



POLK COUNTY

POLK COUNTY COURTHOUSE ★ DALLAS, OREGON 97338
(503) 623-9237

COMMUNITY DEVELOPMENT

AUSTIN M'GUIGAN
Director

MEMORANDUM

TO: Board of Commissioners

FROM: Sidney Mulder, Planning Manager
Polk County Community Development

DATE: August 6, 2024

SUBJECT: Public Hearing for Plan Amendment PA 24-01 and Zone Change ZC 24-01

Public Hearing – August 14, 2024

ISSUE:

Should the Polk County Board of Commissioners move to adopt the Comprehensive Plan amendment presented in PA 24-01 and the Zone Change presented in ZC 24-01?

The applicant, represented by Davis Wright Tremaine LLP, is requesting a Comprehensive Plan Map amendment and Zoning Map amendment for an area approximately 0.3 acre in size, which consists of one (1) parcel and the adjacent public right-of-way. The subject property is currently designated Public on the Comprehensive Plan Map and Public and Private Education Facilities (PE) on the Zoning Map. The applicant is proposing to change the Comprehensive Plan designation to Unincorporated Community Commercial and the zoning to Unincorporated Community Commercial General (UC-CG). If the Comprehensive Plan amendment is approved, the subject property would be amended on the Comprehensive Plan Map. If this Zone Change is approved, the subject property would be amended on the Official Zoning Map. Consequently, the adopting ordinance would include a text amendment to Polk County Zoning Ordinance (PCZO) Section 111.090(A) in order to update the effective date of the Official Zoning Map.

RECOMMENDATION:

Staff recommends that the Board of Commissioners approve the proposal as presented in PA 24-01 and ZC 24-01, as recommended by the Polk County Planning Commission.

BACKGROUND:

The applicant is proposing to change the existing Comprehensive Plan designation of the subject property from Public (PUB) to Unincorporated Community Commercial (UCC) and is proposing to change the existing zoning designation from Public and Private Education Facilities (PE) to Unincorporated Community Commercial General (UC-CG). The subject property is adjacent to Perrydale School, but evidence in the record demonstrates that the property has never been owned by a school. Public Zones (PCZO 170.070 and 170.080) provide some unique code language specifying that the Planning Commission shall make a recommendation to the Board of Commissioners when a public zoned property is transferred to private ownership for a different use; or the use is abandoned, discontinued, or proposed to change. A specific development proposal is not being reviewed as part of this application. However, the proposed Comprehensive Plan amendment and Zoning Map amendment are intended to allow for the possibility of re-developing the property and establishing a future use(s) that is allowed in the UC-CG zone.

The subject parcel is approximately 0.23 acre in size and has frontage along West Perrydale Road towards the north and Perrydale Road towards the east. PCZO 111.130 provides "Rules for Interpretation of Zone Boundaries" and states that zone boundaries shall be construed to follow center lines of streets. Therefore, for the purpose of this application, the "subject property" includes the subject parcel and the adjacent right-of-way to the center line of West Perrydale Road and Perrydale Road, which affects an area approximately 0.3 acre in size, as depicted in Attachment A of the staff report.

The applicable criteria for the proposed Zone Change and Comprehensive Plan Amendment are listed under PCZO Sections 170.080, 111.275, and 115.050. Staff provided a recommendation to the Planning Commission to recommend approval of this application, subject to one (1) condition of approval that would require a non-remonstrance deed restriction that specifies the vision clearance standards found in PCZO 112.140 shall continue to apply to the subject property.

The Planning Commission held a public hearing on June 25, 2024. At the public hearing, the applicant's representative supported the proposed findings of facts and conclusions from the staff report, but requested a revised condition of approval to read as follows:

The property owner shall sign and record a non-remonstrance deed restriction (Attachment E) with the Polk County Clerk's Office that states the property owner shall not construct a 6-foot fence or install signage along the frontage of Perrydale Road and West Perrydale Road.

Currently, the vision clearance standard found in PCZO 112.140 applies to the subject property because it is within a public zone. Staff was also concerned that without the imposition of the vision clearance standard, the proposal could create a safety hazard to the traveling public and/or pedestrians walking to and from Perrydale School. The staff report states that without the vision clearance standard, fences and free-standing signs up to six (6) feet in height could be constructed on the northeastern corner property lines. At the Planning Commission public hearing, staff clarified that reference to "fences and free-standing signs up to six (6) feet in height" in the staff report was intended to be an example and not an inclusive list. The vision clearance standard is broader to preclude any plantings, walls, structures, or temporary or permanent obstructions to vision exceeding 30 inches in height above the curb level, or street shoulder where there is no curb. The Planning Commission fully discussed and considered this request, but ultimately passed a motion to recommend that the Board of Commissioners approve the application as recommended by staff.

At the public hearing no other members of the public were present. After the Planning Commission public hearing additional written testimony was provided (Exhibit B). To address the additional testimony that was not considered by the Planning Commission, staff has prepared additional findings below.

A public hearing before the Board of Commissioners is scheduled for August 14, 2024 at 9:00 A.M. A detailed description of the applicant's proposal, the applicable criteria, and associated findings are located in the staff report that was prepared for the Planning Commission (Exhibit A).

ADDITIONAL FINDINGS:

On July 31, 2024, written comments were provided from J. Kevin Shuba with Garrett Hemann Robertson P.C., who is representing Perrydale School District No. 21 (District). Comments provided request that the Board of Commissioners deny this application and asserts that the proposal is 1) contrary to the intensions of Perrydale community planning; 2) limits the property's potential use; and 3) increases risks for students.

Contrary to the intensions of Perrydale community planning:

Comments state that the current designations were made for the purpose of allowing the expansion of Perrydale School, and when the subject property was designated PUB and PE in 1980, the intent was to pave the way for Perrydale's school expansion. Mr. Shuba did not identify which applicable review and decision criteria these comments are intended to address, but staff assumes they are related to criteria found in PCZO 115.050(A)(1), which states:

(A) Amendments to the Comprehensive Plan Map must meet one or more of the following criteria:

(1) The Comprehensive Plan designation is erroneous and the proposed amendment would correct the error; or

As discussed in the staff report, based on recorded deeds, staff found that there is no evidence in the record to demonstrate that Perrydale School, or any other public or private school has ever owned the subject property. Staff also found that there is no evidence of the subject property ever being used and/or leased for school purposes, based on Polk County Community Development records, Clerk records, and Assessor's records. Mr. Shuba asserts that the PUB and PE designations were made despite the parcel being privately owned at the time and not utilized by the School District.

Staff finds that there is no evidence in the record to support the claim that the PUD and PE designations from 1980 were intentional for the purpose of expanding Perrydale School. The current property owner acquired the property from Victor Brown, who owned the subject property from March 23, 1972 until March 25, 2022. Written testimony states that the District has offered to purchase the subject property and that the District intends to acquire the subject property. In any case, the subject property is not currently owned or used by a public or private school, and there is no evidence of any commitments or legal obligations for the current property owner to sell or allow for Perrydale School to be expanded.

PCZO 170.080 states:

Any area shown on the official zoning map as a park, playground, cemetery, ball park, fairgrounds, airport, school or other public or semi-public area, shall not be used for any other purpose than that for which such area is used at the effective date of the Polk County Zoning Ordinance, and whenever the use of such an area is discontinued or proposed to be changed, the Planning Commission shall recommend to the Board of Commissioners appropriate rezoning for any such area.

Since the subject property has never been used as public space or owned by a public entity, staff finds that there is substantial evidence in the record to demonstrate that the Public Comprehensive Plan designation, which is implemented by the PE zone, is erroneous.

Staff finds that the subject property's size would not be feasible for residential or industrial uses, therefore, a commercial zone would be most appropriate zone even if future commercial uses would be limited in scale and size, and would not accommodate all uses that are permitted in the UC-CG zone.

Limits the property's potential use:

Comments were provided stating that if the District were to acquire this property, it would allow for the possibility of expanding the school's playground, creating recreational space, or allowing room for more classrooms. As discussed above, there is no evidence in the record of any commitment or legal obligations for the current property owner to convey the subject property to the District. There is also no evidence of the subject property owner's willingness or future plans to convey this property to the District. Therefore, this application should not be predicated on the assumption that the District would own the subject property in the future. If ultimately the

District did acquire the subject property, then the District would have the right to apply for and pursue a Comprehensive Plan Amendment and Zoning Map Amendment to change the designations back to PUB and PE.

Written testimony further states that uses available for the proposed designations would be extremely limited due to the size and not being suitable for an on-site septic system, and not having access to water. These concerns were addressed in the staff report, and at the Planning Commission public hearing the applicant's representative recognized the fact that these are limiting factors for future uses.

Written testimony disagrees with staff's findings that the proposed designations would benefit the community and its economy, and asserts that this claim may have more merit if the owner had a specific development proposal. Staff finds that the subject property is currently vacant of any structures and is not currently put to any beneficial use. There is no evidence in the record to suggest that the property owner is obligated to sell or lease the property to the District; therefore, staff finds that this application should not be predicated on the assumption that the District would own the subject property in the future. Staff finds that the applicable review and decision criteria does not require the applicant to propose a specific use, so the analysis is focused on whether or not any uses allowed in the UC-CG zone could be feasible. The proposed designations would allow the property owner to put the subject property to a beneficial use, even though site constraints and development standards would not allow for all uses allowed within UC-CG zone.

