

Hi Heather,

Thank you for taking the time yesterday to discuss with me the city's area plans, Concept Master Plans, and proposed Annexation Agreements (chapter 17 and proposed chapter 16 of the city code).

To follow-up on our conversation, proposed Chapter 16 outlines two processes for annexation, depending on a property's plan designation and size. Annexation of properties that are 10 acres or more and/or plan-designated urban holding would be subject to requirements for area plans, concept and final master plans, and annexation agreements. (See proposed 17.10.060 at pdf. p. 146). Annexation of all properties that are both smaller than 10 acres and plan designated either commercial or industrial would continue to be processed as quasi-judicial land use proceedings.

As we discussed, I have several concerns.

My first concern is that the city declares by ordinance that certain decisions are not land use decisions, even though they fall squarely within the statutory definition of land use decisions at ORS 197.015.(10)¹. These decisions include the adoption of area plans, and potentially concept master plans, annexation agreements, and determinations of adequacy of infrastructure and public services.

I have a second concern with respect to the lower level of planning required for commercial and industrial parcels under 10 acres, as opposed to land that is plan-designated urban holding.

We also discussed the opportunity to address the problems that can arise when only a portion of a parcel is annexed, leaving a remnant under county jurisdiction and zoning.

Area Plans

I support the concept of area plans and believe they can be a valuable tool in guiding future development. That said, I have a serious concern regarding chapter 17.10.040:

¹ ORS 197.015(10) "Land use decision":

- (a) Includes:
 - (A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:
 - (i) The goals;
 - (ii) A comprehensive plan provision;
 - (iii) A land use regulation; or
 - (iv) A new land use regulation;
 - * * *
 - (b) Does not include a decision of a local government:
 - (A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;
 - * * *

17.10.040 Area plan process. A. The city council shall initiate an area planning process for lands that are designated as Urban Holding (UH) on the McMinnville Comprehensive Plan Map. B. Property owners may initiate the area planning process, if the city council has not yet initiated or completed an area plan for land designated on the comprehensive plan map as Urban Holding (UH) in a UGB expansion area. 1. Area planning may be initiated by property owners for lands 100 acres or greater in size. C. The city council shall adopt an area plan as a guiding land use document. ***The adoption of the area plan is not a land use decision***, and does not result in any changes to comprehensive plan designations or zoning districts. (Emphasis added.)

Adoption of an area plan falls squarely within the statutory definition of a land use decision because it, “concerns the adoption, amendment or application of a comprehensive plan provision.” In fact, it is to be adopted as a supplement to the comprehensive plan and is thus a quintessential land use decision. As your staff memorandum explains:

The first step of the annexation process is the adoption of an Area Plan for the UGB UH Comprehensive Plan designation that delineates a high level land-use plan for the area identifying future comprehensive plan designations and city zoning that will meet the intention of the adopted Framework Plan outlined the need for housing, employment land, and public amenities in that area that serve the city's stated for growth and development. **This plan will be adopted by the City Council as a supplemental document to the McMinnville Comprehensive Plan.** This process will be treated ***similar*** to a Type IV land-use application requiring a public hearing with the Planning Commission and a final decision by the City Council. (Emphasis added.)

Lest there be any doubt that adoption of an area plan involves application of the comprehensive plan and thus falls within the definition of a land use decision, here is an excerpt from the ordinance language that defines their scope and components:

17.10.050 Area plan scope and components.

* * *

Area plans must embody the development principles of the applicable framework plan, UGB expansion plan, McMinnville Comprehensive Plan, and any other city land use policies and standards.

* * *

[A]rea plans for UH areas within the MGMUP areas will be developed to be consistent with:

- i. The guidelines and characteristics of the traditional neighborhood model, as described in the McMinnville Growth Management and Urbanization Plan.
- ii. The potential identification of locations that would be suitable for neighborhood activity centers (NACs) to meet neighborhood commercial land needs as identified in the MGMUP framework plan, and also support surrounding residential development, as

described in the McMinnville Growth Management and Urbanization Plan.

iii. The city's adopted Great Neighborhood Principles, as described in Comprehensive Plan Policies

You state in your staff memo, the adoption of an area plan will be treated *similar* to a Type IV land-use application requiring a public hearing with the Planning Commission and a final decision by the City Council. I suggest that area plans be considered a Type IV decision, rather than similarly to one, leading to amending 17.10.040 as follows:

17.10.040 Area plan process. A. The city council shall initiate an area planning process for lands that are designated as Urban Holding (UH) on the McMinnville Comprehensive Plan Map. B. Property owners may initiate the area planning process, if the city council has not yet initiated or completed an area plan for land designated on the comprehensive plan map as Urban Holding (UH) in a UGB expansion area. 1. Area planning may be initiated by property owners for lands 100 acres or greater in size. C. The city council shall adopt an area plan as a guiding land use document. ***An Area Plan shall be adopted as a supplement to the McMinnville Comprehensive Plan through a legislative land use proceeding if it was initiated by the city council or either a quasi-judicial or legislative land use proceeding, depending on its size and the number of properties it covers, if it was initiated by an application.***

“Area plans” should also be added to the list of decisions requiring a hearing in section 17.72.120.

