

1 Airport. The subject property is more particularly identified on the map in Exhibit "A," which is
2 attached hereto and incorporated herein.

3 2. The Board adopts the findings, conclusions and recommendations in the final order
4 of the Planning Commission to support these actions. That final order is adopted as set forth in
5 Exhibit "B" attached hereto and incorporated herein.

6 3. In accordance with the Planning Commission's recommendations and at the request
7 of the City of Toledo, and as accepted by the applicants, the following conditions shall apply to
8 this request:

9 a. For future development:

10 1. All on-site drainage and native riparian vegetation shall be protected during
11 development of this property.

12 2. Except for clearing necessary to construct a single-residential use on this site, all
13 existing native vegetation shall be retained.

14 3. A County access permit shall be obtained by the applicant prior to constructing a
15 driveway.

16 4. Any successive development beyond a single-family residence on these site shall
17 be annexed into the City of Toledo and be part of a Planned Unit Development
18 proposal.

19 5. Adequate fire vehicle access shall be assured by requiring the driveway access
20 be paved and approved by the Fire Chief.

21 b. Appropriate easements as contained in the appendices of the Oregon Department of
22 Aviation's Land Use Compatibility Guidebook (by this reference incorporated herein)
23 shall be recorded prior to commencement of construction on the subject property.

24 4. Copies of this ordinance shall be forwarded to the County Surveyor; County GIS/LIS
25 Department; County Assessor; County Counsel; Lincoln County Department of Planning and
26 Development; applicants' agent Dawn Pavitt, Pavitt Land Use Consulting LLC, PO Box 5,
27 Newport, Oregon, 97365; and to the applicants, Mike Michael J. Smith, 556 South Bay Road,
28 Toledo, OR 97391 and Walter Heller and Zita Heller, 410 South Bay Road, Toledo, OR 97391.

Page 2 -- ORDINANCE # 463

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing ordinance to be omitted. New sections are in boldfaced type.

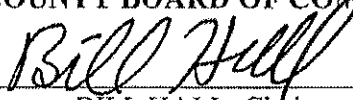
1 5. The Department of Planning and Development shall amend the official maps and
2 shall forward a copy of this ordinance to the Department of Land Conservation and
3 Development.

4 **SECTION 2.**

5 This Ordinance being necessary for the immediate preservation of the public peace,
6 health and safety, an emergency is declared to exist and this Ordinance shall take effect upon its
7 passage.

DATED: June 9, 2010.

LINCOLN COUNTY BOARD OF COMMISSIONERS



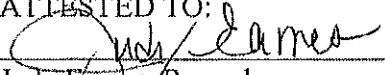
BILL HALL, Chair




TERRY N. THOMPSON, Commissioner



DON LINDLY, Commissioner

ATTESTED TO:


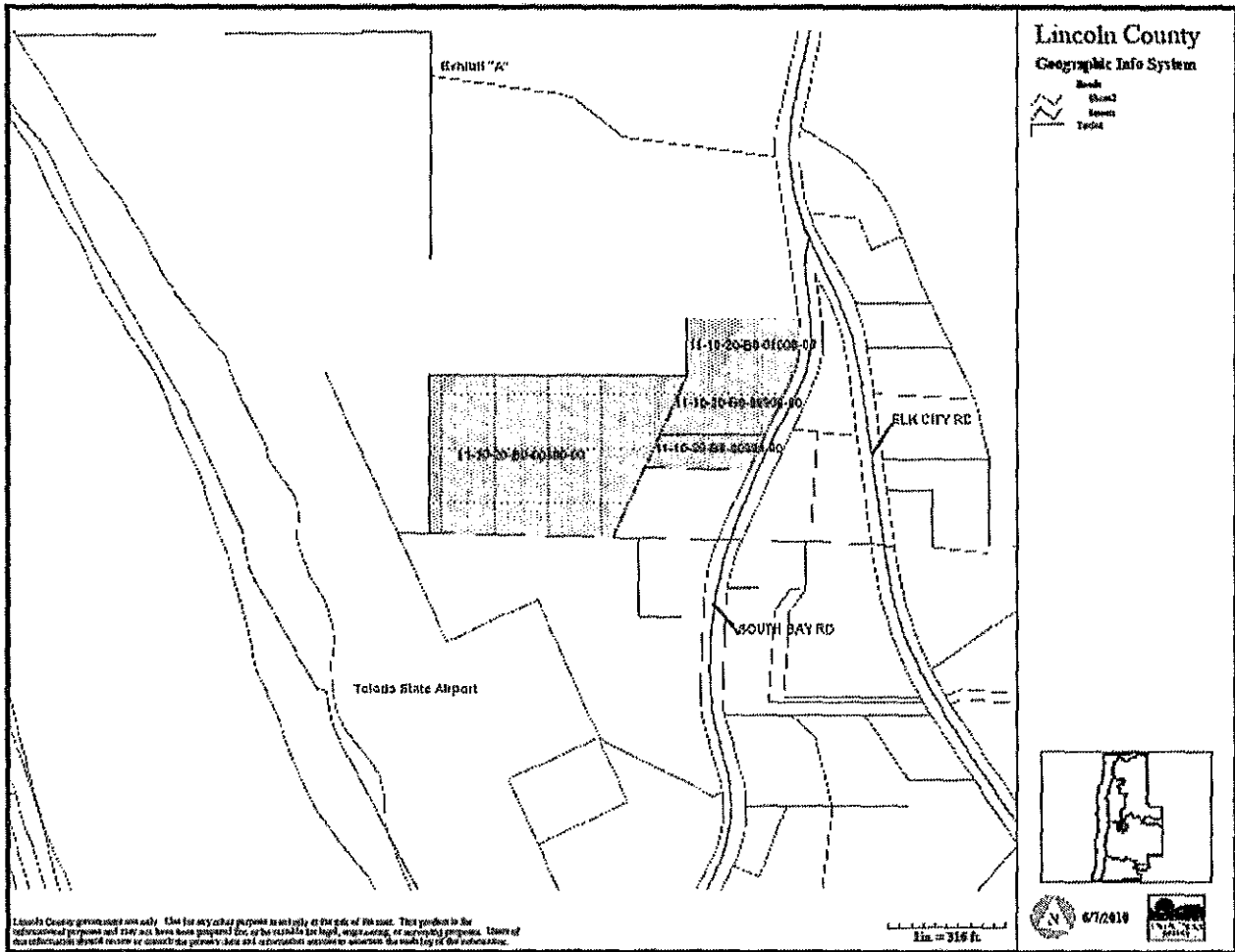
Judy James, Recorder

APPROVED AS TO FORM:


Wayne Belmont, County Counsel

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing ordinance to be omitted. New sections are in boldfaced type.

Exhibit "A"



Lincoln County government and staff use for any other purpose is solely at the risk of the user. This product is for informational purposes and may not have been prepared for, or be suitable for, legal, engineering, or surveying purposes. Users of this information should exercise caution in the primary data and information sources to determine the suitability of the information.

Exhibit "B"

BEFORE THE PLANNING COMMISSION
OF
LINCOLN COUNTY, OREGON

Comprehensive Map Amendment and Zone Change) Case File: 03-ZC-PC-09
Applicant: Mike Smith, Walter Heller Jr. & Zlita Heller) Findings, Conclusions and
Agent: Pavitt Land Use Consulting LLC, Dawn Pavitt) Final Order

Nature of the Application

The applicant requests a zone change for his property from I-P (Industrial) to R-1 (Residential) and a comprehensive plan map amendment from Industrial to Suburban Residential.

Relevant Facts

The following is a summary of the facts and testimony found to be relevant to this decision.