Increases risks for students:

Written testimony asserts that future uses may increase the flow of traffic in an area that does not have sidewalks or crosswalks for children moving to and from school, even with the vision clearance restrictive covenant. Staff previously addressed traffic in the staff report and found that the existing transportation networks are sufficient because the subject property's small size, lack of on-site potable water, and insufficient area for an on-site septic system would limit the size and type of development that could ultimately occur. An approved access permit from the Polk County Public Works Department would be required prior to issuing any future building permits.

Comments provided assert that because the subject property is contiguous to the school's playgrounds, with only a chain-linked fence as a barrier, that an influx of unknown adults on the subject property would make it more difficult for Perrydale School staff to control interactions between visitors and students. Staff finds that there is no evidence in the record to support this claim or to demonstrate that schools abutting commercial zoned properties pose an increase of danger to children.

DISCUSSION/ALTERNATIVES:

After opening the public hearing and receiving testimony, the Board of Commissioner's options include the following:

1. **APPROVE** PA 24-01 and ZC 24-01 as recommended by the Planning Commission; and **ADOPT** the findings and conclusions found in Sections III and IV of the Staff Report (Exhibit A), and the "ADDITIONAL FINDINGS" found in this memorandum; or
2. Other.

FISCAL IMPACTS:

No fiscal impacts to the County have been identified.

EXHIBITS:

Exhibit A - Polk County Planning Division Staff Report provided to the Planning Commission

Attachment A: Subject Property Map
Attachment B: Comprehensive Plan Map (Current/Proposed)
Attachment C: Zoning Map (Current/Proposed)
Attachment D: 2022 Aerial Photograph
Attachment E: Deed Restriction for Vision Clearance Development Standards

Exhibit B - Comments provided after the Planning Commission Public Hearing



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COMMUNITY DEVELOPMENT

AUSTIN McGUIGAN
Director

Polk County Community Development Planning Division Staff Report and Recommendation to the Planning Commission

APPLICATION:

The Polk County Planning Commission and Board of Commissioners will hold separate public hearings to consider the following application affecting approximately 0.3 acre of land, which is comprised of one (1) parcel and the adjacent public right-of-way. The application consist of the following:

1. Comprehensive Plan Map Amendment to change the designation of the subject area from Public to Unincorporated Community Commercial.
2. Zoning Map Amendment to change the zoning of the subject area from Public and Private Education Facilities (PE) to Unincorporated Community Commercial General (UC-CG).

APPLICANT/OWNER: SRC Management, LLC

APPLICANT'S REPRESENTATIVE: Elaine Albrich, Davis Wright Tremaine LLP

PROPERTY LOCATION: One property northeast of Perrydale School (Assessment Map T6S, R5W, Section 23A, Tax Lot 100); and the adjacent right-of-way to the center line of West Perrydale Road and Perrydale Road.

FILE NUMBERS: PA 24-01 & ZC 24-01

REVIEW AND DECISION CRITERIA: Polk County Zoning Ordinance (PCZO) Sections 170.080, 111.275 and 115.050

HEARING DATES AND TIMES:
Planning Commission Hearing: June 25, 2024 at 6:00 PM
Board of Commissioners Hearing: July 24, 2024 at 9:00 AM

LOCATION FOR BOTH HEARINGS: Hearing/Conference Room, First Floor, Polk County Courthouse, 850 Main Street, Dallas, Oregon

POLK COUNTY STAFFCONTACT: Sidney Mulder; Phone: (503) 623-9237,
Email: mulder.sidney@co.polk.or.us

SECTION I: PROJECT AND PROPERTY DESCRIPTION

PROJECT DESCRIPTION:

The applicant is proposing to change the existing Comprehensive Plan designation of the subject property from Public (PUB) to Unincorporated Community Commercial (UCC) and is proposing to change the existing zoning designation from Public and Private Education Facilities (PE) to Unincorporated Community Commercial General (UC-CG). The subject property is adjacent to Perrydale School, but the applicant asserts that the property has never been owned by a school. A specific development proposal is not being reviewed as part of this application. However, the proposed Comprehensive Plan amendment and Zoning Map amendment are intended to allow for the possibility of re-developing the property and establishing a future use(s) that is allowed in the UC-CG zone.

The subject parcel is approximately 0.23 acre in size and has frontage along West Perrydale Road, towards the north and Perrydale Road towards the east. Polk County Zoning Ordinance (PCZO) 111.130 provides “Rules for Interpretation of Zone Boundaries”. PCZO 111.130(A) states that zone boundaries shall be construed to follow center lines of streets. Therefore, for the purpose of this review, the “subject property” includes the subject parcel and the adjacent right-of-way to the center line of West Perrydale Road and Perrydale Road, which affects an area approximately 0.3 acre in size, as depicted in Attachment A.

Typically, a proposal that involves a Comprehensive Plan amendment and Zoning Map amendment requested by an applicant is processed as a quasi-judicial land use proceeding, which requires a public hearing before the Hearings Officer who makes a recommendation to the Board of Commissioners. The Board of Commissioners considers that recommendation, conducts a separate public hearing, and makes the final local decision. However, Public Zones (PCZO 170.070 and 170.080) provide some unique code language specifying that the Planning Commission shall make a recommendation to the Board of Commissioners when the property is transferred to private ownership for a different use; or the use is abandoned, discontinued, or proposed to change. In this case, it appears that the subject property has never been owned by an educational facility, or used for school purposes. Nevertheless, because the subject property is intended for future commercial use, it was initially staff’s opinion that this application should be processed as a Legislative Amendment since criteria listed in PCZO 170.080 states that the Planning Commission shall recommend to the Board of Commissioners an appropriate zone when the ownership changes or the use of the property is proposed to be changed to a use that is not associated with an educational facility (school).

The applicant provided additional information into the record on April 19, 2024 asserting that this application should be processed as a quasi-judicial land use matter, and cited the Oregon Supreme Court case *Strawberry Hill 4 Wheelers v. Benton County*, 287 Or. 591, 601 P2d 769 (1979). This case evaluates a three-factor test to determine when a land use matter is quasi-judicial or legislative in nature. The three factors are: is the process bound to result in a decision; is the making of the decision bound to apply preexisting criteria to concrete facts; and is the matter directed at a closely circumscribed factual situation or a small number of persons. The applicant also referenced an Oregon Land Use Board of Appeals (LUBA) case, *VanDyke v. Yamhill County*, 78 Or LUBA 530, 2018 WL 10454696, *5 (2018), which stated that “answering two or three of the questions in the affirmative suggests that the matter is quasi-judicial in nature”, and not one factor is determinative. Based on these factors evaluated in the above referenced cases, staff concurs with the applicant that this application should be processed as a quasi-judicial land use matter rather than a legislative proceeding. Other cases that require a zone change and/or Comprehensive Plan amendment pursuant to PCZO 177.070 or 170.080 could be processed as a legislative matter and this determination should be made on a case-by-case basis.

Although this application has been determined to be a quasi-judicial land use matter, certain procedures for non-legislative amendments (quasi-judicial) in PCZO Chapters 111 and 115 reference the Hearings Officer rather than the Planning Commission. Because PCZO 170.080 specifies that the Planning Commission shall make a recommendation to the Board of Commissioners, staff finds that the Planning Commission is the appropriate hearing body to make a recommendation, regardless of the procedural references to the Hearings Officer in PCZO Chapters 111 and 115.

This application was submitted on February 27, 2024 and deemed complete on April 19, 2024.

Table 1. Comprehensive Plan and Zoning Designations for the Subject Property and Surrounding Properties.

Location	Comprehensive Plan Designation	Zoning Designations
Subject Property	Public	Public and Private Education Facilities (PE)

Property North	Unincorporated Community Residential	Suburban Residential (SR)
Property South	Public	Public and Private Education Facilities (PE)
Property East	Unincorporated Community Residential	Suburban Residential (SR)
Property West	Public	Public and Private Education Facilities

PROPERTY DESCRIPTION:

The subject property is located one property northeast of Perrydale School and is identified on the Polk County Assessment Map as T6S, R5W, Section 23A, Tax Lot 100; and the adjacent right-of-way to the center line of West Perrydale Road and Perrydale Road (Attachment A). The subject property is located in the Unincorporated Community of Perrydale. According to 2024 Polk County Assessor's records, the subject property is currently being assessed as having improvements, including a 1,920 square foot machine shed and a 3,200 square foot general purpose building. Staff reviewed historic imagery from 1935 and 1956, accessed through Polk County's Geographic Information System (GIS), and it appears that these structures were on-site at the time the photographs were taken.

Although the subject property is currently being assessed as having structures, the applicant has described the property as being vacant. Staff reviewed a street view image of the subject property, accessed through Google maps, and it appears that the existing structure(s) were in the process of being dismantled at the time the photograph was taken in November of 2023. Based on this information, staff finds that the subject property either currently contains partially dismantled structures, or is vacant. In either case, there is no evidence to support that the subject property is currently being "used" for any purposes.

