

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 99-235

Approving the annexation of territory to Dunthorpe-Riverdale County Service District.

The Multnomah County Board of Commissioners Finds:

- (a) A request for annexation was received pursuant to procedures set forth in ORS 198 and Metro Code 3.09.
- (b) The annexation was endorsed by the Board of the District as required by ORS 198.850 (1).
- (c) A staff report which addressed factors mandated in the Metro Code was presented to the Board 15 days prior to the hearing as required by the Metro Code.
- (d) A public hearing was held before the Board of County Commissioners on December 2, 1999 to determine whether the boundary change was appropriate as required by ORS 198 and whether it met the criteria laid out in the Metro Code.

The Multnomah County Board of Commissioners Orders:

- 1. On the basis of the Findings and Conclusions listed in Exhibit "A", Proposal No. MU-0699 is approved.
- 2. The territory described in Exhibit "B" and depicted on the attached map, be annexed to Dunthorpe-Riverdale County Service District.
- 3. The staff is directed to file this document with the required parties.

ADOPTED this 2nd day of December, 1999.



Reviewed:

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

by


Jeffrey B. Litwak
Assistant County Counsel

FINDINGS AND REASONS FOR DECISION

Based on the staff report and the public hearing, the Commission found that:

1. The territory to be annexed contains approximately .5 acres, is vacant and has an assessed value of \$75,000.
2. The applicant desires sewer service to facilitate development of a single-family residence on the parcel. His parcel consists of two Tax Lots. The north Tax Lot is within Multnomah County and within the Boundary of the Dunthorpe-Riverdale County Service District. The south Tax Lot is in Clackamas County and outside of the District. His proposed new residence will be substantially on the portion of the parcel that is within Clackamas County.
3. The property slopes east toward the Willamette River. Surrounding land uses are single family residences.
4. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).
5. The law which dictates that Metro adopt criteria for boundary changes specifically states that those criteria shall include " . . . compliance with adopted regional urban growth goals and objectives, functional plans . . . and the regional framework plan of the district [Metro]." In fact, while the first two mentioned items were adopted independently, they are actually now part of Metro's Regional Framework Plan. The Regional Framework Plan also includes the 2040 Growth Concept. Metro is authorized to adopt functional plans which are limited purpose plans addressing designated areas and activities of metropolitan concern and which mandate local plan changes. Metro adopted on functional plan - the Urban Growth Management Functional Plan. They have codified this functional plan in Metro Code Chapter 3.07 and they include it as an appendix to the Regional Framework Plan.

The Urban Growth Management Function Plan requires cities and counties to amend their comprehensive plans and implementing ordinances to accord with elements in the Functional Plan. Included in these requirements are such items as minimum density standards, limitations on parking standards, mandated adoption of water quality standards and rules relating to Urban Growth Boundary expansion into Urban Reserve areas. None of these requirements relate directly to the issue of annexation to a district which provides sewer service.

The staff has examined the Regional Framework Plan and found no provisions which are directly applicable to annexations in general or to annexations to county service districts in particular.

6. The Clackamas County plan designation for the site is LDR (low density residential) and it is zoned R-30 (30,000 square feet per unit). The parcel is defined as Immediate Urban, which means:

lands within Urban Growth Boundaries which meet at least one of the following conditions: (1) served by public sewer; (2) included within boundaries of cities or within special districts capable of providing public sewer and planned to be served in the near future; or (3) substantially developed or surrounded by development at urban densities.

The following policy applies to the parcel:

7.0 Immediate Urban Policies

* * *

- 7.2 Place conditions on development to insure adequate services and facilities prior to or concurrent with development.

7. Clackamas County has an Urban Growth Management Agreement (UGMA) with the City of Lake Oswego which identifies this parcel as being within Lake Oswego's Dual Interest Area. The territory is within Lake Oswego's Urban Service Boundary as identified in the acknowledged Lake Oswego Comprehensive Land Use Plan, and the City/County UGMA. The following policies of the UGMA are pertinent:

3. Development Proposals in the Unincorporated Area

* * *

- D. The County shall not form any new County service districts or support the annexation of land within the unincorporated Dual Interest Area to such districts or to other service districts without City approval.

* * *

6. City Annexations

- A. The City may undertake annexations in the matter provided for by law within the Dual Interest Area. The City annexation proposals

shall include adjacent road right-of-way to properties proposed for annexation. The County shall not oppose such annexations.

- B. Upon annexation, the City shall assume jurisdiction of the County roads and local access roads pursuant to a separate road transfer agreement between the City and the County.

The City of Portland-Multnomah County UPAA calls for the County to notify the City of any legislative changes to the Comprehensive Plan " . . . and any quasi-judicial or administrative decisions pursuant to the Comprehensive Plan that may substantially affect the City."

The agreement between Clackamas County and the City of Portland provides that the City of Portland's Urban Services Boundary is along the Multnomah-Clackamas County line in this vicinity. Thus the territory proposed for annexation to the District is outside the ultimate service area of the City of Portland.

8. An element of the City of Lake Oswego's Development Code is City Goal #14: Urbanization. The following policies of the goal are pertinent here:

* * *

11. The City shall, to the extent permitted by law, enter into and maintain intergovernmental agreements with any provider of sanitary sewer or water service within the Urban Services Boundary to require annexation agreements for unincorporated lands which require either service.

