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TITLE: AN ORDINANCE AMENDING ORDINANCE NO. #4030, WHICH ADOPTED THE CITY OF ALBANY'S COMPREHENSIVE DEVELOPMENT PLAN, TO PROVIDE FOR THE RECLASSIFICATION OF URBAN RESIDENTIAL LAND USE TO BUSINESS/PROFESSIONAL AND COMMERCIAL FOR APPROXIMATELY 2.56 ACRES LOCATED WEST OF GEARY STREET AND SOUTH OF NINTH AVENUE AND DECLARING AN EMERGENCY.

WHEREAS, the Planning Commission of the City of Albany has held such hearings as are required by the law and the ordinances of this city and has made findings concerning the appropriate comprehensive plan amendment with said findings being based upon evidence produced at hearings; and

WHEREAS, the Council of the City of Albany has duly advertised and caused notices to be given as required by law and has had a public hearing concerning the comprehensive plan amendment above described and evidence having been introduced and the same being fully considered, the City Council does hereby find as follows:

(see attached findings of fact)

now, therefore,

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT NO. 10

description)

(see attached legal

is hereby amended in accordance with Exhibit A attached hereto and this amendment shall be known as Comprehensive Development Plan Amendment No. 10.

Section 2: COPY FILED

A copy of this comprehensive development plan amendment shall be filed in the Office of the City Recorder of the City of Albany.

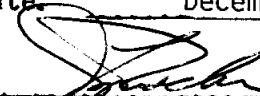
Section 3: EMERGENCY CLAUSE

Whereas, it is in the best interest of the public health, safety, and general welfare of the citizens of the City of Albany, Oregon, that this matter be disposed of at the earliest possible moment; therefore, an emergency is hereby declared to exist and this ordinance shall become immediately effective upon its passage by the Council and approval by the Mayor.

Passed by the Council: December 13, 1978

Approved by the Mayor: December 13, 1978

Effective Date: December 13, 1978

  
MAYOR

ATTEST:

  
CITY RECORDER

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OFFICE OF SURVEYOR  
LINN COUNTY, ALBANY, OREGON

September 5, 1978

With C.S. 1939

Roger Reid, Attorney

*Legal*

Beginning at the Southwest corner of Lot 4, Block 2 of Price's Second Addition to Albany, Linn County, Oregon; and running thence S.79°05'W. 87.0 feet to the centerline of Periwinkle Creek; thence N.15°42'W., along said centerline, 189.96 feet; thence N.37°00'W., along said centerline, 88.0 feet to the South line of Ninth Avenue; thence N.80°59'E., along the South line of said Ninth Avenue, 448 feet to the Northeast corner of Lot 12, Block 1 of said Price's Second Addition; thence S.9°06'E. 264.0 feet to the Southeast corner of Lot 9 in said Block 1; thence S.80°59'W. 298.0 feet to the point of beginning.



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INTERDEPARTMENTAL MEMORANDUM  
Planning Department

SUBJECT: Comprehensive Plan Amendment and Zone Change Request  
for Jack and Beverly Haines

TO: Mayor and Members of the City Council

FROM: Planning Commission

DATE: December 13, 1978

Background Information:

This request is to allow a zone change from R-2 Limited Multiple Family Residential to C-2 Community Commercial and to amend the Comprehensive Plan designation for the same area from Urban Residential to Business-Professional and Commercial. The property is located west of Geary Street and south of Ninth Avenue (now under construction) and contains approximately 2.56 acres. Warner Avenue (unimproved) bisects the subject property which consists of eight lots. The property is bounded by C-2 Community Commercial zoning on three sides and by R-2 Limited Multiple Family zoning (Periwinkle Mobile Home Park) to the south. Presently the property contains three rental houses and part of a storage yard for the adjoining building supply business. The applicant also owns all of the adjoining C-2 property along Geary Street. No changes or new developments are proposed within the subject area as the present time.

Planning Commission's Action:

At their regular meeting of November 6, 1978, the Planning Commission held a public hearing on this matter and recommended approval of the request based upon the findings of fact submitted by the applicant with the following additions:

- (a) The improvement of Ninth Avenue will significantly alter the characteristics of this property and increase the need for additional commercial land in this vicinity.
- (b) The present Comprehensive Plan was recently amended to correspond specifically with existing zones and does not allow for expansion of commercial areas in this vicinity which has been demonstrated as a public need.
- (c) This property is best suited to satisfy the public need for added commercial space due to its location near two major arterial streets and by the fact that the property is surrounded on three sides by commercial property.