The subject property was lawfully created pursuant to Polk County Subdivision and Partition Ordinance Section 91.950(1)(a), as evidenced by "Parcel 3" of a deed recorded in Polk County Book of Record 28, Pages 182-184, dated March 23, 1972. The subject property is currently described in a Statutory Warranty Deed recorded in Polk County Clerk Document 2022-003753, dated March 25, 2022.

According to the Polk County Significant Resource Areas (SRA) map, the subject property does not contain any inventoried significant resources. Based on a review of the National Wetland Inventory map, Ballston quadrangle, the subject property does not contain any inventoried wetlands. The subject property is not located within the Special Flood Hazard Area (SFHA), pursuant to Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel number 41053C0100F, dated December 19, 2006. There are no identified historic resources or Greenway areas located on the subject property.

NOTIFICATION:

Notice of the June 25, 2024 public hearing before the Planning Commission and the July 24, 2024 public hearing before the Board of Commissioners was provided as required by 111.340 - 111.370. Notice was mailed to area property owners on May 20, 2024. Notice was printed in the local *Itemizer-Observer* newspaper on May 29, 2024. Notice was posted on the subject property on or prior to June 5, 2024 for the Planning Commission public hearing.

SERVICES:

Access: The subject property is a corner parcel with frontage along West Perrydale Road towards the north and frontage along Perrydale Road towards the east. According to the Polk County Transportation Systems Plan, Figure 3, West Perrydale Road and Perrydale Road are both classified as Major Collectors.

Water/Sewer: The subject property is located within the area served by Perrydale Domestic Water Association (PDWA). However, PDWA provided comments stating that water is not available. The subject property is not located within an area served by a sanitary sewer district.

School: Perrydale School District 21

Fire: Amity Rural Fire Protection District

Police: Polk County Sheriff

II. COMMENTS RECEIVED

Environmental Health: Due to the size of the lot and lack of usable area, the subject property will unlikely meet the requirements for an on-site septic system approval in accordance with Oregon Administrative Rules (OAR) 340-071-0150(4). However, some commercial uses allow for holding tanks if the site and use meets the requirements noted in OAR 340-071-0340(1)(a).

Public Works Department: Currently the zoning for property (T6S, R5W, Section 23A, Tax Lot 100) is held to the development standard 112.140 Vision Clearance Area. This standard prevents any structures being built within the setback that could create a sight distance issue for traffic driving along West Perrydale Road and Perrydale Road. With the proposed zoning change the Vision Clearance Area standard would not be required. The Polk County Public Works Department is concerned by the zoning change because of the removal of the Vision Clearance Area standard. Without standard 112.140 that sight distance can be impaired due to signage, fencing, retaining walls, etc. With this zoning change, can a Vision Clearance Area remain a requirement for this property?

Perrydale Domestic Water Association: There is no water available from Perrydale Domestic Water Association at this lot.

No other comments were received as of the writing of this staff report. Full comments are included in the record.

III. REVIEW & DECISION CRITERIA

The applicable criteria for the proposed Zone Change and Comprehensive Plan Amendment are listed under Polk County Zoning Ordinance (PCZO) Sections 170.080, 111.275, and 115.050. Under these provisions, the Polk County Planning Commission conducts a public hearing pursuant to PCZO 111.190 and 115.030 and makes a recommendation to the Polk County Board of Commissioners. The Polk County Board of Commissioners conducts a public hearing pursuant to PCZO 111.200 and 115.030 and makes a final local decision. The Applicant's findings and staff findings are provided in this section.

Findings for ZC 24-01:

- 1. CHANGING USE.** Any area shown on the official zoning map as a park, playground, cemetery, ball park, fairgrounds, airport, school or other public or semi-public area, shall not be used for any other purpose than that for which such area is used at the effective date of the Polk County Zoning Ordinance, and whenever the use of such an area is discontinued or proposed to be changed, the Planning Commission shall recommend to the Board of Commissioners appropriate rezoning for any such area. [PCZO 170.080]

Staff Findings: The subject property is currently zoned Public and Private Education Facilities (PE) and has a Comprehensive Plan designation of Public; therefore, the subject property is considered an area shown on the official zoning map as a school. The current property owner purchased the

subject property on March 25, 2022, as evidenced by a Statutory Warranty Deed recorded in Polk County Clerk Document 2022-003753. The current property owner is proposing to redevelopment of the property for uses that are allowed under the Unincorporated Community Commercial General (UC-CG). The UC-CG zone is not consistent with the Public Comprehensive Plan Designation; therefore, the applicant has also applied for a Comprehensive Plan Amendment to change the designation from Public to Unincorporated Community Commercial. Findings to address the criteria for a zone change are addressed in Section III, Subsections 2 and 3, below. Findings to address the criteria for a Comprehensive Plan Amendment are addressed in Section III, Subsection 4, below.

After conducting a public hearing that is scheduled for June 25, 2024, the Planning Commission will make a recommendation for the appropriate rezoning of the subject property to the Board of Commissioners. The Board of Commissioners will conduct a separate public hearing that is scheduled for July 24, 2024, and make a final local decision.

2. **AMENDING OFFICIAL ZONING MAP.** A zone change is a reclassification of any area on the Official Zoning Map from one zoning designation to another, after the proposed change has been reviewed and a recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. Annexation of territory to a city shall result in automatic amendment of the Official Zoning Map as of the effective date of annexation. When the Official Zoning Map is amended by ordinance or annexation to a city, the Planning Director shall cause the changes to be made to the Official Zoning Map. [PCZO 111.110]

Staff Findings: The applicant is proposing to amend the official zoning map for an area approximately 0.3 acre in size. The current zoning designation is PE and the proposed zone is UC-CG. If approved by the Board of Commissioners, the Planning Director shall cause the changes to be made on to the Official Zoning Map once the decision becomes effective.

3. **ZONE CHANGE CRITERIA.** Pursuant to Section 111.160, a zone change may be approved, provided that the request satisfies all applicable requirements of this ordinance, and provided that with written findings, the applicant(s) clearly demonstrate compliance with the following criteria:

- (A) The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification; [PCZO 111.275(A)]

Applicant's Findings: Applicant is concurrently pursuing a Comprehensive Plan designation amendment.

Staff's Findings: The current Comprehensive Plan designation is Public (PUB), which is implemented by the public zoning designations listed in PCZO Chapter 170, including the PE zone. The proposed UC-CG zoning designation implements the Unincorporated Community Commercial (UCC) Comprehensive Plan designation. Therefore, the applicant has also applied for a Comprehensive Plan amendment to change the Comprehensive Plan designation from PUB to UCC.

- (B) The proposal conforms with the purpose statement of the proposed zone; [PCZO 111.275(B)]

PURPOSE AND INTENT. The purpose of the Unincorporated Community Commercial General (UC-CG) Zoning District is to implement the Comprehensive Plan policies related to commercial development by providing for a range of service and product-oriented commercial activities. This zone is applied to commercial lands within unincorporated communities.

The intent of the UC-CG Zoning District is to provide for commercial development in unincorporated communities. Commercial activities in this zone generally consist of uses which complement agricultural and forest activities in the surrounding area, uses

which serve the needs of the surrounding community or the needs of the traveling public, or other uses which are small-scale and low impact. [PCZO 147.010]

Applicant's Findings: The purpose of the UC-GC zone is to implement Comprehensive Plan policies related to commercial development by providing a range of services and product-oriented commercial activities in unincorporated communities. Commercial activities within the UC-GC zone generally complement the unincorporated community, serve the needs of the community or traveling public, and offer other uses that are small-scale and low impact. Applicant proposes to rezone the property to UC-GC to allow for the redevelopment of the property for uses that are allowed under the UC-GC and likely small-scale and low-impact, including such uses in PCZO 146.040(C) and PCZO 146.040(C). By conforming to the allowed uses in the UC-GC, Applicant's proposal will conform to the purpose of the UC-GC and this criterion is met.

Staff Findings: As discussed above, it does not appear that the subject property is currently being used for any specific purpose, and the structures are either currently being dismantled, or have been recently removed/demolished. Uses that are allowed in the UC-CG are specified in PCZO Chapter 147, which also references certain uses listed in PCZO Chapter 146 and 145. If approved, any future development would be limited to the uses that are permitted in the UC-CG zone. Future development would also be subject to all applicable development standards (i.e. setbacks, parking, landscaping, etc.), which would further limit the scope of future uses that could be established. For these reasons, staff finds that the proposal conform to the purpose and intent of the UC-CG zone, even though a specific development proposal is not being reviewed at this time.

(C) The uses allowed in the proposed designation will not significantly adversely affect allowed uses on adjacent lands; [PCZO 111.275(C)]

(D) Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; [PCZO 111.275(D)]

Applicant's Findings [PCZO 111.275(C)]: The UC-GC allowed uses are by their nature, lower impact uses that do not result in significant burden on public services, transportation, or surrounding properties. Adjacent lands are used for public education, residential, commercial, or are otherwise vacant.

Potential impacts from Applicant's proposed use could include additional trips at the intersection but otherwise no offsite impacts are anticipated. No impacts are anticipated that would rise to the level of significant to adversely impact public education, residential, or commercial uses. Accordingly, this criterion is met.

Applicant's Findings [PCZO 111.275(D)]: A future commercial project will be served by the existing transportation system and access and by new on-site water and sanitary systems. Applicant proposes to use tanked drinking water supply until water is available through Perrydale Domestic Water Association and will install an on-site septic system. This criterion can be met with conditions.

