facility would require 1 space per employee plus 1 space per 800 sq ft of patron serving area. The applicant did not provide the estimated square footage of the proposed structure dedicated to office but the City estimates ¼ (or 3,750 sq ft) based on the site plan which would require 5 spaces and an additional 5 spaces for the estimated employees for a total of 10 parking spaces. The applicant's preference to not hire an architect or civil engineer* ***DOES NOT*** *relieve the applicant of demonstrating compliance with this requirement.*

d) *Our Urban Growth Boundary Coordination Agreement (UGMA) with Marion County states under Section I.9., "Conversion of land within the UGA to urban uses shall occur upon annexation and be based on a consideration of applicable annexation policies in the Aurora Comprehensive Plan" and Section III.3, "The County shall, to the extent feasible, require City development standards for development within the UGA, including dedication of additional ROW... The County shall, to the extent feasible, require compliance with City development standards, in lieu of County standards, if the development is other than a single-family dwelling."*

   *Demonstration of City development standards for the proposed development is clearly not met and therefore, compliance with the UGMA is not met.*

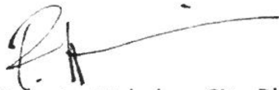
e) *Marion County's Urban Transition Zone 16.13.320.E. requires a favorable site evaluation from the county sanitarian for on-site sewage disposal. NO such evidence has been submitted for review and approval and* ***the applicant's assurance on use of the existing septic system for the new use does not satisfy this requirement.***

   *Further section 16.13.320.E requires this criterion be met* "prior to the approval of a use" and *therefore, we believe Marion County lacks authority to approve the use absent completion of this item.*

**The City of Aurora does not believe the subject application addresses compliance with the applicable criteria.** We also believe this proposal violates Marion County's Comprehensive Plan chapter on Urbanization and Policies opposing sprawl and ensuring the orderly transition of land uses from rural to urban land uses. **We do not believe the application is consistent with Section 9 of the Urban Growth Management Agreement between Marion County and the City of Aurora because the proposed use/application is for an urban use.**

We ask that Marion County respond to each of the concerns and questions outlined above prior to a decision on this application being made by Marion County. **We also encourage Marion County to require annexation and City land use approvals prior to the proposed development.**

Thank you for your consideration.



Renata Wakeley, City Planner

Cc: Scott Jorgensen, City Recorder