In addition, the Commission recommended that the following condition also be added to the ordinance:

Prior to any building permits being issued on the subject property, the property owner(s) shall either petition for improvements of Warner Street or petition for its vacation.

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EVIDENCE REQUIRED BY SECTION TEN  
OF THE CITY OF ALBANY ZONE CHANGE PETITION

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The following information is put forth on behalf of the petitioner to demonstrate why the proposed zone change is consistent with and promotes the objectives of a comprehensive plan, goal statements and zoning and land use regulations of the city of Albany. The information also demonstrates that there is a public need for the change, and that the need will best be served by changing the classification of this particular piece of property.

1. CITIZEN INVOLVEMENT: Citizen involvement will be provided through a framework of notice and public hearings. The planning commission is required by section 19.04 of the City of Albany zoning and land use regulation to hold public hearings on the zone change petitions. That section also provides for mailing of written notice of the application to owners of property within 500 feet of subject property, as well as newspaper publication of said notice.

These series of notice and hearings will provide ample opportunity for any citizen who wishes to become involved in the planning process to appear and voice his or her opinions with respect to the proposed zone change.

2. LAND USE PLANNING: This goal is being fulfilled by the actions of the public hearing and procedures set forth by the city

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of Albany, planning and development staff giving full consideration to the needs of the area to be served.

3. AGRICULTURE LANDS: The property in question is within the city limits of the City of Albany and is currently zoned as a limited multiple family residential district (R-2). By zoning the property R-2 the planners have already made a determination that the property is better suited for purposes other than those of agriculture and have removed the property from the farm land inventory.

4. FOREST PLANS: The petitioner respectfully submit that this goal and the guidelines adopted pursuant thereto are not applicable to the requested change, as the land does not fall within the definition of forest land as set out in LCDC goal number four.

5. OPEN SPACES, SCENIC AND HISTORIC AREA, AND NATURAL RESOURCES: The land for which the proposed change is sought is not suitable for open space or recreational area. It is bordered by busy streets on the north and west and is directly across the street from land already zoned and being utilized for business purposes. The development of the property has, for the most part, already taken place and as such even if preserved and continued in its present use would not; (1) conserve and enhance natural or scenic resources; (2) protect air or streams or water supply; (3) promote conservation of soils, wet lands, beaches or tidal marshes; (4) conserve landscaped areas such as public or private golf courses, that reduce air pollution and enhance the value to the public of abutting or neighboring parks,

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forests, wild life preserves, nature reservations or sanctuaries, or other open space.

6. AIR, WATER, AND LAND RESOURCE QUALITY: Since all of the contemplated development of the property subject to this petition has already taken place, there will be no change in air, water, or land resource quality.

7. AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS: The petitioners submit that this goal and the guidelines pursuant thereto are not applicable to the present situation in that the property in question does not fall within the definition of an area of natural disasters and hazards as set forth in LCDC goal number seven.

8. RECREATIONAL NEEDS: The petitioner submits that LCDC goal number eight and the guidelines pursuant thereto are not applicable. This conclusion is based on the fact that because of the location of the property and its proximity to busy streets and commercial enterprises that the property is not suitable as recreational property.

9. ECONOMY OF STATE: The proposed change from R-2 to C-2 in this area would provide for continuation that the present favorable impact that the businesses located on the property now have. The city is now undertaking a project of street improvement in the area and a change in the zoning of this property to reflect its actual use would benefit the public in that that property would then pay an increased share of the tax assessment. The business now located on the property enjoys a non-conforming use status which allows them to operate in their present structure but does not provide for the opportunity of any improvement or expansion. Although no new

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expansion is contemplated at this time a change from R-2 to C-2 zoning of this property would allow for future expansion and increased productivity from the existing firms now located on the property which would later serve to strenghten local and regional economic development. Although the land is presently zoned R-2, the fact that it is bordered on two sides by major arterials makes the property neither suitable nor desirable as a residential zone. The property subject to this petition is bordered on the north, west, and east by properties that are already zoned and being utilized as commercial. There are no plans to alter the status of the four houses now located on the property in question. The petitioners merely set forth that the highest and best use of the property at some time in the future would be for commercial purposes rather than for residential purposes. There will come a time when those houses will be in need of extensive repairs, and at that time the petitioners would like to have the freedom to utilize the properties as commercial rather than to expend the funds necessary to maintain them as residential.

10. PUBLIC FACILITIES AND SERVICES: Rezoning this property C-2 would promote the goal of developing an orderly and efficient arrangement of Public Services. The property presently houses 2 retail service facilities and most of the surrounding property is also currently utilized as commercial. The area is, for all practical purposes, a commercial area. A change to allow for the continuation of a small cluster of businesses already in the area and to provide that possible future construction of service facilities could be located in an area adjacent to other like businesses and in an area

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with convenient access by already existing arterials would be consistant with this goal and the guidelines adopted pursuant thereto.