Staff Findings: The subject property is located within the unincorporated community of Perrydale, which is approximately 68 acres in size and contains a mixture of residential, public, industrial, and commercial zoned properties. Perrydale school abuts the subject property towards the south and west, which is a small rural school serving grades K-12. Surrounding properties towards the north and east are zoned Suburban Residential (SR), generally range in size from approximately 0.5-3 acres, and are developed with single-family residences. The minimum parcel size for SR zoned properties within an unincorporated community is 1.0 acre; therefore, additional parcelization and residential development could potentially occur in the vicinity of the subject property.

The subject property is located within the area served by Perrydale Domestic Water Association (PDWA); however, PDWA provided comments stating that water is not available for the subject property. Although this review is not intended to evaluate a specific development proposal, staff finds that the UC-CG zone does allow for some uses that would not necessarily require on-site potable water, such as a greenhouse, farm product storage, or a seasonal farm stand. Staff also finds

that installing a drinking water tank and having a contract with a potable water provider could potentially be allowed for some commercial uses, but ultimately this would be determined by the Polk County Building Official and would likely be dependent on how many people are on-site and whether or not the use was considered temporary or permanent. In any case, because the UC-CG zone allows for uses that do not necessarily require on-site potable water, staff finds that the proposed zone change would result in the subject property having the potential to be put to a beneficial use that the current PE zone precludes.

The Polk County Environmental Health Division provided comments stating that due to the size of the subject property and lack of usable area, it is unlikely that an on-site septic system could be approved in accordance with Oregon Administrative Rules (OAR) 340-071-0150(4). However, some commercial uses allow for holding tanks if the site and use meets the requirements found in OAR 340-071-0340(1)(a).

Among other criteria, OAR 340-071-0340(1)(a) specifies that permanent, small-scale commercial uses can be served with a holding tank when the projected sewage flow is not more than 200 gallons per day. The applicant has not proposed any specific future development at this time. Nevertheless, staff finds that the UC-CG zone permits small-scaled commercial uses that could be scaled to not exceed 200 gallons per day. For example, the UC-CG zone permits various types of commercial offices, but this design flow limitation could reduce the number of offices and occupancy, assuming all other development standards were also met. Other types of uses allowed in the UC-CG may not require an on-site septic system, such as a greenhouse or seasonal farm stand.

Staff finds that on-site potable water and the lack of available space for an on-site septic system are both limiting factors to future use(s) on the subject property. However, these limiting factors would ensure that any future development would be small in scale and is not anticipated to significantly adversely affect surrounding properties. Ultimately, the applicant would have to demonstrate that all applicable development standards were met prior to the issuance of any future building permits.

The subject property is a corner parcel with frontage along Perrydale Road and West Perrydale Road, which are both classified as Major Collectors in the Polk County Transportation Systems Plan (TSP), Figure 3. Although the UC-CG zone allows for uses that could generate a high traffic volume, such as a grocery store, staff finds that the subject property's small size, lack of on-site potable water, and insufficient area for an on-site septic system would limit the size and type of development that could ultimately occur. For these reasons, staff finds that any future development on the subject property would be small in scale and the existing transportation networks are sufficient.

The application complies with these criteria.

(E) The proposed change is appropriate taking into consideration the following: [PCZO 111.275(E)]

(1) Surrounding land uses,

(2) The density and pattern of development in the area,

(3) Any changes which may have occurred in the vicinity to support the proposed amendment. [PCZO 111.275(E)(1)-(3)]

Applicant's Findings: The property is located at an intersection in the middle of the incorporated Perrydale community. It is nearby other developed properties, mostly comprised of similar or larger parcels. Rezoning the property to commercial use will allow for its redevelopment and put it back into productive use to serve the community, offering potential office space, storage space, or other type of commercial building for a business to occupy. The future use would be compatible with the surrounding public education, residential, or commercial uses, as it would be similar to the active uses in the area. There is other commercial zoned land near the Perrydale intersection and this proposed zone change offer an opportunity to revitalize an otherwise vacant corner. This criterion is met.

Staff Findings: Staff reviewed the Polk County Zoning map and 2022 aerial imagery, and confirmed

that the applicant has accurately described the subject property and surrounding area. As discussed above, the unincorporated community of Perrydale is approximately 68 acres in size and contains a mixture of residential, public, industrial, and commercial zoned properties. The subject property abuts Perrydale school towards the south and west, which is a small rural school serving grades K-12. Surrounding properties towards the north and east are zoned SR, generally range in size from approximately 0.5-3 acres, and are developed with single-family residences. The minimum parcel size for SR zoned properties within an unincorporated community is 1.0 acre; therefore, additional parcelization and residential development could potentially occur in the vicinity of the subject property.

The Polk County Public Works Department provided comments expressing concerns about how the proposed zone change could create a sight distance issue for traffic driving along West Perrydale Road and Perrydale Road. Specifically, the vision clearance standards found in PCZO 112.140 would no longer be applicable which prevents any structures, signs, fencing, retaining walls, etc. from being built within the vision clearance setback area.

The vision clearance standards found in PCZO 112.140 states:

VISION CLEARANCE AREA. In the SR Zone or any public zone, the vision clearance area for corner lots at street intersections shall have a minimum of 30-foot legs along each street and for alley-street intersections in said zones, the vision clearance area shall have legs of a minimum of ten (10) feet along both alley and street. The vision clearance area shall not contain any plantings, walls, structures, or temporary or permanent obstructions to vision exceeding 30 inches in height above the curb level, or street shoulder where there is no curb, except a supporting pillar or post not greater than 12 inches in diameter or 12 inches on the diagonal of a rectangular pillar or post; and further, excepting those posts or supporting members of street signs, street lights, and traffic control signs installed as directed by the department of public works, or any other sign erected for public safety.

Vision clearance shall not be required at a height of seven (7) feet or more above the curb level, or seven (7) feet, six (6) inches above the shoulder of a street that does not have a curb.

This section shall not be construed as waiving or altering any yard requirements or setback requirements that may be required by this or any other ordinance.

The vision clearance standard only applies to properties within the Suburban Residential (SR) zone and all public zones. Staff finds that the proposed zone change would result

Staff concurs that the vision clearance area standard found in PCZO 112.140 is currently applicable to the PE zone, but would not be applicable to the proposed UC-CG zone. The development standards for the UC-CG zone found in PCZO 112.400(C)(6) states:

- (6) *CONDITIONS IMPOSED WHERE ZONE CHANGE TO CG OR UC-CG ZONE ABUTS RESIDENTIAL ZONE. In any zone change or reclassification of property to the CG and UC-CG Zones where the territory proposed to be changed abuts upon a residential zone, or abuts upon a street or alley which would be the boundary line between the proposed CG and UC-CG Zones and the residential zone conditions to preserve neighborhood qualities may be imposed by the Board of Commissioners relating to:*

- (a) *Size and location of signs;*
- (b) *Size, type and location of outdoor lighting;*
- (c) *Landscaped areas;*
- (d) *Screening;*
- (e) *Building setbacks; and*

(f) *Ingress and egress for commercial uses.*

If any of the above conditions are imposed they shall be placed in the deed records of the County.

As discussed above, the subject property abuts residential zoned properties towards the north and west; therefore, the Board of Commissioners could choose to impose condition(s) to preserve neighborhood qualities related to (a) through (f) listed above. Staff finds that the concerns raised by the Public Works Department are valid and it is important to consider the potential impacts that the proposed zone change could have at this intersection, especially given the proximity to an existing school and surrounding residential zoned properties. Without the imposition of the vision clearance standard, fences and free-standing signs up to six (6) feet in height could be constructed on the northeastern corner property lines, which could create a safety hazard to the traveling public and/or pedestrians walking to and from Perrydale School. For these reasons, staff finds that a deed restriction to continue the imposition of the vision clearance standard found in PCZO 112.140 is warranted. Staff recommends a condition of approval that the property owner shall sign and record a non-remonstrance deed restriction (Attachment E) with the Polk County Clerk's Office that specifies the vision clearance standards found in PCZO 112.140 shall continue to apply to the subject property. The property owner shall pay the applicable recording fees. The property owner shall submit a copy of the recorded deed restriction to the Planning Division for inclusion in the record of ZC 24-01.

Many of the uses allowed in the UC-CG zone are intended to serve the needs of the community and surrounding area. The subject property is sited at an intersection near the central portion of the unincorporated community, which would provide a convenient location for future development to serve the Perrydale community. The vision clearance area should be maintained to preserve the neighborhood qualities; specifically, the safety qualities that a vision clearance standard provides. Staff finds that the proposal would provide an opportunity for the subject property to be put to a future beneficial use to serve the rural community of Perrydale.

With the above recommended condition of approval, the application complies with these criteria.

(F) The proposal complies with any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land; and [PCZO 111.275(F)]

Applicant's Findings: To Applicant's knowledge, no such agreements exist for Perrydale.

Staff Findings: Perrydale is an unincorporated community of Polk County. There are no applicable intergovernmental agreements that pertain to the subject property.

The applicant complies with this criterion.

(G) The proposal complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply. [PCZO 111.275(G)]

Applicant's Findings: The property is already zoned for non-resource use and located within an existing unincorporated community. No exceptions are required.

