

**CITY OF ST. HELENS PLANNING DEPARTMENT
STAFF REPORT
Annexation A.6.21**

DATE: November 23, 2021
TO: City Council
FROM: Jennifer Dimsho, AICP, Associate Planner
APPLICANT: Shivam Patel
OWNERS: Sahjahand Investments, LLC
ZONING: Columbia County’s Commercial-General (C-3)
LOCATION: 58471 Columbia River Highway
4N1W-8AC-2600 & 2700
PROPOSAL: The property owner filed consent to annex because they would like to use the City’s development rules and connect to City sewer.

SITE INFORMATION / BACKGROUND

This annexation request contains two lots, one at 11,326 square feet (0.26 acres) and one at 9,148 square feet (0.21 acres). The smaller of the two lots is developed with a detached single-family dwelling, while the larger is undeveloped. The developed lot abuts Columbia River Highway with a paved driveway approach and curb-tight sidewalks. The undeveloped lot abuts Kavanagh Avenue right-of-way in the rear. There is no developed roadway or frontage improvements abutting the property in the back, though it is improved as a gravel road that leads to the subject property heading north from Firway Lane. There are known wetlands within the Kavanagh Avenue right-of-way partially abutting this property and further south.

Kavanagh Avenue right-of-way is also the location of City sewer. The property is connected to McNulty Water. The applicant is interested in developing the subject properties in conjunction with two abutting properties under the same ownership (and already within City limits) with new commercial uses.

Photos of the subject property are on the next page.

Abutting Zoning

North – County’s Commercial General (C-3)
East –City’s Heavy Industrial (HI)
South – City’s Highway Commercial (HC)
West – City’s Highway Commercial (HC)



Left: Undeveloped property with single-family dwelling in the background taken from underdeveloped Kavanagh Avenue.

Right: Single-family dwelling on developed lot from Highway 30 facing north.

PUBLIC HEARING & NOTICE

Public hearing before the Planning Commission for *recommendation to the City Council*: November 9, 2021. Public hearing before the City Council: December 1, 2021.

Notice of this proposal was sent to the Oregon Department of Land Conservation and Development on September 29, 2021 through their PAPA Online Submittal website.

Notice of this proposal was sent to surrounding property owners within 300 feet of the subject property on October 15, 2021 via first class mail. Notice was sent to agencies by mail or e-mail on the same date.

Notice was published on October 27, 2021 in The Chronicle newspaper.

AGENCY REFERRALS & COMMENTS

ODOT: It looks like the St. Helens wants to bring these 2 lots into annexation with the city, and no new development changes to the existing accesses is proposed. As such, ODOT has no comment on the application.

APPLICABLE CRITERIA, ANALYSIS & FINDINGS

SHMC 17.08.040 (1) – Quasi-judicial amendment and standards criteria

- (a) A recommendation or a decision to approve, approve with conditions, or to deny an application for a quasi-judicial amendment shall be based on all of the following standards:
 - (i) The applicable comprehensive plan policies and map designation; and that the change will not adversely affect the health, safety, and welfare of the community; and
 - (ii) The applicable Oregon Statewide Planning Goals adopted under ORS Chapter 197, until acknowledgment of the comprehensive plan and ordinances; and

- (iii) The standards applicable of any provision of this code or other applicable implementing ordinance.
- (b) Consideration may also be given to:
 - (i) Any applicable evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application.

Discussion: (a)(i) The Comprehensive Plan designation for the subject property is Unincorporated Highway Commercial. Applicable designation and zoning district for annexation are discussed later.

There is no known conflict with the general Comprehensive Plan policies identified in Chapter 19.08 SHMC. Note that SHMC 19.08.030 discusses public services and facilities and includes utility provisions (e.g., water and sewer) as well as services such as police and library. In sum, all services are intertwined; the consent to annexation allows connection to City sewer to support existing and future development on the subject property, and, once annexed, all other City services/facilities. By this process, the proposal complies with this aspect of the Comprehensive Plan.