1. Property location: The subject properties are located between the South Bay Rd. and TL 100 of map 11-10-19 which is adjacent to the northern end of the landing strip of the Toledo State Airport. The properties are identified on Lincoln County Assessor's Map 11-10-20 B as tax lots 600, 800, 900 and 1000. Tax lot 600 is owned by Mr. Smith and is vacant. Tax lots 800, 900 and 1000 are owned by Mr. and Mrs. Heller. Their home is located on tax lot 900 and can also be identified by its assigned street address 410 South Bay Rd.
2. Lot size: The total gross acreage of all properties involved is approximately 8.33 acres. Smith owned property 11-10-20 B tax lot 600 is approximately 5.68 acres. Heller owned property 11-10-20 B tax lots 800, 900 and 1000 is approximately 2.65 acres.
3. Zoning Designation: I-P (Planned Industrial)
4. Plan Designation: Industrial/Urban Growth Boundary (UGB)
5. Topography and Vegetation: The topography slopes downward from the South Bay Rd. toward the Toledo State Airport. Some surface streams do exist on tax lot 600. Specific areas on tax lot 600 are steep and drop quickly to a small wetland located between upland area on tax lot 600 and the Toledo State Airport landing strip. Much of the property is forested with native vegetation. The Hellers residence is located on tax lot 900, which is landscaped in a residential manner. Natural vegetation on tax lots 800 and 1000 serves as a buffer for the Hellers residence.
6. Surrounding Land Use: Surrounding land uses consist of the Toledo State Airport located west of the properties. This facility maintains a small landing strip in addition to five small hangars. Property to the north is for the most part undeveloped industrially zoned land within the city of Toledo's urban growth boundary. Western Cascade Industries maintains a small scale lumber mill

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operation with a house on property located inside the city limits north of the subject properties. RR-5 zoned properties and home sites are located to the east and south and are spread along the South Bay Rd. and Elk City Rd. Mike Smith owns a small piece of industrial property southwest of the subject lots adjacent to the airport. This property recently underwent a zone change process from RR-5 to Planned Industrial (Case File #01-ZC-PC-07). The Port of Toledo owns property further southwest of the properties and maintains the Airport Boat Launch and Day-Use Area.

7. Existing Structures: All four tax lots involved with the zone change are void of any structures except for tax lot 900, which is owned by the Hellers and is the location of their single family residence. According to Lincoln County Assessor's records this structure was built in 1950. The Hellers originally purchased tax lots 800 and 900 before zoning was adopted in the area in 1957 and 1966. They later purchased tax lot 1000 in 1981. At the time they purchased tax lot 900 a single family dwelling existed on the lot.
8. Development Constraints: Due to the close proximity of the property in relationship to the Toledo State Airport specific code criteria from section 1.1940, Airport Areas of the Lincoln County Code will apply to any future use. A portion of this property is located within the 100-year floodplain. Future uses will need to comply with specific regulations contained within LCC section 1.1395, Flood Hazard Overlay Zone.

Details of the applicant's proposal can be found in staff's report and evidence submitted by the applicant, which is incorporated into the record herein.
9. A public hearing was held before the Lincoln County Planning Commission on Monday, February 22, 2010. All interested parties were given an opportunity to testify.
10. Mr. Stuart Cowie, Associate Planner with Lincoln County, gave the staff presentation. He determined that the properties under review were previously zoned A-2, which at the time was a rural residential zone designation when Lincoln County adopted county-wide zoning in March, 1974. The zoning for the subject properties was subsequently changed to Planned Industrial by Lincoln County on June 30, 1980 when the county amended the zoning ordinance and implemented the first comprehensive plan consistent with statewide planning goals. This zoning was later adopted as part of the city of Toledo's comprehensive plan in 1982 as a result of being located inside the city's UGB. The locations of these properties form the southern most boundary of the city of Toledo's UGB. These properties, in addition to a large majority of the property to the north of the subject lots located between the Yaquina River and the South Bay Rd. to Butler Bridge were also inventoried as Planned Industrial with the idea that future industrial growth from within the city would move in this direction.
11. The Hellers own property identified on tax lots 800, 900 and 1000 on assessor's map 11-10-20 B. Each of these tax lots have been identified as a

legal lot of record by Planning Department staff. These parcels each have frontage on South Bay Rd. The first parcel purchased by the Hellers was tax lot 900 in May of 1957. At that time a home constructed in 1950 existed on the lot. In December of 1966, the Hellers purchased tax lot 800 to the south. In February of 1981 the Hellers purchased their third parcel tax lot 1000 to the north. These subsequent purchases were intended to add property to their original purchase of tax lot 900 for the purpose of providing a buffer around their home from surrounding neighbors. The Hellers indicate they intended to utilize these parcels for residential purposes in conjunction with their single-family dwelling located on tax lot 900.