Finally, on the subject of area plans, the code (17.10.050) says an area plan "shall more specifically identify land uses, their locations" etc. More specifically than what? How specifically? For clarity, it may be beneficial to better explain this in the code.

Concept Master Plans

Like area plans, the ordinance explicitly states that formal adoption of a concept master plan is not a land use decision.

17.10.065 Master plan process.

A. Concept Master Plan. For the conceptual plan review process, there is no need for the post-acknowledgement plan amendments (PAPAs) to the Oregon Department of Land Conservation and Development, or local Measure 56 notice, although early involvement of nearby property owners and state agencies that may have an interest in the effect of urbanization on state interests is advised, because the decision does not yet amend the McMinnville Comprehensive Plan, as it is being reviewed and approved as part of an annexation agreement with the McMinnville city council and is not considered a land use decision. The concept master plan should consider all of the same elements and factors as the master plan described below.

I think that they may be a final land use decision, given that they are approved by the city council as part of a binding the annexation agreement. The concept plan identifies the location of plan and zone designations and the location of uses. The ordinance doesn't address how much the ultimate plan map amendment may deviate from the concept master plan, but as noted, they are adopted as part of a binding annexation agreement which suggests they are pretty locked-in.

Finally, the reasons that the ordinance cites to explain why a concept master plan is not a land use decision don't hold up. Just because a decision does not amend the comprehensive plan and is reviewed as part of an annexation agreement, does not mean the decision is not a land use decision. The adoption of a concept master plan may or may not be a land use decision, but not because of the reasons stated in the ordinance.

For these reasons, I suggest amending 17.10.065 to either (a) clarify that a concept master plan is non-binding and only advisory in nature; or (b) clarify that approval of a concept plan is a land use decision.

Annexation Agreement

The proposed annexation agreement between a property owner and the city is also explicitly not a land use decision, even though they seemingly involve application of comprehensive plan provisions. The proposed section 16.10.020 provides: "The agreement is also used to ensure that the annexation is consistent with the McMinnville Comprehensive Plan and that the resulting development meets the community's identified needs." In addition, the proposed section 16.10.030 provides: "The annexation agreement shall address, at a minimum, ... compliance with the McMinnville Comprehensive Plan, approved applicable area plan, and concept master plan."

The annexation agreement certainly seems to be a final land use decision because it locks in plan and zone designations. Here are excerpts from the sample agreement in the packet:

COMPREHENSIVE PLAN/ZONING: At the time of annexation, the City will apply the Comprehensive Plan designations for the Property as identified in the adopted _____ Area Plan, "Area Plan", per Exhibit B, and the city zoning identified in the approved Final Master Plan.

* * *

Owner agrees that any development of the property will comply with the applicable approved Area Plan and will incorporate and follow the City's Great Neighborhood Principles (attached as Exhibit C) as applicable. The City Manager or City Manager designee, or Hearings Body shall determine the applicability of the Great Neighborhood Principles to the subject property as necessary.

As currently drafted, the area plan isn't a land use decision, the concept plan isn't a land use decision, and the annexation agreement isn't a land use decision. Nonetheless, the annexation

agreement (a) locks in plan designations shown in the area plan; and (b) addresses compliance with the comprehensive plan. Also, determination of applicability of the Great Neighborhood Principles and compliance with these principles requires interpretation or the exercise of policy or legal judgment which falls squarely within the definition of a land use decision per ORS 197.015(10).

I'm not sure I have any suggested ordinance language to address this, other than to treat annexation agreements as land use decisions. Alternatively, the city may be able to treat the area plans and concept master plans as land use decisions and determine compliance with the comprehensive plan and the applicability of, and compliance, with the great neighborhood principles exclusively through those land use processes, but I haven't completely thought that through.

Commercial and Industrial properties

As we discussed, there may be sound reasons to require the same level of planning for commercial and industrial parcels smaller than 10 acres, as for land that is designated urban holding. While the plan-designations are already established for these properties, the relationship of the various zones allowed within those designations are not; nor are the relationships between the various uses allowed in the zones to one. For example, an office park or office building may benefit from employee-serving day care, lunch spots, or public plaza. An industrial park could benefit from the same.

Moreover, to the extent that the city believes the use of annexation agreements can result in more "extractions," like walking paths, parks, etc., this certainly holds true for employment land, just as much as urban-holding land.

Other considerations

As we discussed, the city can use this opportunity to address the problems that can arise when only a portion of a parcel is annexed, leaving a remnant under county jurisdiction and zoning. The city could add to Chapter 16 a provision requiring/encouraging that only whole parcels be annexed.

As we also discussed, the potential exists for a developer/property owner to "game" the system by bringing in multiple annexations just under 10 acres so as to avoid the requirements that only apply to parcels greater than 10 acres. Requiring annexation of whole parcels would partially address this. So could a requirement that only one application for annexation be filed per year (or some other time period) for parcels and/or contiguous land under the same ownership.

I hope these comments are helpful. Please feel free to share them with the planning commission.

Sid