11. TRANSPORTATION: Zoning of the property as C-2 to allow for the use of the property for retail store purposes would promote LCDC goal number 11 by clustering small businesses so that consumers would not have to travel all over town to service their needs. Access to the area is good and because of presently occuring road construction traffic problems are not anticipated.

12. ENERGY CONSERVATION: LCDC goal number 12 provides that land and the uses developed on land shall be managed and controlled so as to maximize the conservation of all forms of energy based upon sound economic principles.

The area in question is located between two major retail areas of Albany, that is the downtown area and the Fred Meyer area to the northeast. By providing for its continued and future use as commercial property we avoid the energy waste involved in having retail businesses located in fringe areas which required a consumer to drive a relatively long distance between shops.

14. URBANIZATION: The goal is stated that the LCDC with regards to urbanization is to provide for an orderly and efficient transition from rural to urban land use. The land in question is already being utilized as urban property rather than rural and therefore the petitioners submit that this goal in the guidelines pursuant thereto are not applicable.

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THERE IS A PUBLIC NEED FOR THE CHANGE OF THE KIND IN QUESTION

First of all, it should be noted that "public need" is not a clearly defined concept. An adequate discussion of whether a public need for a change exists requires a two step analysis dealing with specific public needs and the concept of net public benefit.

Most authorities appear to believe that public need means that the benefits to the general public from the change will exceed public detriments.

In the case presented to the commission, by this petition, several clearly defined public benefits can be identified. Any community is benefited by the establishment in continued profitable operation of commercial enterprises. They provide valuable services to members of the public and add to the tax base of the city. In this particular case increased street and roadway improvements are presently underway and by a rezone of this property, to C-2 the city would provide that the owner of that property would bear an increased portion of the assessments for improvements thereby benefiting the remainder of the public whose costs would go down.

The public is also benefited by good planning and orderly growth, the property in question is bordered by major arterials and most of the surrounding property is being used as commercial property making it an area ill suited for residential use. Because of the clustering of existing businesses and their proximity to major arterials directly between the downtown core area and the Fred Meyer areas it is ideal for commercial activity and a benefit to the public exists

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because of the convenience of access and lack of need to travel long distances between stores.

The only possible detriment offsetting the benefit is the withdrawal of the parcel as a possible site for multi-family dwelling. However, that detriment vanishes when one looks at all of the facts. First of all because of the surrounding busy streets, it is not a safe place for the children which are characteristically found in multi-family dwellings. For those same reasons and because of the noise generated by the streets it is not a desirable location in which to live and it is seriously questioned that any investor would construct residential buildings on this particular piece of property and because of the ultimate deterioration of present structures if the owners are forced to operate under the limitations of a non-conforming use the zone change is the only logical solution.

Economic wastes that would result from under-utilization of this property is a detriment which far outweighs the loss of the property as a site for apartments or other multiple family dwellings.

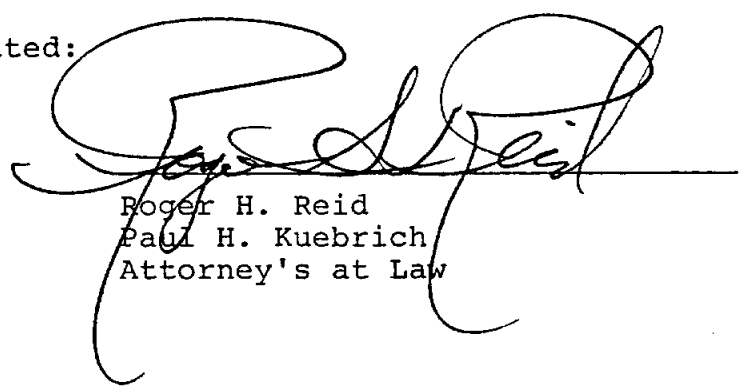
High on the list of specific public needs in the city of Albany is that of having adequate commercial enterprises so that our residents do not have to go out of town to shop. The fulfillment of that need can be met by rezoning this property to assure adequate sites for commercial development.

Another need to be served by rezoning this property is to allow for continued operation of the commercial use without the limiting rules pertaining to nonconforming uses and that of insuring jobs for

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Albany residents. No one can argue that an enterprise which provides jobs benefits both those employed and the community in which they live. The wages paid are multiplied many times as they are spent within the community.

Respectfully submitted:



Roger H. Reid  
Paul H. Kuebrich  
Attorney's at Law