

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR WASHINGTON COUNTY, OREGON

ORDINANCE 899

REJECTED

An Ordinance Amending the Comprehensive Framework Plan for the Urban Area and Rural/Natural Resource Plan to Expand the North Plains Urban Growth Boundary

The Board of County Commissioners of Washington County, Oregon ("Board") ordains as follows:

SECTION 1

A. The Board recognizes that the Comprehensive Framework Plan for the Urban Area (Volume II) was readopted with amendments on September 9, 1986, and subsequently amended by Ordinance Nos. 343, 382, 432, 459, 471, 480, 483, 516-517, 526, 551, 555, 561, 571-572, 588, 590, 598, 608-610, 612-615, 620, 624, 631-632, 637, 643, 649, 662, 666, 669, 671, 683, 686, 694, 712, 726, 730, 732-733, 739, 742, 744-745, 753, 758, 764, 769, 771, 775, 785, 788-790, 796, 799, 802, 805, 809, 813-814, 820, 822, 828, 838, 843, 857, 865-866, 886, and 889.

B. The Board recognizes that the Rural/Natural Resource Plan Element of the Comprehensive Plan (Volume III) was readopted with amendments, by way of Ordinance No. 307, and subsequently amended by Ordinance Nos. 342, 383, 411-412, 458-459, 462, 480, 482, 499, 539, 547, 572, 574, 578, 588, 598, 606, 609, 615, 628-631, 637, 643, 648-649, 653, 662, 671, 686, 733, 740, 753, 764, 772, 776, 785, 796, 809, 813-814, 822, 824, 828, 840, 854, 865, and 869.

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1 C. The Board recognizes that through City File Number CPA 23-056 (2), North
2 Plains Housing Needs Analysis (HNA) Update Amendment, the City of North Plains will
3 consider adoption of the HNA in September 2023. The HNA confirms the need for the City
4 to expand its Urban Growth Boundary (UGB) to provide additional housing supply for the
5 next 20 years. Through City File Number CPA 23-056 (1), North Plains Urban Growth
6 Boundary (UGB) Amendment, the City will subsequently consider adoption of the expanded
7 UGB in September 2023. The County must subsequently adopt the new North Plains UGB
8 into the County's Comprehensive Plan through the amendment of its Comprehensive
9 Framework Plan for the Urban Area, and the Rural/Natural Resource Plan. The County will
10 amend the Washington County – North Plains Urban Planning Area Agreement through a
11 future separate legislative action. The Board takes note that such changes are necessary for
12 the benefit of the health, safety, and general welfare of the residents of Washington County,
13 Oregon.

14 D. Under the provisions of Washington County Charter Chapter X, the
15 Department of Land Use and Transportation has carried out its responsibilities, including
16 preparation of notices, and the County Planning Commission has conducted one or more
17 public hearings on the proposed amendments and has submitted its recommendations to the
18 Board. The Board finds that this Ordinance is based on those recommendations and any
19 modifications made by the Board, as a result of the public hearings process.

20 E. The Board finds and takes public notice that it is in receipt of all matters and
21 information necessary to consider this Ordinance in an adequate manner and finds that this
22 Ordinance complies with the Statewide Planning Goals, the standards for legislative plan

1 adoption as set forth in Chapters 197 and 215 of the Oregon Revised Statutes, the
2 Washington County Charter, the Washington County Community Development Code, and
3 the Washington County Comprehensive Plan.

4 SECTION 2

5 The following exhibits, attached hereto and incorporated herein by reference, are
6 adopted as amendments to the designated documents as follows:

7 A. Exhibit 1 (1 page), amends the Comprehensive Framework Plan for the
8 Urban Area, Policy 41, Urban Growth Boundary Expansions, Map A -
9 'Future Development Areas.'

10 B. Exhibit 2 (3 pages), amends the following maps of the Rural/Natural
11 Resource Plan:

- 12 1. 'Special Concept Plan Area B' Map, Policy 29, Rural and Urban
13 Reserves; and
- 14 2. 'Urban and Rural Reserves' Map.

15 SECTION 3

16 All other Comprehensive Plan provisions that have been adopted by prior ordinance,
17 which are not expressly amended or repealed herein, shall remain in full force and effect.

18 SECTION 4

19 All applications received prior to the effective date shall be processed in accordance
20 with ORS 215.427.

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22 ////

1 SECTION 5

2 If any portion of this Ordinance, including the exhibits, shall for any reason be held
3 invalid or unconstitutional by a body of competent jurisdiction, the remainder shall not be
4 affected thereby and shall remain in full force and effect.

5 SECTION 6

6 The Office of County Counsel and Department of Land Use and Transportation are
7 authorized to prepare planning documents to reflect the changes adopted under Section 2 of
8 this Ordinance, including deleting and adding textual material and maps, renumbering pages
9 or sections, and making any technical changes not affecting the substance of these
10 amendments as necessary to conform to the Washington County Comprehensive Plan format.