12. Mr. Smith owns tax lot 600 on assessor's map 11-10-20 B. This property appears to have been created by deed in January of 1962 and is considered to be a legal lot of record by the Planning Department. Mr. Smith acquired the property in October of 2005. Tax lot 600 is located directly west of the Hellers property and does not have frontage on South Bay Rd. Mr. Smith also owns additional property south of tax lot 600 identified on assessor's map 11-10-20 C as tax lot 1000. Mr. Smith maintains a single-family dwelling and accessory structure at this location. Since tax lot 600 is land-locked and cannot be accessed by direct connection to South Bay Rd., TL 1000 serves as the most practical route in which TL 600 can be accessed.
13. Tax lot 700 on assessor's map 11-10-20 B seems a logical parcel to include as part of the proposal given its size and current and historical use. However, when the owners of the parcel were invited to participate in the land use action they declined.
14. The necessary process to amend the City of Toledo's Comprehensive Land Use Plan and Zoning Map changing the subject properties from UGB Industrial to UGB Medium Density Residential has been completed. The amendment was adopted on November 4, 2009 by Ordinance #1331 and is consistent with Lincoln County Code in regards to Urbanization Policies contained in section 1.0030(4)(5). As part of the ordinance, Toledo's City Council recommended that the Lincoln County Board of Commissioners change the zone from Planned Industrial to Residential R-1, and amend the comprehensive plan designation from Industrial to Suburban Residential in order to conform to the changes made by the city.
15. Ms. Dawn Pavitt, agent with Pavitt Land Use Consulting LLC acting in the interest of Mike Smith and the Hellers, gave testimony on behalf of the request. The applicants asserted that the error was made based on two factors. The first factor cites that a large portion of industrial land has been designated and kept in reserve within the city's UGB as a result of faulty population projections. The second factor indicates that the subject properties, along with much of the other property zoned Planned Industrial inside the UGB is ill-suited to industrial uses based on topography and location.
16. The population forecasts used to determine the appropriate segments of zoning within the UGB are contained within the 1982 City of Toledo's

Comprehensive Plan and also the 1999 Buildable Lands Inventory (BLI). The applicant argued that each of these documents contain inflated population forecasts, and that in actuality the city of Toledo has not grown as the forecasts predicted.

17. The applicants cite specific language contained within the Toledo Comprehensive Plan and the BLI, providing evidence that the population projections in each document are in error. Consequently, these over inflated projections have caused city officials to dedicate more land than necessary for future industrial uses. As a result, more industrial zoned land exists than is needed. The population forecasts used to determine the appropriate segments of zoning within the UGB are contained within the 1982 City of Toledo's Comprehensive Plan and also the 1999 Buildable Lands Inventory (BLI). The applicant provided evidence that each of these documents contain inflated population and employment forecasts and that in actuality the city of Toledo has not grown as the forecasts predicted.
18. The applicants cite specific language contained within the Toledo Comprehensive Plan and the BLI, which provides evidence that the population projections in each document are in error. Consequently, these over inflated projections have caused city officials to dedicate more land than necessary for future industrial uses. As a result, more industrial zoned land exists than is needed.
19. The applicants provided evidence that the unsuitability of already designated industrial lands and the lack of need for additional industrial land are reflected in the improvement records maintained by the County Assessor's Office. The 2008 assessor records show that only one lot out of the entire schedule of the BLI has been improved. Although this lot was zoned Light-Industrial, it was only .95 acres in size. The applicants argued that if this is the only industrial land that has been developed within the ten years since the BLI study was concluded, that the amount of industrially zoned land within the UGB is over-inflated and not necessary.
20. There was no other oral testimony in either support or opposition of the application.
21. There was one letter dated February 11, 2010 submitted from Melinda Fahey, aviation planner with the Oregon Department of Aviation. The letter stated that all four of the proposed changes are within the Transitional Surface of the Toledo State Airport. The letter indicated that any structure being constructed within the Transitional Surface needs to be reviewed by ODA by submitting an FAA Form 7460-1 "Notice of Proposed Construction" per OAR 738-070. The letter recommended that any approved uses are recommended to have a Declaration of Anticipated Noise. Copies of sample declarations were referenced.
22. There was no letters of concern submitted by neighbors or agencies.