Staff Findings: Staff has addressed each of the Statewide Planning Goals below.

Goal 1 - Citizen Involvement: Citizen involvement is advanced by providing appropriate notice and an opportunity to comment on this application. Notice of the scheduled public hearings and a request for comments has been mailed to area property owners and posted on a publicly accessible website in compliance with the Polk County Zoning Ordinance. This Goal will be complied with throughout this process.

Goal 2 - Land Use Planning: This Goal provides the flexibility in land use planning by allowing for exceptions to Goals under certain circumstances. A Goal exception is not proposed or required for this application.

Goal 3 - Agricultural Lands and Goal 4 - Forest Lands: The subject property is an acknowledged exception area where these goals do not apply.

Goal 5 - Natural Resources, Scenic and Historic Areas, and Open Spaces – According to the Polk County Significant Resources Area map, the subject property does not contain inventoried Goal 5 resources.

Goal 6 - Air, Water and Land Resources Quality: Staff is not aware of any impacts that future uses would have on air, water and land resource qualities. There are no inventoried air or water or land resources of significance identified on the subject property. This Goal is complied with.

Goal 7 - Areas Subject to Natural Hazards: The subject property is not located in an area that is known to be at risk of natural hazards. The subject property is located outside of the FEMA Special Flood Hazard Area, and Polk County does not have evidence to suggest that the subject property is in an area at risk of landslides or wildfires.

Goal 8 - Recreational Needs: The subject property is not designated in the Comprehensive Plan as an area intended to provide public recreational opportunities, nor would it create increased demand for recreational land.

Goal 9 - Economic Development: The proposed amendments would allow for limited commercial development, which would provide economic development and possible employment opportunities that are not currently afforded under the current Plan designation. This proposal is consistent with Goal 9.

Goal 10 – Housing: The subject property is located outside an urban growth boundary in a “rural service center” unincorporated community. The UC-CG zone permits a single-family dwelling; however, a dwelling would not be permitted to be served by a septic holding tank. Consequently, the applicant’s proposal would not affect the supply of housing in the Perrydale Unincorporated Community.

Goal 11 - Public Facilities and Services: Future development would be limited to those uses that either do not require potable water or an on-site septic system; or, uses that could be served by a septic holding tanks and delivered potable water. These development standards would ensure that all future development is small in scale. Future development that did not comply with Goal 11 would not be permitted. This Goal is complied with.

Goal 12 – Transportation: In 2012, changes were made to the Oregon Highway Plan (OHP), and with the Transportation Planning Rule. Those changes provide a “safe harbor” for automatic compliance with Goal 12 where the proposal does not increase the average daily trips (ADT) by more than 400. When evaluated together, the TPR and OHP exempt Plan amendments that would generate less than 400 ADT from further TPR review as they are classified as a small increase that does not further degrade the transportation facility. As discussed above, uses within the UC-CG zone could potentially generate a high traffic volume, but not at this site due to property being less than a 1/3 acre in size. Staff finds that future development of the property would be far below the “safe harbor” figure of 400. This Goal is complied with.

Goal 13 – Energy: Any redevelopment of the subject property would be subject to any applicable energy code, as determined by the Polk County Building Official. This Goal is complied with.

Goal 14 - Urbanization - The subject property is located within a designated unincorporated community. The boundary of the community would not be affected. The proposal does not affect an urban growth boundary. This Goal is complied with.

Goals 15 - 18 Relate to the Willamette River and Ocean Areas: These Goals are not applicable to this application as the exception area is not near or impacted by the Willamette River or any of the Ocean Goals.

The application complies with all Statewide Planning Goals and a Goal exception under OAR 660-004 is not required.

(H) The road function, classification, capacity and existing and projected traffic volumes

have been considered. To allow comprehensive plan map and zone map amendments that may generate trips up to the planned capacity of the transportation system, Polk County will consider road function, classification, road capacity and existing and projected traffic volumes, as criteria for comprehensive plan map and zone map amendments. [PCZO 111.275(H)]

Applicant's Findings: The property is abutted by two public roadways. The redevelopment of Applicant's property should not result in trips that would affect the capacity or functionality of the existing transportation system. The property is about one-quarter an acre and the anticipated development is anticipated to be relatively low impact and small square footage given the need to accommodate septic, water tanks, and parking onsite.

Staff Findings: The subject property is a corner parcel with frontage along West Perrydale Road towards the north and frontage along Perrydale Road towards the east. According to the Polk County Transportation Systems Plan (TSP), Figure 3, West Perrydale Road and Perrydale Road are both classified as Major Collectors.

While the UC-CG zone allows for many different types of uses that could generate a significant amount of traffic, such as a bus terminal, grocery store, or amusement services, many of those uses would require a conditional use permit and the subject property is not large enough to meet all development standards (i.e. setbacks, parking, on-site septic system, etc.) to support those types of uses. Redevelopment of the subject property would require the property owner to demonstrate that all applicable development standards could be met through a conditional use permit, and/or would be met prior to the issuance of any future building permits for the intended use.

It is more likely that any future redevelopment of the property would be limited to uses that are temporary in nature, such as a seasonal farm stand, or small scaled uses that could be served by a septic storage tank and pumping contract, and delivery of potable water. The UC-CG zone also permits farm stands and greenhouses, which are uses that would likely no require on-site potable water or permanent restroom facilities.

For these reasons, staff concurs with the applicant's findings that future development would not affect the capacity or functionality of Perrydale Road or West Perrydale Road. Approval of this proposed zone change would not authorize the property owner to establish a use that would exceed transportation capacity.

Findings for PA 24-01:

4. CRITERIA FOR NON-LEGISLATIVE PLAN AMENDMENTS. A non-legislative plan amendment may be approved provided that the request is based on substantive information providing a factual basis to support the change. It is the applicant's responsibility to provide the information necessary to determine if the request meets the pertinent criteria.

(A) Amendments to the Comprehensive Plan Map must meet one or more of the following criteria: [PCZO 115.050(A)]

(1) The Comprehensive Plan designation is erroneous and the proposed amendment would correct the error, or [PCZO 115.050(A)(1)]

(2) The Comprehensive Plan Designation is no longer appropriate due to changing conditions in the surrounding area; and [PCZO 115.050(A)(2)]

Applicant's Findings: The property is located on the corner of an active rural county road intersection. It offers frontage on both W Perrydale Road and Perrydale Road. It has been zoned PE for years and never owned by a school or put to public education use. Thus, the property has been underdeveloped for years. Applicant owns and invests in commercial and industrial properties throughout the County. Applicant acquired this property after seeing its redevelopment potential. Applicant seeks to amend the property's comp plan designation from P to C to facilitate rezoning the property to UC-CG. This will allow the property to be put back to productive economic use after

sifting unoccupied and unattended for years. This criterion is met.

Staff Findings: According to the historic zoning map dated December 4, 1975, the subject property and the neighboring Perrydale School property were previously zoned SR. According to the zoning map dated December 10, 1980, the subject property and Perrydale School property's zoning designation was changed to PE. Historic deed records demonstrate that Victor and Dorthy Brown purchased the subject property on March 23, 1972 and Victor Brown owned the property until March 25, 2022, when it was sold to the current property owner. Based on these deed records, staff concurs with the applicant and finds that there is no evidence in the record to demonstrate that Perrydale School, or any public or private school, has ever owned the subject property. The subject property was owned by Victor and Dorthy Brown when the property's zoning designation was changed from SR to PE.

Staff also reviewed Polk County Community Development records, Clerk records, and Assessor's records and found no evidence of the subject property ever being used for school purposes, or leased by a public or private school. Based on these records, staff finds that the Public Comprehensive Plan designation is erroneous. The proposed Unincorporated Community Commercial designation would correct this error by redesignating the site to allow for the redevelopment of the site to be put to a beneficial use.

(3) The purpose of the Comprehensive Plan will be carried out through approval of the proposed Plan Amendment based on the following: [PCZO 115.050(A)(3)]

(a) Evidence that the proposal conforms to the intent of relevant goals and policies in the Comprehensive Plan and the purpose and intent of the proposed land use designation. [PCZO 115.050(A)(3)(a)]

Citizen involvement:

Goal 1.5 Polk County will provide notice to those citizens that may be affected by proposed and adopted land use decisions and actions including but not limited to: amendments to the comprehensive plan and implementing regulations, zone changes, land use determinations, variances, conditional use permits, dwelling approvals, land divisions and subdivisions.

Goal 2.1 Polk County will prepare and make available to the public upon request clear and concise information reports, and supporting findings of fact and conclusions of law to citizens regarding County land use decisions and actions.

Goal 2.2 Polk County will, as required by law provide public notices of proposed and approved land use decisions that sufficient and concise information to enable citizens to provide timely, informed comments. [PCCP Section 2]

Applicant's Findings: The County's land use review will include the opportunity for public notice, public comment, and public engagement before both the Planning Commission and the Board of County Commissioners.

Staff Findings: Notice of the scheduled public hearings and a request for comments has been mailed to area property owners and posted on a publicly accessible website. A copy of the staff report will be available for inspection, or copies can be obtained, and will be posted on the publicly accessible website at least seven (7) days prior to each public hearing.

Economic Development:

Goal 1. To achieve a rate or pattern of economic activity which; will relieve chronically high levels of unemployment and underemployment.