11 *////*

12 *////*

13 *////*

14 *////*

15 *////*

16 *////*

17 *////*

18 *////*

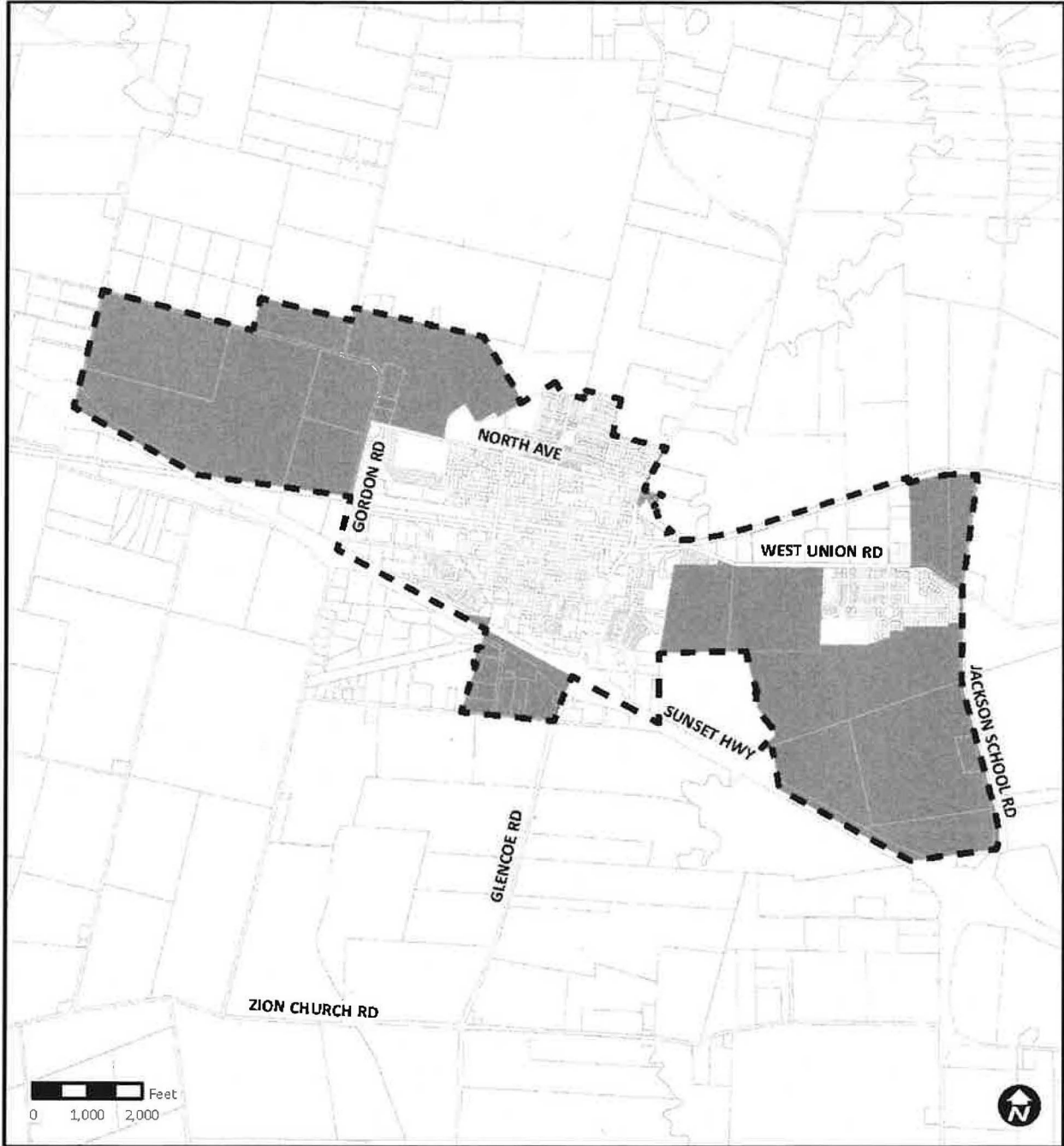
19 *////*

20 *////*

21 *////*

22 *////*

The 'MAP A - Future Development Areas' in Policy 41, Urban Growth Boundary Expansions, of the COMPREHENSIVE FRAMEWORK PLAN FOR THE URBAN AREA is amended to reflect the North Plains Urban Growth Boundary (UGB) expansion area as shown:



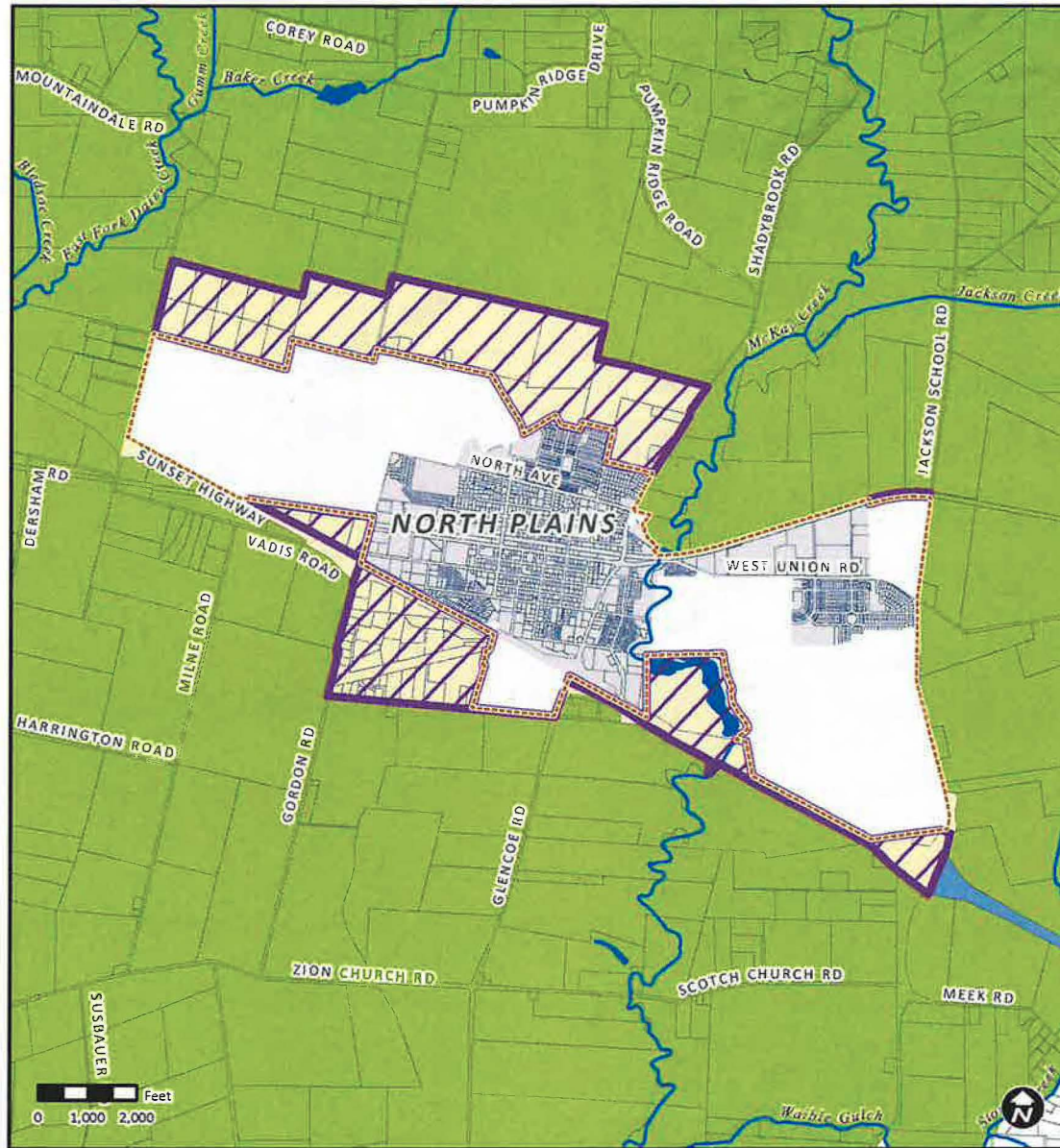
■ Added to North Plains UGB

□ Expanded UGB

abcdef Proposed additions

abcdef Proposed deletions

The 'Special Concept Plan Area B' map in Policy 29, Rural and Urban Reserves, of the RURAL/NATURAL RESOURCE PLAN is amended to reflect the following:



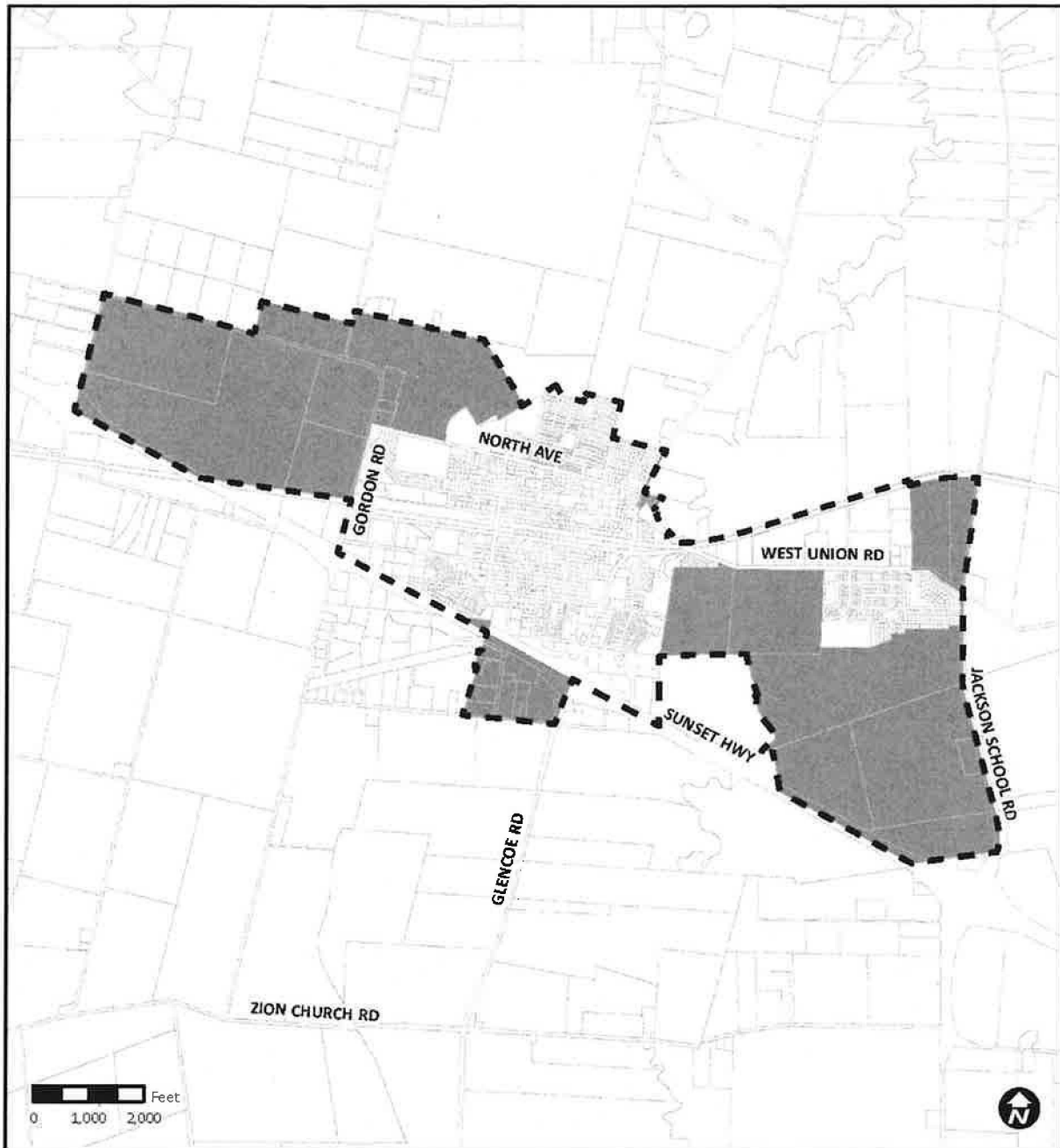
- | | |
|--|-----------------------|
| Rural Reserve | Urban Growth Boundary |
| Urban Reserve | County Boundary |
| Rural area with no reserve designation | City |
| Special Concept Plan Area B | Taxlot |

abcdef Proposed additions
~~abcdef~~ Proposed deletions



~~abcdef~~ Proposed additions
~~abcdef~~ Proposed deletions

The 'Urban and Rural Reserves' Map of the RURAL/NATURAL RESOURCE PLAN is amended to reflect the North Plains UGB boundary and UGB expansion area as shown:



Remove Rural area with no reserve designation Urban Growth Boundary

abcdef Proposed additions
~~abcdef~~ Proposed deletions



July 9, 2024

To: Washington County Board of Commissioners

From: Erin Wardell, Manager
Planning and Development Services

Subject: **PROPOSED LAND USE ORDINANCE NO. 899 – An Ordinance Amending the Comprehensive Framework Plan for the Urban Area and the Rural/Natural Resource Plan to Expand the North Plains Urban Growth Boundary**

STAFF REPORT

For the July 16, 2024 Board of Commissioners Hearing
(The public hearing will begin no sooner than 6:30 p.m.)

I. STAFF RECOMMENDATION

Deliberate on Ordinance No. 899. At the conclusion of deliberations, REJECT Ordinance No. 899.

II. PLANNING COMMISSION RECOMMENDATION

The Planning Commission (PC) considered Ordinance No. 899 at its Oct. 18, 2023 hearing. After extensive public testimony from community members and North Plains staff, the PC closed the hearing and continued deliberations to Nov. 15, 2023. The continuation, in part, was because a referendum petition had been submitted to North Plains on the city's Ordinance No. 490, which approved the Urban Growth Boundary (UGB) expansion for the city of North Plains.

After further discussion on Nov. 15, 2023 and Dec. 6, 2023, the PC voted to continue its deliberations to June 26, 2024 - after the May 2024 referendum vote and prior to the Board of Commissioner's July 16, 2024 hearing date. On June 26, 2024, the PC supported staff's recommendation and voted 7 to 1 to recommend that the Board reject Ordinance No. 899.

III. OVERVIEW

Ordinance No. 899 proposes to amend the Comprehensive Framework Plan (CFP) for the Urban Area and the Rural/Natural Resource Plan (RNRP) to expand the UGB for the city of North Plains. On Nov. 28, 2023, the Board conducted a public hearing for Ordinance No. 899. After receiving public testimony from community members and the mayor of North Plains, the Board closed the hearing and continued deliberations to July 16, 2024. The continuation, in part, was because County staff learned of the referendum petition on the city of North Plains' Ordinance No. 490, which approved the UGB expansion. The referendum petition contained sufficient valid signatures to send the city's approval of its ordinance to a public vote in May 2024.

