

**MALHEUR COUNTY COURT MINUTES  
SPECIAL MEETING  
JOINT PUBLIC HEARING WITH THE CITY OF ONTARIO**

November 7, 2019

The Malheur County Court held a Special Meeting at Ontario City Hall with the City of Ontario Council. Present from Malheur County were Judge Dan Joyce and Commissioner Larry Wilson; and staff members Planner Eric Evans and Planning Management Assistant Tatiana Burgess. Present from the City of Ontario were: Mayor Riley Hill, and City Councilors Dan Capron, Michael Braden, Norm Crume, Freddy Rodriguez, Ramon Palomo, and Marty Justus. The meeting was opened at 6:00 p.m. The purpose of the Special Meeting was to hold a joint public hearing to expand the urban growth boundary and change the designation of certain land. Notice of the hearing was published in the Argus Observer.

Minutes of the joint public hearing were provided by the City of Ontario.

**SPECIAL ACTION – JOINT PUBLIC HEARING**

**Ordinance #2766-2019: Joint Public Hearing with Malheur County Court and City of Ontario for an Ordinance Amending the City of Ontario Comprehensive Plan and Zoning Maps for Expanding the Urban Growth Boundary to Change the Designation of Certain Land from County Exclusive Farm Use (C-A1) to Ontario Urban Growth Area (UGA); Rezoning said Certain Land to Urban Growth Area-Residential (UGA-R); and Declaring an Emergency**

It being the date advertised for public hearing on the matter of City of Ontario Ordinance #2766-2019/Malheur County Ordinance No. 221, the Hearing was declared open. There were no objections to the jurisdiction to hear the action, no abstentions, ex parte contact, and no declarations of conflict of interest. Mayor Hill turned this portion of the action over to the County Court.

Judge Dan Joyce opened the hearing.

Eric Evans, Malheur County Planning and Zoning Administrator presented.

Mr. Evans read into the record:

*Now is the time to hear the proposal to amend the Ontario Urban Growth Area/Boundary (UGA/UGB) to include property commonly identified as Map 18S47E06D TL 200 (0.94 acres) and correct the exclusion of said property from the URA (Urban Reserve Area) when Ontario adopted the most current UGA/URA in 2007; and Re-zone property from C-A1/EFU (Exclusive Farm Use) to UGA-R. County Planning Department file 2019-09-001. City's Planning Action #2019-08-57CPAMD.*

*Please sign in at the podium, fill out a testimony and question sheet if you have not done so already and when called to speak please state your name, address and title (if any) for the record.*

*1. There is a general time limit for testimony of 5 minutes. The applicant's initial presentation will be 20 minutes; with a rebuttal of 10 minutes.*

2. All testimony and questions shall be directed to or through the chair. Testimony and questions should not be directed to staff or directly to witnesses.

3. Do any members of the Ontario City Council or Malheur County Court need to abstain, disclose conflicts, disclose biases, or disclose any ex parte communications or site visits? If so, state the reason. None.

4. Does anyone object to any of the members of the Ontario City Council or Malheur County Court hearing this matter? No objections.

5. Does anyone challenge the Ontario City Council or Malheur County Court's jurisdiction to hear this matter? No challenges.

6. Land use statements for the record: Oregon land use law requires several items be read into the record at the beginning of this hearing. I will now read these items:

*The applicable substantive criteria upon which the application will be decided are found in Oregon State laws and rules as well as local code provisions, which are specifically set out in the Staff Report and include:*

*The Malheur County Code: MCC 6-10-7*

*Joint Management Agreement between Ontario and Malheur County, Ontario Municipal Code 108-20-30*

*Statewide Planning Goals 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.*

*Testimony, arguments, and evidence presented must be directed toward these approval criteria or other criteria in state law, the Malheur County Comprehensive Plan, the Malheur County Code, or the Ontario Municipal Code that the speaker believes to apply to the decision.*

*The failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the decision makers and the parties the opportunity to respond to the issue will preclude appeal on that issue.*

*An issue that may be the basis of an appeal must be raised no later than the close of the record. Such issues must be raised and accompanied by statements or evidence sufficient to afford the decision makers and the parties an adequate opportunity to respond to each issue. Failure to raise an issue may preclude raising it before LUBA (Land Use Board of Appeals).*

*The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the decision makers to respond to the issue precludes an appeal or an action for damages to circuit court.*

Mr. Evans presented a staff report to the County Court.