There is no known conflict with the specific Comprehensive Plan policies identified in Chapter 19.12 SHMC.

There is no known conflict with the addendums to the Comprehensive Plan which includes Economic Opportunities Analysis (Ord. No. 3101), Waterfront Prioritization Plan (Ord. No. 3148), the Transportation Systems Plan (Ord. No. 3150), the Corridor Master Plan (Ord. No. 3181), the Parks & Trails Master Plan (Ord. No. 3191), the Riverfront Connector Plan (Ord. No. 3241), and the Housing Needs Analysis (Ord. No. 3244). Finally, there is no evidence that this proposal will be contrary to the health, safety, and welfare of the community.

(a)(ii) The City’s Comprehensive Plan has been adopted by the State, thus, the applicable Oregon Statewide Planning Goals adopted under ORS Chapter 197 do not need to be analyzed per this section.

(a)(iii) In addition, Section 3 of the City’s Charter states that “annexation, delayed or otherwise, to the City of St. Helens, may only be approved by a prior majority vote among the electorate.” However, during the 2016 Legislative Assembly, Senate Bill 1578 was passed. It states that a City shall annex the territory without submitting the proposal to the electors if certain criteria are met:

1. Property is within the UGB
2. Property will be subject to the City’s Comprehensive Plan
3. Property is contiguous to the City limits or is separated by only a public right of way or body of water
4. Property conforms to all other City requirements

This property is separated by only a public right-of-way to City limits. As this proposal meets these criteria, this property will **not** be subject to a majority vote among the electorate. Other provisions applicable to this proposal are discussed elsewhere herein.

(b) There is no evidence of a change in neighborhood, or mistake or inconsistency in the Comprehensive Plan or Zoning Map.

Finding: The quasi-judicial amendment and standards criteria are met.

SHMC 17.08.060 – Transportation planning rule compliance

- (1) Review of Applications for Effect on Transportation Facilities. A proposed comprehensive plan amendment, zone change or land use regulation change, whether initiated by the city or by a private interest, shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-012-0060 (the Transportation Planning Rule (“TPR”)). “Significant” means the proposal would:
 - (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
 - (b) Change standards implementing a functional classification system; or
 - (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (i) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (ii) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP; or
 - (iii) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.
- (2) Amendments That Affect Transportation Facilities. Comprehensive plan amendments, zone changes or land use regulations that significantly affect a transportation facility shall ensure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the TSP. This shall be accomplished by one or a combination of the following:
 - (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
 - (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of OAR 660-012-0060.
 - (c) Altering land use designations, densities, or design requirements to reduce demand for vehicle travel and meet travel needs through other modes of transportation.
 - (d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
- (3) Traffic Impact Analysis. A traffic impact analysis shall be submitted with a plan amendment or zone change application, as applicable, pursuant to Chapter 17.156 SHMC.

Discussion: This section reflects State law regarding the Transportation Planning Rule (TPR): Transportation Planning Rule (TPR), OAR 660, Division 12. The TPR requires that where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures to assure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility. **Current zoning of the property is Columbia County’s Commercial-General (C-3) and the City’s only zoning option given annexation is Highway Commercial.**

Generally, when comparing potential land use impact on transportation facilities, the *reasonable worst case scenario* for the existing and proposed designation/zone are considered. The potential

land uses are very similar for both the City and County. The City's zoning is comparable to the County with regards to the possible intensity of uses allowed and potential vehicular trips generated. Thus, this proposal will not affect an existing or planned transportation facility.

Finding: No transportation facility will be significantly affected by this proposal. No traffic impact analysis is warranted.

SHMC 17.28.030 (1) – Annexation criteria

- (a) Adequate public facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area; and
- (b) Comply with comprehensive plan amendment standards and zoning ordinance amendment standards and not be in conflict with applicable comprehensive plan policies and implementing ordinances; and
- (c) Complies with state laws; and
- (d) Abutting roads must meet city standards or property owner will be required to sign and record an irrevocable consent to local improvement district; and
- (e) Property exceeding 10 acres in gross size must show a need on the part of the city for such land if it is designated residential (e.g., less than five years' supply of like designated lands in current city limits).