The 2024 Oregon Legislature passed House Bill (HB) 4026, purporting to clarify that a referendum cannot be used to challenge a UGB expansion ordinance of this type, and attempting to apply that new clarification retroactively to this matter. Litigation challenging that new legislation on constitutional grounds was commenced immediately after the Governor signed the bill. After a preliminary hearing, the court ordered the election to proceed.

On May 21, 2024, North Plains voters overwhelmingly approved the referendum and rejected the city's UGB expansion ordinance 71% to 29%.

IV. BACKGROUND AND ANALYSIS

UGB expansions in Oregon outside Metro's UGB are guided by [Statewide Planning Goal 14 \(Urbanization\)](#) and Oregon Administrative Rules. A full discussion of the city's proposal and the County's analysis are included in the staff reports for the dates noted above.

The process of expanding the UGB for a city outside of Metro's jurisdiction, such as North Plains, requires three layers of approval:

- (1) Adoption of an ordinance by the city to amend its code and maps, along with findings that required standards and criteria have been met;
- (2) Adoption of an ordinance by the County to amend its code and maps, along with findings that required standards and criteria have been met; and
- (3) Review and acknowledgment by DLCD and the Land Conservation and Development Commission (LCDC) determining that standards and criteria have been met.

Since North Plains voters rejected the city's UGB expansion ordinance and legal actions are underway to determine the legal effect of the referendum and HB 4026, the first layer of approval is in question.

In light of the election results, city of North Plains staff requested that the County reject Ordinance No. 899 at this time. The city of North Plains may choose to consider a new UGB expansion ordinance in the future pending additional technical work and outreach. Should that occur, the County can file a corresponding new ordinance on the North Plains UGB expansion.

IV. COUNTY STAFF RECOMMENDATION

County staff recommend the Board REJECT Ordinance No. 899.

Washington County will continue to work with staff from the city of North Plains as they determine their next steps.

List of Attachments

Attachment A: PC deliberations from Nov. 15, 2023, Dec. 6, 2023 and June 26, 2024

Attachment B: Public communications on Ordinance No. 899 received since the Nov. 28, 2023 hearing



**WASHINGTON COUNTY PLANNING COMMISSION (PC)
WED., NOV. 15, 2023**

Ordinance No. 899 – An ordinance amending the Comprehensive Framework Plan for the Urban Area and the Rural/Natural Resource Plan to expand the North Plains Urban Growth Boundary (UGB)

Draft Deliberations

PC Members Present: Blake Dye, Mike Frey, Mark Havener, Joe Keizur, Deborah Lockwood, Stacy Milliman, Sushmita Poddar, and Morgan Will: Absent: Rachel Mori Bidou

Staff Present: Erin Wardell, Planning and Development Services (PDS); Theresa Cherniak, Todd Borkowitz, Emily Brown, and Susan Aguilar, Long Range Planning (LRP); Rob Bovett, County Counsel

Summary

Todd Borkowitz, Senior Planner with the LRP Community Planning group, gave a PowerPoint presentation on the proposed ordinance, including a summary of the Oct. 18 PC hearing on the ordinance, letters and emails received, feedback from the Board of Commissioners, and a staff recommendation.

Staff Recommendation

- Conduct deliberations.
- Recommend approval of Ordinance No. 899 to the Board.

Additional Written Testimony

Greg Mecklem	Denise Caire	City of North Plains	Nellie McAdams
Aaron Nichols	Andrea D’Amico	Lily & John Stone	Katie Miller
Katie Reding	Jacqueline Duyck	Glenna Wilder	Brett Morgan
Faun Hosey	Jones		

PC Deliberations

- Comments by individual members:
 - Concerns:
 - The agenda did not advertise an opportunity for further testimony
 - The Public Communication comments will not get recorded as testimony
 - The large size of the proposed UGB expansion area
 - The lack of assurances for affordable housing in proposed UGB expansion areas
 - Insufficient community outreach and information on impacts to wildlife, soil and transportation
- Questions:
 - Why Sunset Air Strip is not included in the proposed North Plains UGB expansion
 - What the anticipated number of dwelling units is within the residential acres proposed and whether they are all within or outside of current North Plains city limits

- How the PC considers public testimony received after the public hearing was closed
- If the city of North Plains can change allocations for residential and employment uses within the UGB expansion area during the comprehensive planning process
- Whether residential or commercial land generates more local tax revenue
- Why “neutral” acres containing trails and other undeveloped sloped areas are part of the proposed North Plains UGB expansion
- Whether North Plains residents could vote to raise local property taxes
- What the city of North Plains’ preferred housing density is
- If any data exist illustrating the diversity of community members who participated in public outreach
- Whether Ordinance No. 899 would come back to the PC if the May 2024 referendum on the North Plains UGB expansion passes

Votes

PC member Milliman moved to reopen the public hearing on Ordinance No. 899 and allow for additional public comment. PC member Keizur seconded motion. PC member Milliman then withdrew motion and PC member Keizur withdrew second of motion so that Staff Report could first be heard.

After the Staff Report and PC deliberations, the following motions were made:

PC member Havener moved to recommend the Board not approve Ordinance No. 899. Motion was not seconded. **Motion failed.**

PC member Milliman moved to reopen the public hearing on Ordinance No. 899 and allow for additional public comment. PC member Keizur seconded motion. **Vote: 2-6. Motion failed.**

Yes: Milliman and Poddar; **No:** Dye, Frey, Havener, Keizur, Lockwood, and Will

PC member Will moved to recommend approval of Ordinance No. 899 to the Board. PC member Keizur seconded motion. **Vote: 3-5. Motion failed.**

Yes: Dye, Keizur, and Will; **No:** Frey, Havener, Lockwood, Milliman, and Poddar

Vice Chair Dye moved that the PC continue deliberations on Ordinance No. 899 to June 26, 2024. PC member Poddar seconded motion. **Vote: 4-3-1. Motion failed.**

Yes: Dye, Havener, Lockwood, and Poddar; **No:** Frey, Keizur, and Milliman; **Abstain:** Will

PC member Will moved that the PC continue deliberations on Ordinance No. 899 to Dec. 6, 2023. PC member Keizur seconded motion. **Vote: 6-0-2. Motion passes.**

Yes: Frey, Havener, Keizur, Milliman, Poddar, and Will; **No:** (none) **Abstain:** Dye and Lockwood

End of deliberations.