Goal 2. To provide an atmosphere conducive to economic activity with an emphasis on private sector activity. [PCCP Section 2]

Applicant's Findings: This application will help facilitate redevelopment of an underutilized, vacant site and offer commercial opportunities in the future, including new commerce and employment potential.

Staff Findings: The proposed UCC designation would provide for the opportunity to establish future commercial uses that the current PUB designation does not afford. Although this site has development constraints, future uses could provide limited employment opportunities, including in the private sector.

Goal 5. To provide for and maintain a viable economy while preserving the present sense of community and high level of environmental quality.

Policy 1.1 Polk County will favor the development of economic activities which will provide jobs able to utilize the skills of the local labor force.

Policy 1.2 Polk County will encourage the provision of economic opportunities in or near areas of high unemployment.

Policy 3.1 Polk County will coordinate with public agencies and concerned citizens in encouraging a diversified economy and employment base in order to reduce or avoid reliance upon one sector of economic activity.

Policy 4.4 Polk County will encourage the concentration of industries of similar types, performance characteristics and service needs.

Policy 5.1 Polk County will encourage commercial uses to locate within existing municipalities, urban growth boundaries, unincorporated communities and existing rural commercial areas. [PCCP Section 2]

Applicant's Findings: This application offers the opportunity to support the Perrydale economy by offering new commercial opportunities that could utilize a local workforce skillset while retains Perrydale's community character. Applicant anticipates the commercial opportunities provided by the future commercial project will diversify the economic activity in Perrydale consistent with the County's policy to locate commercial uses within existing unincorporated communities.

Staff Findings: The proposed UCC designation would provide for the opportunity to establish future commercial uses that the current PUB designation does not afford. Although this site has development constraints, future uses could provide some economic opportunities to the Perrydale Community.

Unincorporated Communities Plan Element:

Goal 4. To provide for opportunities for development in unincorporated communities while preventing development that would exceed that ability of the area to provide potable water, wastewater management, or transportation services. [PCCP Section 2]

Applicant's Findings: Applicant's future commercial project will not exceed Perrydale's ability to provide portable water, wastewater, or transportation services. The future commercial project will build new on-site water and sanitary systems. The Applicant proposes to use tanked drinking water supply until water is available through Perrydale Domestic Water Association. The future commercial use should not result in trips that impact the capacity or functionality of the existing transportation system as the anticipated development is expected to be low impact.

Staff Findings: As discussed above, future uses would likely be limited to uses that either do not require an on-site septic system or potable water; or, scaled uses within the limitations of using a septic holding tank and delivered potable water. In either case, the UCC plan designation and UCC implementing zone allows for small-scale uses that do not require potable water or wastewater management, and would not have impacts on the existing County road system. Any future development would be required to demonstrate that all applicable development standards were met prior to the issuance of any building permits.

Goal 5. To provide for and maintain a viable economy while preserving the present sense of community and environment.

Policy 1.3 Polk County will only permit those uses in unincorporated communities for which it can be clearly demonstrated that such uses: a. Contribute to the well-being of the community; b. Do not seriously interfere with surrounding or adjacent activities; c. Are consistent with the identified function, capacity and level of service of facilities. [PCCP Section 2]

Applicant's Findings: This application will help facilitate a future commercial project that supports the three criteria in Policy 1.3 because the expected development will respond to the economic needs of the community, will complement surrounding uses, and will be low impact. Moreover, the future commercial project will provide on-site water and sanitary systems and will use tanked drinking water supply until water is available through Perrydale Domestic Water Association.

Staff Findings: Staff finds that the UCC plan designation and UC-CG zone would allow the subject property to be put to a future beneficial use, which the current plan designation and zone precludes. The small size of the property would be the most limiting factor for future development possibilities. Ultimately, if on-site septic and water are not available, a greenhouse or seasonal farm stand may be the only uses that could be established on this property. Even so, those uses would contribute to the well-being of the community by providing additional small-scale development potential to serve the surrounding rural area community.

Policy 1.6 Polk County shall ensure that new uses authorized within unincorporated communities do not adversely affect agricultural or forestry uses. [PCCP Section 2]

Applicant's Findings: This application will not adversely affect agricultural or forestry uses because the parcel is currently developed and designated Private Educational Facilities (PE).

Staff Findings: The subject property is not contiguous with any properties that are zoned for agricultural or forestry uses, and the nearest farm operation is approximately 275 feet south towards the south, on the east side of Perrydale Road. Staff finds that any new uses established on the subject property would have a significant buffer distance between neighboring farm and forest operations.

Policy 1.7 Polk County shall ensure that the cumulative development within unincorporated communities will not:

- a. Result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations; and,**
- b. Exceed the carrying capacity of the soil or of existing water supply resources and sewer services. [PCCP Section 2]**

Applicant's Findings: This application will result in neither public health hazards or adverse environmental impacts nor exceed the carrying capacity of the soil or of existing water supply and sewer services. The future commercial project is anticipated to be relatively low impact and small square-footage to accommodate the onsite water and sanitary systems. Applicant proposes to use tanked drinking water supply until water is available through Perrydale Domestic Water Association.

Staff Findings: Future uses would likely be limited to uses that either do not require an on-site septic system or potable water; or, scaled uses within the limitations of using a septic holding tank and delivered potable water. In either case, any future development would be required to demonstrate that all applicable development standards were met prior to the issuance of any building permits.

Policy 1.10 Polk County shall allow commercial and industrial uses within unincorporated communities in accordance with the provisions of Oregon Administrative Rule OAR 660, Division 22, the Unincorporated Communities

Rule. [PCCP Section 2]

Applicant's Findings: This application will help facilitate a commercial use that is consistent with OAR-660-022-000 *et seq.* The future commercial project will primarily provide for the retail sale of products or services, including office. The anticipated commercial use will not include factories, warehouses, freight terminals, or wholesale distribution centers. *See* OAR-660-022-0010. The future commercial project will be small scale, low impact use, and will serve the community and/or support the travelers passing through the area. *See* OAR 660-022-0030(4).

Staff Findings: The proposed UC-CG zone that would implement the UCC plan designation is in compliance with the provisions of Oregon Administrative Rule OAR 660, Division 22, the Unincorporated Communities Rule. PCZO Chapter 147 includes small-scale low impact development standards, which limit the size of structures.

Transportation:

Goal 2. To develop and assist in the development of a safe, convenient, and economic transportation system available to all persons. [Polk County TSP (2009)]

Applicant's Findings: The anticipated commercial project will be served by the existing transportation system. The redevelopment of Applicant's property should not result in trips that would affect the capacity or functionality of the existing transportation system given the limited site square footage and potential development footprint/envelop.

Staff Findings: Due to the site's small size and limitations of uses that could be served by a septic holding tank and/or delivery of potable water, staff finds that any future uses established on the subject property would be small in scale and would not have a significant impact on the existing transportation system.

Land Use Plan Designations, Unincorporated Community Commercial:

It is the intent of the Unincorporated Community Commercial Plan designation to protect existing employment and provide limited employment opportunities for some of the residents living in and nearby unincorporated communities. [PCCP Section 4]

Applicant's Findings: This application will help facilitate a future commercial project that will offer employment opportunities that may be filled by residents of the Perrydale or neighboring community members.

Staff Findings: Future commercial use(s) could provide limited employment opportunities for residents in the Perrydale Community.

- (b) Compliance with Oregon Revised Statutes, statewide planning goals and related administrative rules which applies to the particular property(s) or situations. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply; and [PCZO 115.050(A)(3)(b)]**

Applicant's Findings: The property is located in an unincorporated community and already zoned for non-resource use with community water services. No exceptions are necessary.

Staff Findings: Staff has addressed each of the Statewide Planning Goals below.

Goal 1 - Citizen Involvement: Citizen involvement is advanced by providing appropriate notice and an opportunity to comment on this application. Notice of the scheduled public hearings and a request for comments has been mailed to area property owners and posted on a publicly accessible website in compliance with the Polk County Zoning Ordinance. This Goal will be complied with throughout this process.

Goal 2 - Land Use Planning: This Goal provides the flexibility in land use planning by allowing for exceptions to Goals under certain circumstances. A Goal exception is not proposed or required for this application.

Goal 3 - Agricultural Lands and Goal 4 - Forest Lands: The subject property is an acknowledged exception area where these goals do not apply.

Goal 5 - Natural Resources, Scenic and Historic Areas, and Open Spaces – According to the Polk County Significant Resources Area map, the subject property does not contain inventoried Goal 5 resources.

Goal 6 - Air, Water and Land Resources Quality: Staff is not aware of any impacts that future uses would have on air, water and land resource qualities. There are no inventoried air or water or land resources of significance identified on the subject property. This Goal is complied with.

Goal 7 - Areas Subject to Natural Hazards: The subject property is not located in an area that is known to be at risk of natural hazards. The subject property is located outside of the FEMA Special Flood Hazard Area, and Polk County does not have evidence to suggest that the subject property is in an area at risk of landslides or wildfires.

Goal 8 - Recreational Needs: The subject property is not designated in the Comprehensive Plan as an area intended to provide public recreational opportunities, nor would it create increased demand for recreational land.