### Summary and Background:

Proposal. A zone change is proposed for the Property as shown on Map 1 attached as Exhibit 1. The overall affect is to bring the Property into the Ontario URA/UGB and ultimately annex the Property into the City of Ontario in order to alleviate a public health risk created by a failing onsite wastewater treatment system on the Property. The owners of the Property intend to connect to Ontario's water and sewer system.

Use/Surrounding Uses. The subject property is 0.94 acres and since approximately 1960 has been used for a single family residential dwelling. The Property is completely surrounded by lands zoned UGA-R and industrial and is irrevocably committed to other uses.

Analysis for Compliance with State and Local Regulations. The requirements of statewide Goal 14 Urbanization are required to be addressed when amending an urban growth boundary. Oregon Administrative Rules Chapter 660 Division 24 contains the requirements for addressing Goal 14 and is addressed under Section IV. Because the Property proposed for inclusion in Ontario's UGB is currently zoned EFU (Exclusive Farm Use), a *goal exception* to Statewide Goal 3 Agricultural Lands is sought under OAR 660-004-0028 as the property is irrevocably committed to other uses. A goal exception essentially justifies why the requirements of an applicable statewide goal should not apply to a particular use that cannot reasonably be accommodated in an area that does not require an exception.

Statewide land use goals and implementing OARs applicable to this request are addressed in Section IV.

The property will be rezoned from County Exclusive Farm Use (C-AI/EFU) to Ontario UGA Residential (UGA-R). It is further anticipated that the property will be annexed into the Ontario City limits.

In addition to the requirements under Oregon's statewide goals and administrative rules, Malheur County and the City of Ontario have criteria in their zoning ordinances that must be met in order for the proposal to be approved. County and City provisions are addressed in Section III. Because the plan amendment and zone change affect land within the County's jurisdiction and the City of Ontario, both the County and City governing bodies must approve the zone change and amendment to the UGA.

This request is being processed subject to the procedures for a quasi-judicial land use hearing contained in Chapter 11 of the Malheur County Code, and the Urban Growth Area Joint Management Agreement between the City of Ontario and Malheur County.

### Applicable City and County Criteria and Standards:

The applicable criteria can be found in Ontario Planning and Zoning Development Standards IOB-20-30: REQUIRED FINDINGS, DECISION CRITERIA:

The Zoning Map amendment is in conformance with statewide planning goals and guidelines. Proposed Finding: Statewide land use goals and implementing OARs (Oregon Administration Rules) applicable to this request are addressed in Section IV.

The Zoning map amendment is in conformity with the acknowledged Comprehensive plan.

Proposed Finding: The Malheur County Comprehensive Plan states, "The county will work with the cities of Ontario, Nyssa, and Vale in establishing and amending urban growth boundaries and joint management agreements." Malheur County and the City of Ontario have an ongoing relationship in order to jointly manage lands in the UGB, pursuant to the Ontario Joint Management Plan. Both Malheur County and the City of Ontario agree that the subject property was overlooked when the last URA amendment for the City occurred in 2007, and this process will rectify the error. Malheur County and the City of Ontario also agree that the subject property is irrevocably committed to other uses. Had the Property been included in the URA it would have been first priority for inclusion in the Ontario UGB.

The applicant has demonstrated a mistake or error in the original zone designation or the applicant has demonstrated a change in physical, social or market conditions generally affecting the area which make the proposed change appropriate.

Proposed Finding: Both Malheur County and the City of Ontario agree that the subject property was overlooked when the last URA amendment for the City occurred in 2007, and this process will rectify the error. Malheur County and the City of Ontario also agree that the subject property is irrevocably committed to other uses. Had the Property been included in the URA it would have been first priority for inclusion in the Ontario UGB.

A public need is demonstrated for this zoning at this location and is not the granting of special privilege for a single property or small group of properties.

Proposed Finding: The residence on the subject property has a failed onsite wastewater treatment system which in itself has a negative effect on the groundwater of the area. By adding the Property to the UGB and then annexing it into the City of Ontario, urban level facilities will be provided having a net positive affect on the groundwater in the area and alleviate a public health threat.