WASHINGTON COUNTY PLANNING COMMISSION (PC)
WED., DEC. 6, 2023

Ordinance No. 899 – An ordinance amending the Comprehensive Framework Plan for the Urban Area and the Rural/Natural Resource Plan to expand the North Plains Urban Growth Boundary (UGB)

Draft Deliberations

PC Members Present: Mike Frey, Mark Havener, Joe Keizur, Deborah Lockwood, Stacy Milliman, Rachael Mori Bidou, Sushmita Poddar, and Morgan Will; Absent: Blake Dye

Staff Present: Erin Wardell, Planning and Development Services (PDS); Theresa Cherniak, Todd Borkowitz, Emily Brown, and Susan Aguilar, Long Range Planning (LRP); Rob Bovett, County Counsel

Summary

Todd Borkowitz, Senior Planner with the LRP Community Planning group, gave a PowerPoint presentation providing an overview of the proposed ordinance, community feedback received and potential impacts from the outcome of the May 2024 referendum on North Plains UGB expansion, and PC options for action on Ordinance No. 899.

Staff Recommendation

- Conduct deliberations.
- Recommend approval of Ordinance No. 899 to the Board.

Additional Written Testimony

Dale Feik Aaron Nichols Kenneth Dobson, Attorney

PC Deliberations

- Comment by individual member:
 - A PC member disclosed a potential conflict of interest on the proposed North Plains UGB expansion
- Questions:
 - Whether staff has any updates on the referendum on North Plains UGB expansion
 - Whether the PC should continue deliberations on Ordinance No. 899 if the May 2024 referendum on North Plains UGB expansion passes
 - Whether the letter from the Department of Land Conservation & Development (DLCD) noting inaccurate statements made by the city of North Plains regarding the Economic Opportunities Analysis should be considered by the PC as testimony, and how the information in the letter impacts PC decision-making on Ordinance No. 899
 - Whether the PC should make its recommendation based on community feedback
 - Whether the PC could include in its recommendation that the city of North Plains and/or the County should perform increased outreach to communities of color

Vote

PC member Poddar moved to continue PC deliberations on Ordinance No. 899 to the scheduled June 26, 2024 PC meeting. PC member Mori Bidou seconded motion. **Vote: 8-0. Motion passed.**

Yes: Frey, Havener, Keizur, Lockwood, Milliman, Mori Bidou, Poddar, and Will (unanimous)

End of deliberations.



WASHINGTON COUNTY PLANNING COMMISSION (PC)
WED., JUNE 26, 2024

Proposed Ordinance No. 899 – An Ordinance Amending the Comprehensive Framework Plan for the Urban Area and the Rural/Natural Resource Plan to Expand the North Plains Urban Growth Boundary

Draft Deliberations

PC Members Present: Mike Frey, Joe Keizur, Deborah Lockwood, Felicita Monteblanco, Rachel Mori Bidou, Amber Rosenberry, Jared Whipps and Morgan Will; Absent: Eric McClendon

Staff Present: Erin Wardell, Theresa Cherniak, Todd Borkowitz, Emily Brown, Susan Aguilar and Rob Bovett, County Counsel

Summary

Todd Borkowitz, Senior Planner, gave a PowerPoint presentation recapping the proposed ordinance and actions relating to the May 2024 referendum on North Plains UGB expansion. Deputy County Counsel Bovett answered legal questions about the city's referendum vote and implications for the County's ordinance.

Staff Recommendation

- Recommend REJECTION of Ordinance No. 899 to the Board of Commissioners

PC Deliberations

- Comment from individual member:
 - Interest in the North Plains UGB expansion process moving forward and concern that the referendum is delaying this process
- Questions:
 - Whether the County still believes the city of North Plains took the needed steps for proposing UGB expansion and why the County is now recommending rejection of Ordinance No. 899
 - Why the city of North Plains cannot just withdraw the proposed UGB expansion
 - What would happen if Ordinance No. 899 was approved by the Board

Vote

PC member Will recommended REJECTION of Ordinance No. 899 to the Board. PC member Frey seconded the motion. **Vote: 7-1. Motion passed.**

Yes: Mike Frey, Deborah Lockwood, Felicita Monteblanco, Rachel Mori Bidou, Amber Rosenberry, Jared Whipps and Morgan Will; **No:** Joe Keizur

End of deliberations.

**Attachment B
Public Communications
on Ordinance No. 899
Received Since the
Nov. 28, 2023 Hearing**

Received 12/04/23
Wash. Co. LUT

From: dfeik33@comcast.net <dfeik33@comcast.net>

Sent: Monday, December 4, 2023 7:26 AM

To: deborahlockwood@comcast.net; Todd Borkowitz <Todd_Borkowitz@washingtoncountyor.gov>

Cc: 'Theresa Cherniak' <theresacherniak@hotmail.com>; Erin Wardell

<Erin_Wardell@washingtoncountyor.gov>; LUT Planning Commission

<lutplanningcommission@washingtoncountyor.gov>; Tanya Ange

<Tanya_Ange@washingtoncountyor.gov>; Kathryn Harrington

<Kathryn_Harrington@washingtoncountyor.gov>; WC CAN Board <board@wc-can.org>; Rob Bovett

<Rob_Bovett@washingtoncountyor.gov>

Subject: [EXTERNAL] Planning Commission Hearing Wed Nov 6, 2023, 6:30 meeting, testimony by Dale Feik

To: Todd Borkowitz (liaison to Planning Commission) and Chair Deborah Lockwood

Please forward the following to the Planning Commissioners – part of my written testimony for the Planning Commission 6:30 pm Wed Nov. 6, 2023, meeting.

Re: See attached letter that Chair Harrington received from the DLCD about the North Plains URB issue, and that Harrington referred to during the WC BOC Hearing Tue, Nov. 28, 2023.

Sincerely,

Dale

Dale Feik, Ed.D.

dfeik33@comcast.net

Cell: 503-504-5972

Chair of Washington County Citizen Action Network (WC CAN) - <http://www.wc-can.org/> active links at the top of the page

Washington County Citizen Action Network (WC CAN) is a coalition of grassroots advocates (individuals and groups) dedicated to improving quality of life in Washington County by promoting healthy and sustainable communities, social and economic justice, and open and responsive government.

Cc: Erin Wardell, Senior Planner and Manager

Theresa Cherniak, Senior Planner

Rob Bovett, Attorney for County, acted as Parliamentarian and clarified legal questions at previous

Planning Commission meeting

Tanya Ange, County Administrator

Kathryn Harrington, WC Commission Chair

Washington County Citizen Action Network (WC CAN) Board of Directors

From: [Traci Shirley](#)
To: [Washington County Clerk](#)
Cc: [Kevin Moss](#); [Angie Aguilar](#); [Theresa Cherniak](#); [Todd Borkowitz](#); [Sarah Lundin](#); [Stephen Roberts](#); [Erin Wardell](#)
Subject: FW: [EXTERNAL] Letter to Board of County Commissioners - Washington County
Date: Tuesday, November 21, 2023 10:47:08 AM
Attachments: [WashCo_ResponseLetter_NPExpansion_DLCD_231117_Signed.pdf](#)
Importance: High

Clerk Moss,

The attached letter is the same as what was submitted yesterday. Please include the email below from Laura Kelly in the Board packet along with the letter. The email includes some critical additional information.