Goal 9 - Economic Development: The proposed amendments would allow for limited commercial development, which would provide economic development and possible employment opportunities that are not currently afforded under the current Plan designation. This proposal is consistent with Goal 9.

Goal 10 – Housing: The subject property is located outside an urban growth boundary in a “rural service center” unincorporated community. The UC-CG zone permits a single-family dwelling; however, a dwelling would not be permitted to be served by a septic holding tank. Consequently, the applicant’s proposal would not affect the supply of housing in the Perrydale Unincorporated Community.

Goal 11 - Public Facilities and Services: Future development would be limited to those uses that either do not require potable water or an on-site septic system; or, uses that could be served by a septic holding tanks and delivered potable water. These development standards would ensure that all future development is small in scale. Future development that did not comply with Goal 11 would not be permitted. This Goal is complied with.

Goal 12 – Transportation: In 2012, changes were made to the Oregon Highway Plan (OHP), and with the Transportation Planning Rule. Those changes provide a “safe harbor” for automatic compliance with Goal 12 where the proposal does not increase the average daily trips (ADT) by more than 400. When evaluated together, the TPR and OHP exempt Plan amendments that would generate less than 400 ADT from further TPR review as they are classified as a small increase that does not further degrade the transportation facility. As discussed above, uses within the UC-CG zone could potentially generate a high traffic volume, but not at this site due to property being less than a 1/3 acre in size. Staff finds that future development of the property would be far below the “safe harbor” figure of 400. This Goal is complied with.

Goal 13 – Energy: Any redevelopment of the subject property would be subject to any applicable energy code, as determined by the Polk County Building Official. This Goal is complied with.

Goal 14 - Urbanization - The subject property is located within a designated unincorporated community. The boundary of the community would not be affected. The proposal does not affect an urban growth boundary. This Goal is complied with.

Goals 15 - 18 Relate to the Willamette River and Ocean Areas: These Goals are not applicable to this application as the exception area is not near or impacted by the Willamette River or any of the Ocean Goals.

The application complies with all Statewide Planning Goals and a Goal exception under OAR 660-004 is not required.

(c) Compliance with the provisions of any applicable intergovernmental agreement

pertaining to urban growth boundaries and urbanizable land. [PCZO 115.050(A)(3)(c)]

Applicant's Findings: To Applicant's knowledge, there are not applicable agreements for Perrydale, an unincorporated community.

Staff Findings: Perrydale is an Unincorporated Community within Polk County. There are no applicable intergovernmental agreements that pertain to the subject property.

The applicant complies with this criterion.

IV. CONCLUSIONS & RECOMMENDATION

Based on the information submitted into the record, and the findings presented above, staff recommends that the Planning Commission recommend that the Board of Commissioners **approve** applications PA 24-01 and ZC 24-01. These applications shall be dependent on the approval of one another. Future development on the subject property would be subject to the use and development standards listed in the PCZO Chapter 147 and PCZO Chapter 112. Staff also recommends the following condition of approval:

1. The property owner shall sign and record a non-remonstrance deed restriction (Attachment E) with the Polk County Clerk's Office that specifies the vision clearance standards found in PCZO 112.140 shall continue to apply to the subject property. The property owner shall pay the applicable recording fees. The property owner shall submit a copy of the recorded deed restriction to the Planning Division for inclusion in the record.

V. ATTACHMENTS

Attachment A:	Subject Property Map
Attachment B:	Comprehensive Plan Map (Current/Proposed)
Attachment C:	Zoning Map (Current/Proposed)
Attachment D:	2022 Aerial Photograph
Attachment E:	Deed Restriction for Vision Clearance Development Standards

SUBJECT PROPERTY MAP

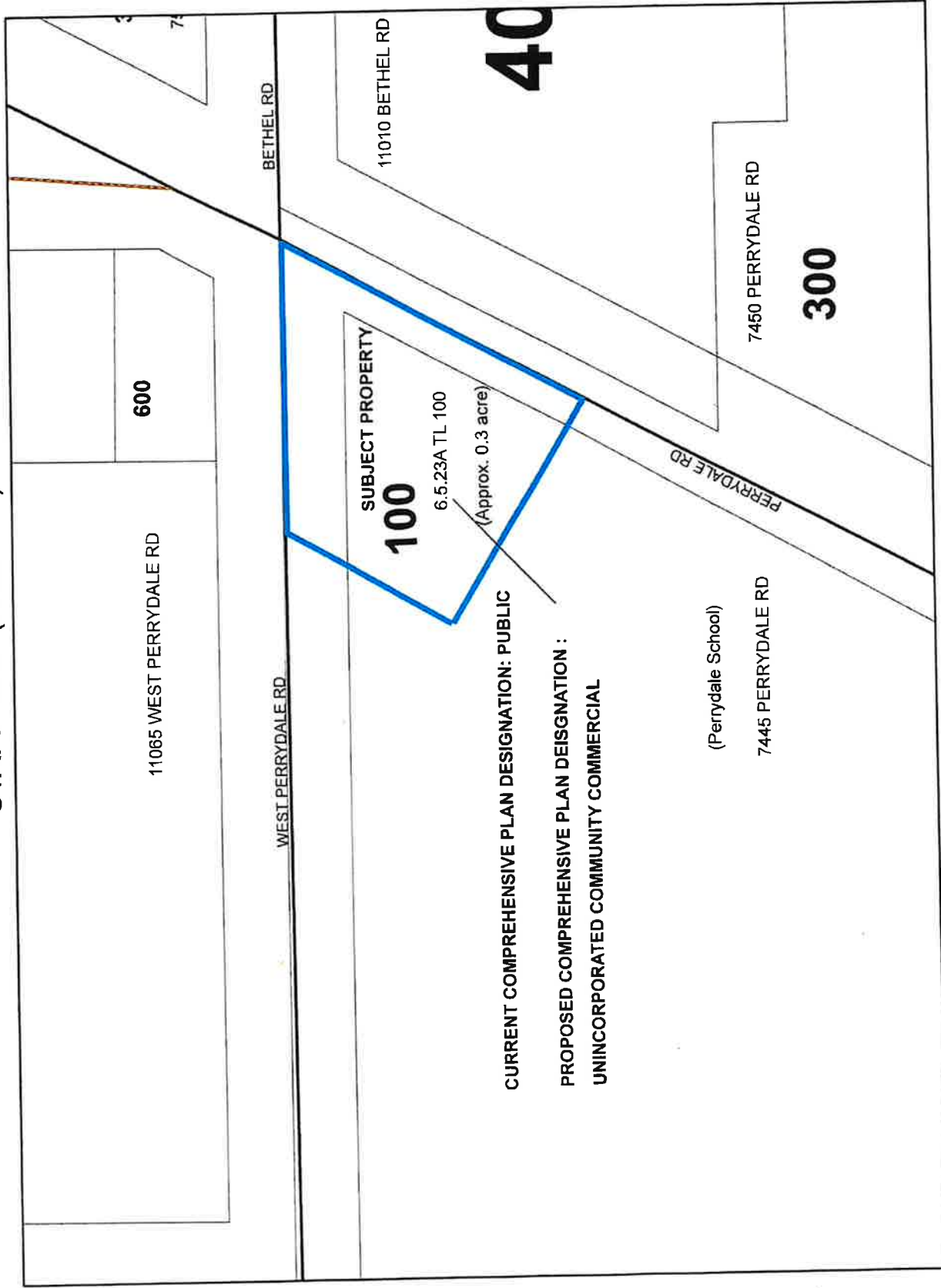
ATTACHMENT A



Date: 6/13/2024

This map was produced from the Polk County geographic databases to support its governmental activities. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. The county is not responsible for any map errors, possible misuse, or misinterpretation. To report a map error, please call (503)623-0713.

STAFF MAP (PA 24-01)