Discussion: (a) Water – The site is currently connected to McNulty Water. The nearest City water is approximately 590 feet away.

Sewer – The applicant desires to connect to City sewer which is available in the Kavanagh Avenue right-of-way abutting the subject property. With regards to capacity, the City's wastewater treatment plant currently has a daily limit (physically and as permitted by DEQ) to handle over 50,000 pounds of Biochemical Oxygen Demand (BOD) and a monthly average limit of 26,862 pounds. This is the "loading" or potency of the wastewater received by the plant. The average daily BOD is well below this at only 1,500 pounds. Thus, any potential uses that occur on the subject property can be accommodated by the City's sanitary sewer system as infrastructure is in place and there is substantial capacity available.

Transportation - As described above, this proposal poses no significant impact on a transportation facility.

Finding: Adequate public facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area.

(b) The land use of the subject property is a detached single-family dwelling. This is not an allowed use in the City's Highway Commercial (HC) zoning district. This will create a non-conforming use of the property upon annexation into the City. However, the applicant is aware of this and desires to redevelop the property as a commercial use.

Finding: There is no known conflict with the Comprehensive Plan and implementing ordinances.

(c) With regards to Oregon Revised Statutes (ORS), city annexations of territory must be undertaken consistent with ORS 222.111 to 222.183.

Pursuant to ORS 222.111(1), a City may only annex territory that is not within another City, and the territory must either be contiguous to the annexing City or be separated from the City only by a body of water or public right-of-way. The subject property is not within another City's jurisdiction and City of St. Helens corporate limits lies on the east, west, and south side of the subject property.

Although undertaking an annexation is authorized by state law, the manner in which a city proceeds with annexation is also dictated in the city charter. ORS 222.111(1) references a city's charter as well as other ORS. St. Helens' Charter requirements pertaining to annexations are noted above.

Per ORS 222.111(2) an annexation may be initiated by the owner of real property or the city council. This annexation request was initiated by the property owner. Further, ORS 222.125 requires that that all property owners of the subject property to be annexed and at least half of the electors residing on the property consent in writing to the annexation. These documents were submitted with the annexation application.

ORS 197.175(1) suggests that all annexations are subject to the statewide planning goals.

The statewide planning goals that could technically apply or relate to this proposal are Goals 1, 2, 11 and 12.

- ***Statewide Planning Goal 1: Citizen Involvement.***
Goal 1 requires the development of a citizen involvement program that is widespread, allows two-way communication, provides for citizen involvement through all planning phases, and is understandable, responsive, and funded.

Generally, Goal 1 is satisfied when a local government follows the public involvement procedures set out in the statutes and in its acknowledged comprehensive plan and land use regulations.

The City's Development Code is consistent with State law with regards to notification requirements. Pursuant to SHMC 17.20.080 at least one public hearing before the Planning Commission and City Council is required. Legal notice in a newspaper of general circulation is also required. The City has met these requirements and notified DLCD of the proposal.

- ***Statewide Planning Goal 2: Land Use Planning.***
This goal requires that a land use planning process and policy framework be established as a basis for all decisions and actions relating to the use of land. All local governments and state agencies involved in the land use action must coordinate with each other. City, county, state and federal agency and special districts plans and actions related to land use must be consistent with the comprehensive plans of cities and counties and regional plans adopted under Oregon Revised Statutes (ORS) Chapter 268.

Generally, Goal 2 requires that actions related to land use be consistent with acknowledged Comprehensive Plans and coordination with affected governments and agencies and be based on an adequate factual base. The City has an adopted Comprehensive Plan, compliance of this proposal which is addressed herein. Moreover, explanation and proof of coordination with affected agencies and factual base are described herein, as well, including inventory, needs, etc.