Traci Shirley | Planning Assistant

503-846-3971 direct | traci_shirley@washingtoncountyor.gov

From: KELLY Laura * DLCD <Laura.Kelly@dlcd.oregon.gov>

Sent: Tuesday, November 21, 2023 10:07 AM

To: Erin Wardell <Erin_Wardell@washingtoncountyor.gov>

Cc: HOWARD Gordon * DLCD <Gordon.HOWARD@dlcd.oregon.gov>; BATEMAN Brenda O * DLCD <Brenda.O.Bateman@dlcd.oregon.gov>; Theresa Cherniak <Theresa_Cherniak@washingtoncountyor.gov>

Subject: [EXTERNAL] Letter to Board of County Commissioners - Washington County

Ms. Wardell,

Please find attached a letter of comment from Oregon Department of Land Conservation and Development (DLCD) Director Brenda Bateman. During its November 15 meeting on Ordinance No. 899, the Planning Commission engaged in a lengthy q&a with city of North Plains staff, counsel, and mayor. During this exchange, several statements were made which do not accurately represent DLCD's position. The department respectfully requests the attached letter, providing DLCD's official position on these subjects, be submitted to the record for Ordinance No. 899. Please let me know if a discussion would be helpful or if I can answer any questions.

Sincerely,

Laura



Laura Kelly

Regional Representative for Metro, Washington County,
and select cities of Columbia County | Portland Metro Regional Solutions
Oregon Department of Land Conservation and Development
1600 SW Fourth Avenue, Suite 109 | Portland, OR 97201
Cell: 503-798-7587 | Main: 503-373-0050
laura.kelly@dlcd.oregon.gov | www.oregon.gov/LCD

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Oregon

Tina Kotek, Governor

Department of Land Conservation and Development

Director's Office

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD

November 20, 2023

Board of County Commissioners
Washington County
155 N. First Ave.
Hillsboro, OR 97124
Sent via email



Dear Chair Harrington and Commissioners:

On behalf of the Oregon Department of Land Conservation and Development (DLCD), I am writing to respond to several topics raised at the November 15, 2023 Planning Commission meeting regarding Ordinance No. 899, relating to the expansion of North Plains Urban Growth Boundary (UGB). Several comments provided at the meeting by non-departmental staff appeared to represent departmental positions on various topics. We appreciate the opportunity to speak about these matters directly. In the paragraphs below, DLCD responds to each statement. If useful, we are available to meet and to discuss these statements further.

Incorrect statement: The department has concerns with, and has notified the city about, the validity of the upcoming referendum.

It is our understanding that the city's ordinance to expand its UGB has been referred to the voters, with the signatures certified by the County's Elections and the matter to be placed on the May 2024 ballot. The department has taken no official position on the referendum, nor does it have any official opinion about the measure's legality or validity. The department does not have jurisdiction over elections issues and does not provide formal legal advice on such matters. Should legal advice be needed, the department would recommend the city and county rely on their own respective counsels.

Incorrect statement: The amount of land needed for UGB expansion is based on the use of state-mandated forecasts and is "locked in" by state-acknowledged EOA and HNA:

The city's proposed Housing Needs Analysis (HNA) includes its housing needs projection, based on its 20-year population forecast as required by ORS 197.296 and Goal 10 administrative rule. When a city's analysis identifies a deficit in the supply of buildable residential land within its UGB, it is required to adopt one or more of the actions described in statute to remedy the identified deficit, which may include UGB expansion. Because the city identifies a deficit of

167.4 acres of land for needed housing and proposes to remedy this deficit through UGB expansion, the department will review both the HNA and UGB expansion proposals concurrently. The department's review of the HNA and UGB expansion can occur only after the city and county adopt an identical UGB expansion and submit to DLCD for review.

Unlike an HNA, the use of a population forecast to determine land need in an Economic Opportunities Analysis (EOA) is optional. Through an EOA, a city identifies the land needed to accommodate future industrial and other employment uses based on the types of industries the city wishes to attract, consistent with its comprehensive plan. It is our understanding that a recent change to community economic development aspirations led the city of North Plains to select an approach focused on attracting tech-based and supporting industries and businesses, and through its EOA, to conclude that it did not have sufficient buildable employment land within its UGB to accommodate them. The city adopted this EOA, which was filed with the department on 12/9/22 and acknowledged 12/31/22. The city's proposal includes bringing 687.8 acres into its UGB for employment uses, based on this acknowledged EOA. The city is not "locked in" to its acknowledged EOA, nor is it required to amend its UGB to resolve this identified employment land deficit, as it has the discretion to modify its economic development approach and adopt a revised EOA at any time. However, it has the option to use the acknowledged EOA as justification for UGB expansion based on employment land need, which the department would review only after the city and county adopt an identical UGB expansion and submit to DLCD for review.

Incorrect statement: The state has acknowledged that the city's process for public engagement related to the UGB expansion proposal complies with the statewide planning program:

The department has not yet reviewed the city's UGB expansion proposal and has not taken a position about the city's process for public engagement. The department would review these matters only after the city and county adopt an identical UGB expansion and submit to DLCD for review.

Conclusion:

We recognize the hard work of both city and county staff to navigate the UGB amendment process; department staff have been engaged in this effort for several years now and are committed to continued assistance as needed.

If you have further questions, please feel free to contact Laura Kelly, our Regional Representative for Washington County (Laura.Kelly@dlcd.oregon.gov or 503-798-7587)

Board of County Commissioners – Washington County

November 20, 2023

Page 3 of 3

Sincerely,

A handwritten signature in black ink that reads "Brenda D Bateman". The signature is written in a cursive, flowing style.

Brenda Bateman, Ph.D.

Director

cc:

Erin Wardell, LUT Planning and Development Services Manager, Washington County

Rob Bovett, Senior Assistant County Counsel, Washington County

Theresa Cherniak, Principal Planner, Washington County

Todd Borkowitz, Senior Planner, Washington County

Andy Varner, City Manager, City of North Plains

Bill Reid, Finance Director, City of North Plains

Gordon Howard, Community Services Division Manager, DLCD

Kirstin Greene, Deputy Director, DLCD

Laura Kelly, Regional Representative, DLCD

Good evening chair Lockwood and members of the commission.