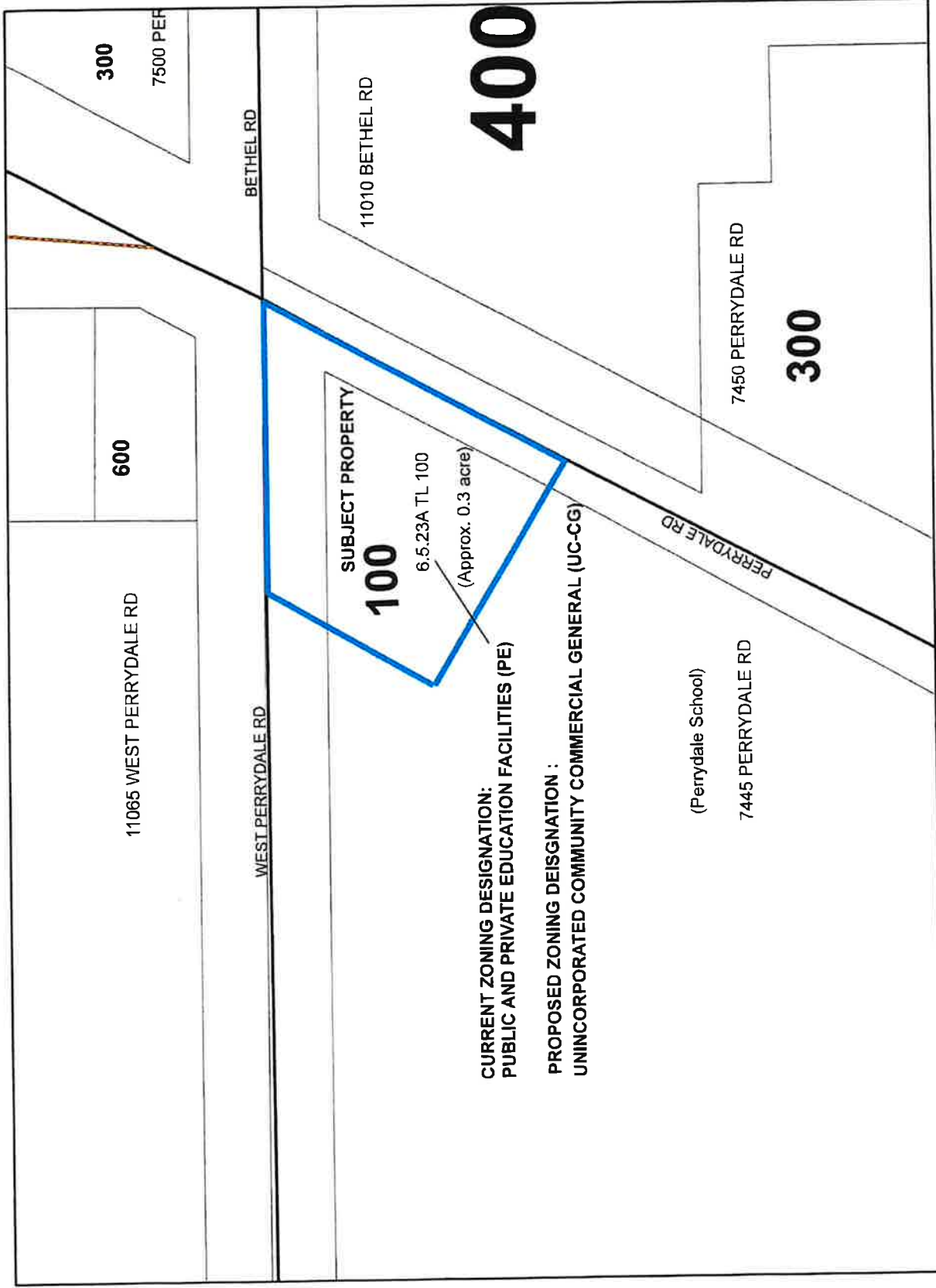


Date: 5/17/2024

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STAFF MAP (ZC 24-01)



Date: 5/17/2024

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Date: 6/13/2024

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RESTRICTIVE COVENANT

Owner: SRC Management LLC

Planning File: ZC 24-01

Location: T6S, R5W, Section 23A, Tax Lot 100

Be it known to all that the undersigned, being the legal owner(s) of the real property described below, hereby consent and covenant as follows:

In recognition of the fact that the subject property was approved for a Zoning Map Amendment to change the subject property's zoning designation from Public and Private Education Facilities (PE) to the Unincorporated Community Commercial General (UC-CG), the property shall remain subject to the vision clearance standards found in Polk County Zoning Ordinance 112.140, which states:

VISION CLEARANCE AREA. In the SR Zone or any public zone, the vision clearance area for corner lots at street intersections shall have a minimum of 30-foot legs along each street and for alley-street intersections in said zones, the vision clearance area shall have legs of a minimum of ten (10) feet along both alley and street. The vision clearance area shall not contain any plantings, walls, structures, or temporary or permanent obstructions to vision exceeding 30 inches in height above the curb level, or street shoulder where there is no curb, except a supporting pillar or post not greater than 12 inches in diameter or 12 inches on the diagonal of a rectangular pillar or post; and further, excepting those posts or supporting members of street signs, street lights, and traffic control signs installed as directed by the department of public works, or any other sign erected for public safety.

Vision clearance shall not be required at a height of seven (7) feet or more above the curb level, or seven (7) feet, six (6) inches above the shoulder of a street that does not have a curb.

This section shall not be construed as waiving or altering any yard requirements or setback requirements that may be required by this or any other ordinance.

Legal Description:

This covenant shall be binding upon the undersigned and their heirs, successors, and assigns as a covenant running with the land or released by Polk County and/or as otherwise noted above.

Owner(s) SignaturePrinted Name(s)Address

1. _____

2. _____

State of Oregon)

County of Polk) ss

On _____, 20____, before me a notary public personally appeared by above-named _____ and acknowledged the

foregoing instrument to be a voluntary act and deed.

Before me: _____

Notary Public of Oregon

My Commission Expires: _____

This space

Reserved

For use by

the Polk County

Recorder

AFTER RECORDING, RETURN TO: Community Development Department Polk County Courthouse, Dallas, Oregon 97338



GARRETT HEMANN ROBERTSON P.C.



Mailing Address:
P.O. Box 749
Salem, OR 97308-0749

Street Address:
4895 Skyline Road S.
Salem, OR 97306

Ph: (503) 581-1501
Fax: (503) 581-5891
www.ghrlawyers.com

July 31, 2024

Via Hand-Delivery

Polk County Community Development
Polk County Courthouse
850 Main St
Dallas, OR 97338

*Re: Written Testimony -- August 14, 2024 BOC Hearing
Our Client: Perrydale School District
Our File No. 69977042*

Dear Polk County Board of Commissioners:

This Written Testimony is submitted on behalf of Perrydale School District No. 21 ("District"), regarding the parcel of property at the intersection of West Perrydale Road and Amity-Dallas Road, in Amity.

Property: Vacant Lot at W. Perrydale Road and Amity-Dallas Road ("Property")
Assessor Map: T65, R5W, Section 23A
Map and Tax Lot: 06523-A0-00100

The District objects to the proposed amendments to change the Property's Comprehensive Plan designation from Public (PUB) to Unincorporated Community Commercial (UCC), and changing the zoning designation from Public and Private Education Facilities (PE) to Unincorporated Community Commercial General (UC-CG). To approve these proposed changes would (1) be contrary to the intentions of Perrydale community planning; (2) limit the property's potential use; and (3) increase risks for students.

Intentions of Perrydale Community Planning:

The Property's current designations were made for the purpose of allowing for the expansion of Perrydale School. Perrydale School is the only school in the area and proudly provides K-12 to students in Perrydale and the surrounding area. Being adjacent to Perrydale School, the Property was designated as PUB and PE in 1980 with the intent of paving the way for Perrydale School's expansion.

This designation was made despite that parcel being privately owned at the time and not utilized by the District. Due to its size and location, the District believes this is still the best designation of the land.

The District recently offered to purchase this Property from the current owner with the hopes of realizing the intent of the current designations. However, no agreement was reached. Regardless of timing, it is the District's intent to acquire the property and utilize it to enrich the children and community of Perrydale.

Proposed Amendments Would Limit Property Use:

The Property would best be used to provide the children of Perrydale more space to learn and play. Perrydale School has access to water and an existing on-site septic system. Furthermore, under the current designations for the Property there would be no need for a restrictive covenant for vision clearance. There are many possible uses of the Property if acquired by the District, including the possibility of expanding the school's playground, creating a recreational space, or allowing room for more classes.

On the other hand, the proposed designation changes would extremely limit the available uses of the Property. The size of the Property alone is a limiting factor, as there is not enough usable area for an on-site septic system. The Property also has no present access to water. The designation changes will also require a restrictive covenant for vision clearance. As addressed in the Polk County Community Development Planning Division Staff Report and Recommendation to the Planning Commission ("Staff Report"), these limitations would likely only permit temporary structures such as a seasonal farm stand.

The Staff Report makes the claim that approving the designation changes will benefit the community and its economy. The District disagrees and sees the current designation as the greatest benefit to the community. Perhaps if the applicant and owner of the Property had provided a specific development proposal, this claim would have more merit. However, the Property's limitations under the proposed designation will likely result in the Property remaining empty and unused or as a temporary use that has limited community and economic benefit. In the District's opinion, it is premature to make these designation changes without a clear proposal demonstrating what the amendments will accomplish for the community.

Proposed Change Increases Danger to Children:

As there is no specific development proposal, there is no stated intent as to what the Property will ultimately be used for. UC-CG permits designated property to be used to keep kennels, farm and forest equipment, as well as build welding and blacksmith shops. The District does not agree that commercial activity is the highest and best use for this land in this small farm community. These activities may increase the flow of traffic in an area that does not have sidewalks or crosswalks for children moving to and from school. Even with the restrictive covenant for vision clearance, the proposed designation changes still place children at an increased risk of injury.

The Property is contiguous to the school's playgrounds, which increases the possibility for children to interact with those entering the Property. The school's playground abuts the property with only a chain-link fence barrier. An influx of unknown adults so near to a school will result in difficulty for Perrydale School staff to control interactions between visitors and students.

Perrydale School District 21
July 31, 2024
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Conclusion:

The District requests that the Polk County Board of Commissioners deny this proposal to amend the Property's Comprehensive Plan designation of the Property from PUB to UCC, and the zoning designation from PE to UC-CG. The best utilization of this Property is for it to be incorporated into Perrydale School, and the only way to do this is for its current designations to remain. Only the current designation will ensure the safety of Perrydale's children.

The District thanks the Polk County Board of Commissioners for its time and consideration on this matter.

Sincerely,



J. Kevin Shuba
jkshuba@ghrlawyers.com