The property affected by the change is adequate in size and shape to facilitate its use and development as permitted under the new zoning classification.

Proposed Finding: The Property is 0.94 (~40,946 square feet) acres and has 150 feet of street frontage. The City of Ontario has established a minimum lot size of 5,000 square feet and each lot must have 50 feet of street frontage. The Property is more than adequate in size and shape to facilitate its use and development.

The property affected by the proposed change of zone is properly related to streets and public facilities and with services adequate to meet the demands of the uses allowed in the new zone.

Proposed Finding: The Property is located adjacent to SW 4th Avenue. There is both water and sewer available and is currently stubbed out to service the Property.

The proposed Zoning map change will not result in adverse effects upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.

Proposed Finding: This proposal will have no impact on any of the surrounding uses with respect to dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land. The Property is already developed as a single-family dwelling and will continue to be zoned residential, this criterion is not applicable.

The applicable criteria can be found in Malheur County Code 6-10-7: COMPLIANCE WITH COMPREHENSIVE PLAN:

In considering an amendment to the text or the zoning maps, the planning commission and County Court shall determine the following:

That the proposed change is consistent with the comprehensive plan.

Proposed Finding: The Malheur County Comprehensive Plan states, "The county will work with the cities of Ontario, Nyssa, and Vale in establishing and amending urban growth boundaries and joint management agreements." Malheur County and the City of Ontario have an ongoing relationship in order to jointly manage lands in the UGB, pursuant to the Ontario Joint Management Plan. Both Malheur County and the City of Ontario agree that the subject property was overlooked when the last URA amendment for the City occurred in 2007, and this process will rectify the error. Malheur County and the City of Ontario also agree that the subject property is irrevocably committed to other uses. Had the Property been included in the URA it would have been first priority for inclusion in the Ontario UGB.

That the level of development in other locations has reached the point whereby additional land is needed for the proposed use(s), and that the area of the proposed change can best meet such needs.

Proposed Finding: Because the Property is already developed as a single family dwelling and will continue to be zoned residential, this criterion is not applicable. This amendment will correct a mistake when the subject property was inadvertently left out of the last Ontario URA amendment in 2007. The proposed site is needed for residential development and is already developed for the proposed use. Including the Property within the Ontario UGA (and annexation) will allow urban facilities to the Property.

That adequate rural services are available and will not be overburdened.

Proposed Finding: The subject property will be zoned UGB and then annexed into the City of Ontario. Thereafter, the Property will connect to City water and sewer services. Urban services will be provided and will not be overburdened. Public facilities are stubbed to and extend beyond the Property. See Exhibit 2. This criterion is not directly applicable, as the proposal is to provide urban services to the site.

That amendments to the text or zoning map which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the transportation system plan. This shall be accomplished by one of the following:

Limiting allowed land uses to be consistent with the planned function of the transportation facility;

Amending the transportation system plan to ensure that existing, improved or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the transportation planning rule; or

Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

A text or zoning map amendment significantly affects a transportation facility if it:

Changes the functional classification of an existing or planned transportation facility;

Changes standards implementing a functional classification system;

Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or

Would reduce the level of service of the facility below the minimum acceptable level identified in the transportation system plan. (Ord. 125, 6-20-2000)

Proposed Finding: The subject property is 0.94 acres and currently has a home which was constructed in 1960. No new development is proposed with this amendment. This proposal will not impact transportation facilities.

Applicable Statewide Planning Goals and Oregon Administrative Rules.

Goal 1 - Citizen Involvement: Proposed Finding: This Goal is met through the required quasi-judicial process including public notice and public hearings. The process provides the opportunity for citizens to be involved by allowing them to comment and present testimony or evidence on the proposed amendment.

Goal 2- Land Use Planning: OAR 660-004-0028 Exception Requirements for Land Irrevocably Committed to Other Uses. Proposed Finding: Goal 2 outlines the basic procedures of Oregon's statewide planning program. Goal 2 also requires consistency between comprehensive plans and implementing zones. In order to achieve consistency in this matter, an exception to Goal 3, under Goal 2 is required to justify why the proposed amendment into the UGB should be allowed on land zoned EFU. The property is deemed irrevocably committed to other uses as set in OAR 660-004-0028 (2):

Characteristic of the exception area: The property is 0.94 acres. It was inadvertently left out of the URA expansion when the last URA amendment was adopted by Malheur County and the City of Ontario in 2007. See Malheur County Ordinance Number 167 recorded with the Malheur County Clerk on October 25, 2017 as Instrument No. 2007-7974.