- ***Statewide Planning Goal 11: Public Facilities and Services.***

Goal 11 requires cities and counties to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. The goal requires that urban and rural development be "guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable and rural areas to be served."

The subject property is served by McNulty water. City sewer capacities are adequate to serve the subject property. This is explained above. The existing development is adequately served.

- ***Statewide Planning Goal 12: Transportation.***

Goal 12 requires cities, counties, metropolitan planning organizations, and ODOT to provide and encourage a "safe, convenient and economic transportation system." This is accomplished through development of Transportation System Plans based on inventories of local, regional and state transportation needs. Goal 12 is implemented through OAR 660, Division 12, also known as the Transportation Planning Rule ("TPR"). The TPR contains numerous requirements governing transportation planning and project development.

Traffic impacts and the City's provisions that address the TPR are explained above. This proposal will not significantly affect an existing or planned transportation facility.

(d) The subject property abuts Highway 30 in the front. Highway 30 is a major arterial with curb-tight sidewalks abutting the subject property, which does not meet our typical cross section standard. The existing right-of-way for major arterials is 101', which is also not met. The subject property also abuts Kavanagh Avenue in the rear with a 50' wide right-of-way, which meets the minimum standard for local streets. Kavanagh Avenue's roadway and street frontage are entirely undeveloped abutting the property. **However, this property not the subject of a current development land use review, which provides the legal nexus and proportionality to require such improvements or right-of-way dedications.** As such, no improvements are warranted with this proposal.

(e) The subject property is not greater than 10 acres in gross size. A needs analysis is not necessary.

Finding: The annexation approval criteria are met for this proposal.

SHMC 17.28.030 (2) – Annexation criteria

The plan designation and the zoning designation placed on the property shall be the city's zoning district which most closely implements the city's comprehensive plan map designation.

Discussion: The Comprehensive Plan designation is currently Unincorporated Highway Commercial (UHC). The City's only zoning option given annexation is Highway Commercial (HC). The Comprehensive Plan designation would thus be Highway Commercial (Incorporated) (HC).

Finding: Upon annexation, the subject property's Comprehensive Plan designation shall be Highway Commercial (Incorporated) and zoned Highway Commercial (HC).

SHMC 17.112.020 – Established & Developed Area Classification criteria

- (1) Established Area.
 - (a) An "established area" is an area where the land is not classified as buildable land under OAR 660-08-0005;
 - (b) An established area may include some small tracts of vacant land (tracts less than an acre in size) provided the tracts are surrounded by land which is not classified as buildable land; and
 - (c) An area shown on a zone map or overlay map as an established area.
- (2) Developing Area. A "developing area" is an area which is included in the city's buildable land inventory under the provisions of OAR except as provided by subsection (1)(b) of this section.

Discussion: OAR 660-008-0005 classifies *buildable land* as:

Residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered "suitable and available" unless it:

- (a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;
- (b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6, 15, 16, 17 or 18;
- (c) Has slopes of 25 percent or greater;
- (d) Is within the 100-year flood plain; or
- (e) Cannot be provided with public facilities.

OAR 660-008-0005 generally defines "Buildable Land" as vacant residential property not constrained by natural hazards or resources, and typically not publicly owned.

Finding: The subject property is not zoned residential. This provision does not apply.