My name is Aaron Nichols and I live at 11000 NW Jackson Quarry Rd, Hillsboro Or. I wanted to address you tonight, briefly, on the topic of the UGB expansion and, specifically, the content of Dr. Bateman's letter to this body dated November 20th. She outlines how the "incorrect facts" were and are being used by the city's advocates to forward the UGB expansion proposal and I would like to show how some of those facts were central to the original approval of this plan and how others are being used to try to slow down and intimidate the referendum effort.

As you know, Dr. Bateman, the director of the DLCD, sent a letter to the County Planning commission taking exception to three of the incorrect statements that city staff have made in an attempt to advance the county's ordinance 899 through the planning commission and, generally, to support the massive UGB expansion. The simple fact that the director of the DLCD saw enough inaccuracies and misinformation in the city's case to need to weigh in is itself exceptional and something that should be seriously considered by this commission. When lacking evidence or credibility, the city's representatives simply made up legal advice and support from the DLCD. This is what they were caught and publicly called out on, other misinformation has gone, so far, uncorrected.

But what I find even more concerning than the incorrect facts regarding the public input process and the legal advice on the referendum is Dr. Bateman's second point where she says in part:

Unlike an HNA, the use of a population forecast to determine land need in an Economic Opportunities Analysis (EOA) is *optional*... It is our understanding that a *recent change to community economic development aspirations* led the city of North Plains to select an approach focused on attracting tech-based and supporting industries and businesses, and through its EOA, to conclude that it did not have sufficient buildable employment land within its UGB to accommodate them... *The city is not "locked in" to its acknowledged EOA*, nor is it required to amend its UGB to resolve this identified employment land deficit, as it has the discretion to modify its economic development approach and adopt a revised EOA at any time. [emphasis mine]

This undercuts the city's justification for the vast majority of the land it plans to expand onto. The city planning commission, the county planning commission, the board of county commissioners, and this body were all told, repeatedly and as a central argument upholding the size of this unprecedented expansion, that the city was locked in by its state acknowledged EOA. In the city planning commission hearing Commissioner LaBonte asked this question specifically and though she was correctly answered by the city's consultant, the city's attorney quickly interjected his opinion that NOT taking the EOA land would violate state law. In the staff presentation to this body, Mr. Reid told you that while some people may have issues with the EOA it is a state accepted document and the time for challenging it is over - a technically correct statement that entirely misses Dr. Bateman's point that EOA land is optional and can be

modified at any time. At the city's first hearing, one consultant went farther saying that taking EOA land was "mandated." Shortly before the end of the public hearing and the city council's first vote, the city attorney cited a long argument explaining why this land has to come into the UGB ending with saying that the EOA "is now an acknowledged part of your comprehensive plan it is no longer subject to review and it shows a need for more land and now we have a housing needs analysis that shows a need for additional land and state laws do require you to address that and provide the necessary lands." Please note that the HNA has not yet been acknowledged by DLCD. Should you wish to verify these quotes, I have submitted the time stamps for them and other instances with my testimony.

I know from the last meeting's discussion that some members see the role of a Planning Commission as primarily judging whether North Plains did its job and followed the law. If you take this view then I think these revelations are particularly important. Dr. Bateman's letter clearly tells us that the city based its UGB expansion on incorrect facts and that they used those facts to prejudice the votes made by public bodies at their public hearings. Regardless of the EOA's recommendation, according to the Goal 14 3-part test, the size and location of a UGB expansion proposal must be based on an actual need for land. Increasing tax revenue is not an allowable justification, but what is required is a demonstration that the city has actual demand for an expansion, the infrastructure plan to pay for it, and that it can't accommodate it in its existing borders. These decisions require a high amount of deliberation on behalf of the deciding body. Yet, after being told, incorrectly, that the plan must include all the EOA lands, the city planning commissioners and the council did not feel they had the discretion to do their due diligence considering the appropriate size of the UGB or the balance between employment and housing lands. In this they failed to consider the factors they were required to consider when passing a UGB expansion.

For these reasons, as well as the many stated before in other testimony, I ask you to vote tonight to send a "Disapprove" recommendation to the Board of County Commissioners for their hearing in July.

Aaron Nichols
Friends of North Plains Smart Growth

Time stamps to support quotes above.

City planning meeting: <https://www.youtube.com/watch?v=TdS9WwCuCOs&t=9505s>

2:34:00, Commissioner LaBonte asks directly if all the acreage has to come in. Heather (consultant) answers yes for HNA, no for EOA but you are compelled to look at 20 year needs. Chris jumps in saying the growth "has to be based on our need." He goes on to say that it would violate goal 14 rules and taking all the acreage in the EOA is required by state law.

3:27:00 big discussion of notice - LaBonte shows the misnoticing Chris Crean says it doesn't exist or was corrected despite actual evidence to the contrary in front of him.

North Plains city council meeting 9/5: <https://www.youtube.com/watch?v=5GqFqldrqSY>

0:47:42 land need explained

0:56:12 need is acknowledged and defined in the EOA

0:56:41 Pat, the consultant from Hillsboro, says "Goal 14 mandates that you bring in all the EOA land"

On Second 9/5 video: <https://www.youtube.com/watch?v=dfPZblAHnr8&t=2178s>

0:17:10 Chris Crean gives a long explanation of how you can't expand a UGB because you want to or not want to. "There are laws that have to be followed. "Goldmine" [hard to hear name of case] is the one for industrial and commercial lands which does show, which is now an acknowledged part of your comprehensive plan it is no longer subject to review and it shows a need for more land and now we have a housing needs analysis that shows a need for additional land and state laws do require you to address that and provide the necessary lands."

0:36:00 Mayor asks re regional partners, Bill lists many agencies but highlights the DLCD

0:38:16 Hearing closes

RECEIVED 12/05/23
Wa. Co. LUT

From: [Ken Dobson](#)
To: [LUT Planning Commission](#)
Cc: [Todd Borkowitz](#)
Subject: [EXTERNAL] Public Comment for 12/6 Planning Commission Meeting
Date: Tuesday, December 5, 2023 3:40:25 PM
Attachments: [ltr-WashCo-12-5-23.pdf](#)

Greetings:

I represent the Friends of North Plains Smart Growth. I have attached supplemental testimony for tomorrow's Planning Commission meeting concerning City of North Plains Ordinance 490 as it relates to proposed Washington County Ordinance 899. To the extent the record for this agenda item is already closed, please accept this testimony as public communication.

Thank you for your attention and please let me know if you have any questions.