Characteristic of adjacent lands. The subject parcel is completely surrounded by Ontario-Industrial lands to the east and north, Ontario-URA-Industrial to the west, and Ontario-UGA-Residential to the south.

The relationship between the exception area and the lands adjacent to it. The exception area is a single small parcel which is not large enough to be farmed. The exception area is surrounded by urban zones. Adjacent properties are not farmed. The current owners of the Property do not own any adjacent property.

Other relevant factors in OAR 660-004-0028 (6). Currently, there are nearby public water and sewer facilities which can adequately supply urban levels of services to the Property. These public work facilities are underground and stubbed to the Property. The Property is small at 0.94 acres and impracticable to farm. The owners of the Property do not own adjacent property. Urban and industrial uses occur on adjacent property. Adjacent properties are not in farm use.

Goal 3 - Agricultural Lands: Proposed Finding: Goal 3 is applicable because the Property is currently zoned C-AI/EFU. In order to add it to the UGB, an exception to this Goal is required. The requirements for justifying a goal exception are contained in Goal 2 Land Use Planning and in OAR 660-004-0028, which is addressed above. The Property is 0.94 acres and is too small to be farmed. The Property is completely surrounded by residential and industrial zones and is currently used as nonfarm residential dwelling. The Property is irrevocably committed to other uses and farming the property is impracticable. The exclusive farm use designation should not apply to the Property.

Goal 5 - Natural Resources, Scenic and Historic Areas, and Open Spaces: Proposed Finding: No identified natural resources have been identified on the subject property. The Property is too small to be farmed as a single unit and cannot be combined with other resource lands as the surrounding property is zoned residential or industrial. Farm use does not occur on adjacent properties.

Goal 6 - Air, Land and Water Quality: Proposed Finding: No negative impacts to air, land, water or other resources have been identified through this process. The residence on the subject property has a failed onsite wastewater treatment system which in itself has a negative effect on the groundwater of the area. By adding the Property to the UGB and then annexing it into the City of Ontario, urban level facilities will be provided having a net positive affect on the groundwater in the area.

Goal 7 - Areas Subject to Natural Hazards: Proposed Finding: No known natural hazards have been identified on the Property. The subject property is outside the 100 and 500 year floodplains.

Goal 8 - Recreation: Proposed Finding: No current recreational lands or properties are being affected by this UGB expansion. This goal is not applicable.

Goal 9 - Economic Development: Proposed Finding: Goal 9 requires cities to provide an estimate of the approximate number, acreage and site characteristics needed to accommodate industrial and other employment uses to implement plan policies. This goal is not applicable as the property is to be zoned residential.

Goal 10 – Housing: Proposed Finding: The City of Ontario requires 50 foot of street frontage for any residential development and at least 5000 square feet of area. The Property currently has a little over 150 feet of street frontage on 4th Avenue. Therefore, a maximum of three homes could be built once the Property is annexed into the City. This is highly unlikely considering the current home would have to be demolished to develop the Property to this potential. As a result, this UGB expansion will have no immediate effect on housing for Ontario. The overall development potential is a maximum of three residential dwellings (either single family or duplex).

Goal 11 - Public Facilities and Services: Proposed Findings: The subject property sites a single-family dwelling. Adequate public facilities and services are stubbed to the Property. The UGB expansion would not change public services provided by the City of Ontario.

Goal 12 - Transportation: Proposed Finding: This action will not create additional average daily trips and will not trigger a traffic impact analysis under the Malheur County or City of Ontario Transportation System Plans. New access to the Property is not needed. The Property has a driveway access/frontage on 4th Avenue. A safe, convenient and economic transportation system consisting of developed and maintained county roads and city streets serve the Property.

Goal 13 - Energy: Proposed Finding: Additional energy services are not expected with this expansion of the UGA. The use of Ontario public utilities on the Property will be more energy efficient.