CONCLUSION & RECOMMENDATION

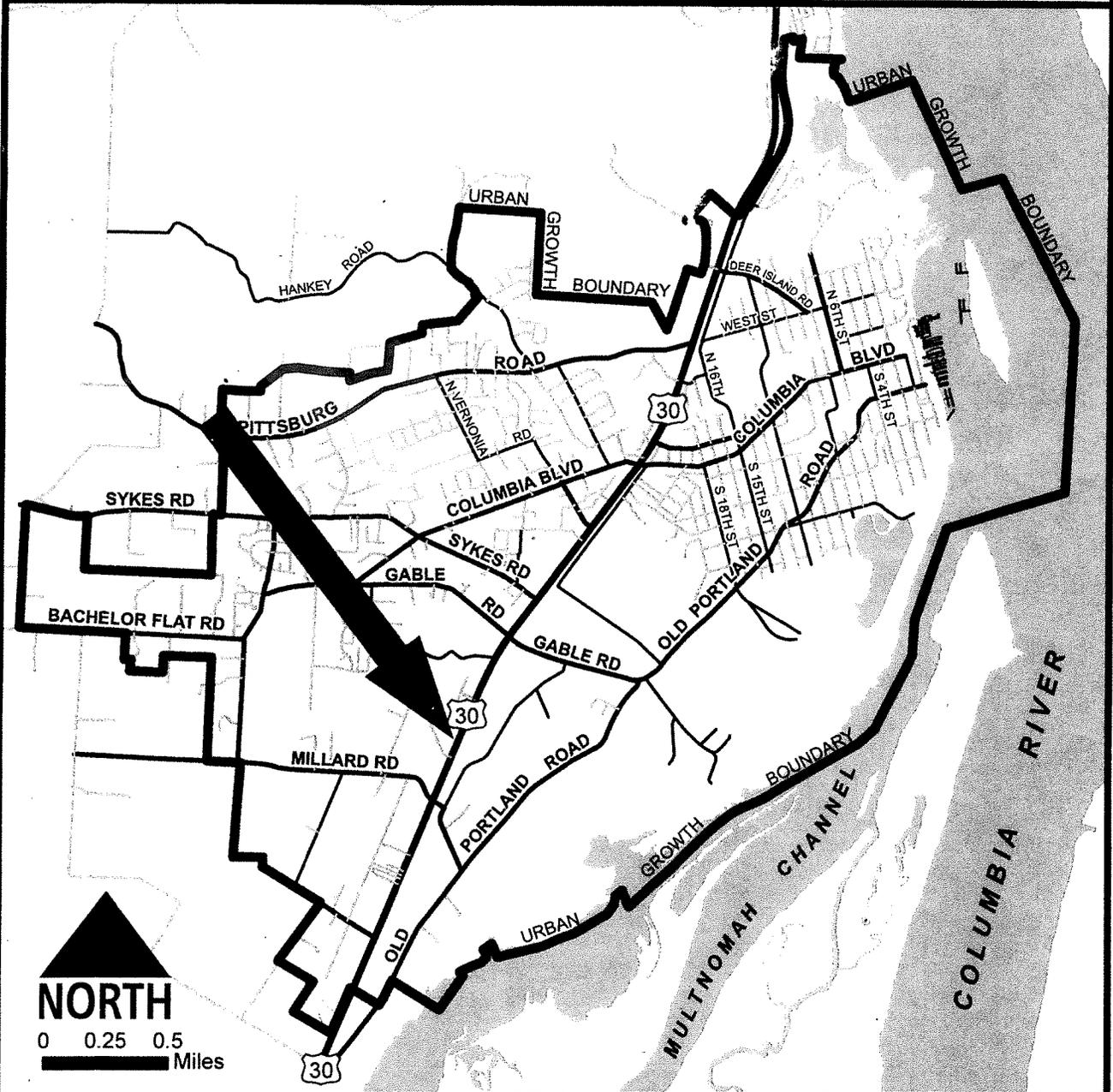
Based upon the facts and findings herein, staff and the Planning Commission recommends approval of this annexation and that upon annexation, the subject property have a Comprehensive Plan designation of Highway Commercial (Incorporated) HC and be zoned Highway Commercial (HC).

*This annexation will **not** be subject to voter approval subsequent to this land use process.*

Attachments: *General Map, Taxlot Map, Aerial Map*

SUBJECT PROPERTY

~ Approximate Location ~



City of St. Helens Urban Growth Boundary Area Vicinity

A.6.21 Annexation Aerial Map