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324 S. Abernethy Street
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December 5, 2023

VIA ELECTONIC MAIL

Washington County Planning Commission
155 N. First Ave., Ste 350, MS14
Hillsboro, OR 97124

1. lutplanningcommission@washingtoncountyor.gov

Re: *Voter Referendum on City of North Plains Ordinance 490*

Greetings:

I represent Friends of North Plains Smart Growth (“FNPSG”). Please accept this letter as FNPSG’s supplemental testimony for the December 6, 2023 Planning Commission meeting on the issue of whether the City of North Plains Ordinance 490, which established land use policies in the Urban Growth Boundary (“UGB”) expansion area. is subject to a voter referendum.

In his letter dated November 15, 2023 and addressed to the Washington County Planning Commission, City of North Plains City Manager, Andy Varner, opined that that Ordinance 490 was not subject to a voter referendum. Mr. Varner’s letter sets forth citations to various case law but offers no legal analysis supporting the City’s position. I have reviewed the case law cited by Mr. Varner and, for the reasons set forth below, respectfully disagree with his conclusion.

The legal authority for a voter referendum on a municipal ordinance is Article IV, section 1 of the Oregon Constitution which states in relevant part:

“(3)(a) The people reserve to themselves the referendum power, which is to approve or reject at an election any Act, or part thereof, of the Legislative Assembly . . . (5) The initiative and referendum powers reserved to the people by subsections (2) and (3) of this section are further reserved to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district.”

Under this section, the right of a referendum applies to municipal ordinances that are “legislative” in character. *Rossolo v. Multnomah Cnty. Elections Div.*, 272 Or App 572, 584, 357 P3d 505 (2015). By contrast, the right of referendum does not apply to municipal ordinances that are “administrative” in nature. *Id.* The Oregon Court Appeals explained the difference:

“In classifying an enacted or proposed law as legislative in character (and subject to the initiative and referendum provisions in the Oregon Constitution) and not executive, administrative, or adjudicative in nature (and outside the scope of those provisions), Oregon courts assess the law to determine if it makes policy of general applicability and is more than temporary in duration (and is thus legislative in nature), or if it applies previous policy to particular actions, or is otherwise compelled in substance or process by predicate policy (and is thus executive, administrative, or adjudicative in nature.” *Id.*

In this case, Ordinance 490 establishes a “policy of general applicability” and is “more than temporary in duration.” Specifically, the ordinance establishes future land use planning policies in a large swath of land in the UGB expansion area totaling 855.2 acres which the City determined was needed for 20 years of growth. Because Ordinance 490 creates policies of general applicability over a large area, it is legislative in nature. *See Parelius v. City of Lake Oswego*, 22 Or App 429, 430, 539 P2d 1123 (1975) (rezoning of a 72.9-acre area made up of numerous separately owned parcels of property was a legislative matter); *Culver v. Dagg*, 20 Or App 647, 654, 532 P2d 1127 (1975) (holding that rezoning of half of the land in Washington County was legislative).

Moreover, Ordinance 490 is not “compelled in substance.” On the contrary, the various reports appended to the Ordinance make clear that the City had a large degree of discretion in crafting the policies for the UGB expansion area. For example, the Supplemental Staff Report dated August 3, 2023 notes on page 7 that “Goal 9 rules and recent Court decisions make clear that North Plains has “reasonable discretion” in determining what method it uses to determine how much land it needs to accommodate a demonstrated need for improved City livability as allowed by Goal 14.” (emphasis added). Similarly, page 64 of the UGB Expansion Report discussed how the PAC used information to deliberate various options for the direction of the UGB expansion area, including competing alternatives for road configurations in certain subareas.

Other sections of the UGB Expansion Report further highlight the degree of discretion the City had in developing the land use policies, explaining “[t]o expand the UGB, North Plains must complete a boundary location analysis, comparing alternative locations and considering which addition to the UGB will result in the most accommodating and cost-effective boundary, while creating the fewest conflicts with neighboring land uses, and causing the fewest negative environmental, economic, social and energy consequences.” UGB Expansion Report p. 25. Importantly, the report notes:

“The analyses that follow do not provide any definitive conclusion as to where the North Plains UGB should be expanded. Rather, they provide the data City leaders need to make an informed decision about how the City should grow over the next 20 years.” *Id.* (emphasis added)

In another section discussing the Goal 5 ESEE analysis similarly states: “Like the other boundary location analyses, the ESEE analysis does not provide a definitive conclusion as to where the North Plains UGB should be expanded but contains information to help inform

decision makers.” *Id.* p. 54 (emphasis added). The fact that the vote to approve Ordinance 490 was not unanimous further highlights that it was not “preordained.”

The fact that Ordinance 490 sets general land use policy for a large geographic area and involved the exercise of discretion by the City Council distinguishes this matter from the various cases cited in Mr. Varner’s November 15 letter. For example, *Dan Gile and Associates, Inc. v. McIver* involved the rezoning of a single property, which is inherently different from establishing land use policies for an area covering 687 acres. 831 P2d 1024, 113 Or App 1 (1992); see also Oregon Attorney General Opinion 80-113 (Sept. 10, 1980) (referendum provisions of Oregon Constitution applicable to land use decisions “except in the case of ordinances which apply to property so limited in area or ownership as not to be legislative in nature.”).

Rossolo v. Multnomah County is also distinguishable because it involved the use of specific transient lodging taxes, which the court characterized as a “closely circumscribed factual situation” that “does not establish or repeal general policies applicable to expenditures of tax funds.” 272 Or App at 587. Moreover, the “hotel bond funding portions of the ordinance were preordained and compelled by the previously adopted intergovernmental agreement and board resolution.” *Id.* As discussed above, however, the content of the Ordinance 490 was not “preordained” and was instead the product the City Council’s balancing of various policy considerations and competing alternatives as to the location and size of subareas, density requirements, and allowed uses.

The other cases cited by Mr. Varner involved relatively routine municipal business that can readily be characterized as administrative in manner. For example, *Monahan v. Funk* involved the sale of single tract of land, which the Supreme Court found to be the type of action “necessary to the successful administration of the business affairs of a city.” 137 Or 580, 587-88, 3 P2d 778 (1931). Similarly, *Foster v. Clark* involved an ordinance renaming a street in the City of Portland, which, as in *Monahan*, was deemed merely “administrative” in nature. 309 Or 464, 474, 790 P2d 1 (1990). *Lane Transit Dist. v. Lane County* involved the salary of a transit district’s general manager, which the Court likewise found to be administrative in nature. 957 P2d 1217, 1221. 327 Or 161, 169 (1998).

By comparison, Ordinance 490 does not involve the sort of routine day-to-day management of the business of the city that has been found to be administrative in nature. Because the City Council’s exercise of discretion to craft general land use policies for an expansive area is a classic example of “legislative” action, it is therefore subject to the referendum provisions of Article IV, section 1 of the Oregon Constitution.

Sincerely,



Kenneth P. Dobson

Cc: Client