Goal 14 - Urbanization: Proposed Findings: The subject property currently contains a single-family dwelling, and the City has adequate public facilities and services to serve it. The Property is currently developed as a non-farm dwelling and is immediately surrounded by urban uses. This amendment is needed for an orderly and efficient transition from C-AI/EFU to UGA-residential and will provide for a more livable area in order to accommodate a failing wastewater system on the Property. This UGB expansion is not based on land need, but rather to correct an error when the Property was not included in the URA in 2007 and to solve an environmental health matter. The findings, exhibits, analysis, urbanization study and data supporting Malheur County Ordinance 167, which established the Ontario URA in 2007, is incorporated herein by reference. Ordinance No. 167 was recorded with the Malheur County Clerk on October 25, 2007, as Instrument #2007-7974.

The Hearing was opened for public testimony. Opponents: None. Proponents: None. There being no Proponent and no Opponent testimony, the public comment portion of the Hearing was closed.

Dan Cummings, Community Development Director, stated this piece of property should have never been left out of the first action. He recommended approval of the action.

Judge Joyce closed the County's portion of the Public Hearing. Mayor Hill closed the city's portion of the Public Hearing.

Commissioner Wilson moved, Judge Joyce seconded, **THAT THE COUNTY COURT ACCEPT AND APPROVE THE FINDINGS OF FACT AS SET FORTH IN THE COUNTY PLANNING ACTION 2019-09-001 AND CITY PLANNING ACTION 2019-08-57CPAMD AS SET FORTH IN THE STAFF REPORT.** Vote: Wilson-yes; Joyce-yes.  
Motion carried.

Commissioner Wilson moved, Judge Joyce seconded, **THAT THE REQUEST FOR AMENDING THE ONTARIO URBAN GROWTH AREA BOUNDARY TO INCLUDE PROPERTY COMMONLY IDENTIFIED AS MAP 18S47E06D TL 200, AND CORRECT THE EXCLUSION OF SAID PROPERTY FROM THE URA WHEN ONTARIO ADOPTED THE MOST CURRENT UGA/URA IN 2007; AND RE-ZONE PROPERTY FROM C-A1/EFU TO ONTARIO UGA-R, AS SET FORTH IN THE COUNTY PLANNING ACTION #2019-09-001, CITY PLANNING ACTION #2019-08-57CPAMD, BE BASED ON THE INFORMATION, FINDINGS, AND CONCLUSIONS SET FORTH IN THE STAFF REPORT.** Vote: Wilson-yes; Joyce-yes. Motion carried.

CRUME moved, CAPRON seconded, **THAT THE CITY COUNCIL ACCEPT THE RECOMMENDATION OF THE ONTARIO PLANNING COMMISSION AND THE MALHEUR COUNTY COURT AND APPROVE THE FINDINGS OF FACT AND APPROVE ORDINANCE #2766-2019, AN ORDINANCE AMENDING THE CITY OF ONTARIO COMPREHENSIVE PLAN AND ZONING MAPS BY EXPANDING THE URBAN GROWTH BOUNDARY TO CHANGE THE DESIGNATION OF CERTAIN LAND FROM COUNTY EXCLUSIVE FARM USE (C-A1) TO ONTARIO URBAN GROWTH AREA (UGA); REZONING SAID CERTAIN LAND TO URBAN GROWTH AREA-RESIDENTIAL (UGA-R); AND DECLARING AN EMERGENCY.** Roll call vote: Braden-yes; Justus-yes; Palomo-yes; Crume-yes; Rodriguez-yes; Capron-yes; Hill-yes. Motion carried 7/0/0.

CRUME moved, JUSTUS seconded, **THAT THE COUNCIL WAIVE THE SECOND READING OF ORDINANCE #2766-2019.** Roll call vote: Braden-yes; Justus-yes; Palomo-yes; Crume-yes; Rodriguez-yes; Capron-yes; Hill-yes. Motion carried 7/0/0.

See instrument #[2019-4103](#) for Ordinance Number 221: An Ordinance Amending the Malheur County Comprehensive Plan and Zoning Maps by Expanding the Urban Growth Boundary to Change the Designation of Tax Lot 200, Map 18S47E06D, Ref. #7685 of the Malheur County Assessor's Office from County Exclusive Farm Use (C-A1) to Ontario Urban Growth Area (UGA); Rezoning Said Property to Urban Growth Area – Residential (UGA-R); and Declaring an Emergency.

The County Court special meeting was adjourned.