23. No party requested a continuance of the public hearing or for the record to remain open.

Relevant Criteria

Lincoln County Land Use Code

- 1) Quasi-Judicial Amendments: Section 1.1235
- 2) Plan Designation: Suburban Residential: Section 1.0190(6)
- 3) Plan Designation: Industrial: Section 1.0190(8)
- 4) R-1 (Residential): Section 1.1310
- 5) I-P (Planned Industrial): Section 1.1364
- 6) Urbanization Policies: Section 1.0030(4)(5)

Findings

The Commission finds:

1. The subject property is comprised of 4 parcels totaling 8.33 acres and zoned I-P (Planned Industrial). One parcel holds a house built in 1950, with the remaining parcels being vacant.
2. The applicants have indicated plans to continue the existing home site use. Mr. Smith would like to build one house on TL 600.
3. A statement submitted by staff from the Oregon Department of Aviation indicates that residential uses are generally incompatible with airport operations. However, there are noise waivers that could be executed which would protect the airport use.
4. The applicant stated that there has been an error in zoning based on faulty population projections adopted by the City of Toledo and used in their industrial land planning.
5. The land is unsuitable for industrial purposes based on location, lack of access and terrain.
6. Both the City of Toledo planning commission and city council have approved the request.
7. The denial of the applicant's request will leave the Heller's home in a non-conforming state that is not compliant with the property's current zoning or comprehensive plan designation.
8. Both Statewide Planning Goals and the Lincoln County Comprehensive Plan will be supported by the applicant's proposal. The zone change will positively affect statewide and local comprehensive goals involving housing, urbanization and transportation policies.
9. The city has adopted ordinance #1331, which amended the city's comprehensive plan and zoning map. Approval of this application would

achieve consistency with the city's decision, thereby aligning appropriate zoning and comprehensive plan designations between the two jurisdictions.

10. The Commission finds that the five conditions as contained within the City of Toledo's Staff Report concerning application PA-1-09 be adhered to regarding future development.
11. The Commission finds that appropriate easements as contained within the appendices of the Oregon Department of Aviation's Land Use Compatibility Guidebook should be recorded upon the commencement of construction on the subject lots.

Conclusions

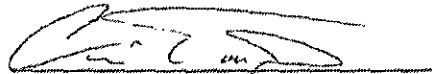
The record and findings support the conclusion that:

1. Substantial evidence in the record demonstrates that the change is in accord with the Comprehensive Plan goals and policies.
2. Substantial evidence in the record demonstrates that the change is in accord with the Statewide Planning Goals.
3. Substantial evidence in the record demonstrates that the I-P/Planned Industrial zoning was made in error and that the zoning should be changed to R-1/Residential.
4. Substantial evidence in the record demonstrates that the Industrial Comprehensive Plan designation was made in error and that the plan designation should be changed to Suburban Residential.

Order

It is ORDERED by the Lincoln County Planning Commission that Case File 3-ZC-PC-09 be APPROVED. This approval will serve as a recommendation to the Lincoln County Board of Commissioners to change the plan designation to Suburban Residential and change the zone designation to R-1/Residential.

This ORDER was presented to and approved by the Lincoln County Planning Commission on March 22, 2010.



Chris Torp, Chair
Lincoln County Planning Commission