* * *

18. The City will support expansion of an existing service district's boundaries only if:
- a. It can be shown that it is the only feasible way to provide a particular service. City services, rather than district services shall be provided when they are, or can be made available and are adequate;
 - b. The provision of service is consistent with the City's Public Facility Plan and Comprehensive Plan goals and policies;
 - c. Annexation agreements are recorded for the property receiving service, to the extent permitted by law, that provides for non-remonstrance to annexation, and;
 - d. The service district can maintain an adequate level of service over both the short and long term.

The city has "a active plan" which covers territory adjacent to but outside the City. The City Plan designates the territory as R-10 (10,000 square feet per unit).

Lake Oswego responded to the annexation in a letter dated November 3, 1999, stating that:

The City of Lake Oswego does not object to the annexation of the above property, within its Urban Services Boundary to the Riverdale-Dunthorpe Sanitary Sewer District provided that the property owner executes a consent to future annexation to the City of Lake Oswego prior to annexation.

The City based its position on Comprehensive Plan Policy 18 quoted above. The letter goes on to provide the following information:

At this time, it is not feasible to extend City sewer and water services to the subject property, and annexation would not result in the creation of a logical city boundary. This is compounded by the fact that the City's USB divides the subject property along the boundary of Clackamas and Multnomah Counties. The provision of services by the Riverdale-Dunthorpe Sanitary Service District does not pose problems to the City's stated policy objective of ultimately being the service provider for this area. Thus service, by the District, at this time, is not inconsistent with the City's Public Facility Plan. This finding is based on [the] fact that the City will require a consent for future annexation to ensure consistency with the above policy. Once annexation becomes feasible, the property would be withdrawn from the Service District and the City of Lake Oswego would provide services.

* * *

This issue raises the larger question of the City's northern Urban Services Boundary not logically following property boundaries and instead "cutting" through several parcels. The reason is that the USB line was originally drawn to follow the boundary between Multnomah and Clackamas Counties. The City of Lake Oswego would, at some time in the future, like to discuss this matter with you and Multnomah County to determine if it is possible to develop a more rational Urban Services Boundary.

The City provided the property owner with an agreement that provides for nonremonstrance to annexation. The City requested he sign it before annexation is approved. The applicant has done so.

9. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space,

recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. The statute was enacted in 1993 but there are no urban service agreements in place in Washington, Multnomah or Clackamas counties to date.

10. The Dunthorpe-Riverdale Service District has an 8-inch line located along the Multnomah - Clackamas County boundary line with a manhole on the subject parcel.

The Dunthorpe-Riverdale Service District is a Multnomah County county service district. The District receives sewage treatment services from Portland's Tryon Creek Wastewater Treatment Plant. The District also contracts with Portland for operation and maintenance of its facilities. The Dunthorpe-Riverdale Service District purchased capacity for the District's use from the Tryon Creek plant by means of a tax levy and general obligation bonds. This capacity was reserved for those properties within the original District. The City of Portland has agreed to sell the District additional units of capacity for newly annexed areas at a cost of \$1390 per residential unit.

The District's single family unit connection fee is \$2500, and permit fee is \$120. The District charges a monthly user fee of approximately \$20.92 for storm water management and sanitary sewage services.

11. The part of the parcel within Multnomah County is within the Palatine Hill Water District. The District has a 1-1/2 inch water line in Elk Rock Road which is served by a 6-inch water line located just north of the parcel. Palatine Hill Water District buys its water from the City of Portland. The District charges a flat rate of \$30 per month, which includes 1000 cubic feet of water. Any additional water use is charged a rate of \$1.65 per 100 cubic feet.
12. The territory is within the Multnomah County Rural Fire Protection District #11 (known as Dunthorpe-Riverdale RFPD in Clackamas County). This District provides fire protection services via a contract with the City of Lake Oswego.
13. The area is served by the Clackamas County Sheriff's Department which provides a rural base level of service of approximately .52 officers per thousand population. The area is also within the Clackamas County Service District For Enhanced Law Enforcement which finances an additional level of service to the urban area to raise the service level from .52 to 1.0 officers per 1000 population.

CONCLUSIONS AND REASONS FOR DECISION

Based on findings, the Board concluded that:

1. The Metro Code at 3.09.050(d)(4) calls for consistency between the Board decision and any "specifically directly applicable standards or criteria for boundary changes contained . . . Regional Framework Plan or any functional plan . . . "

There are no directly applicable criteria in Metro's only adopted functional plan, the Urban Growth Management Functional Plan. This Plan requires that cities and counties amend their plans to include minimum density standards, etc. but these mandates do not relate to extraterritorial extension of water line outside a District's boundaries.

All other elements of the Regional Framework Plan were examined and found not to contain any directly applicable standards and criteria for boundary changes.

2. The Metro Code at 3.09.050(3) calls for consistency between the Board decision and any "specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facilities plans . . ." The Board reviewed the applicable comprehensive plan which is the County Comprehensive Plan and finds approval of this annexation to be consistent with the plan.
3. The Metro Code calls for consideration of any directly applicable standards or criteria to be found in urban planning area agreements. This annexation is consistent with the City of Lake Oswego agreement with Clackamas County, Portland's agreement with Multnomah County and Portland's agreement with Clackamas County.
4. The Metro Code also requires that these conclusions address consistency between this decision and any urban service agreements under ORS 195. As noted in Finding number 9, there are no ORS 195 agreements in place in this area. Therefore, the Board addresses this criterion by finding that there are no agreements and that its decision is not inconsistency with any such agreements.
5. Metro Code 3.09.050(d)(5) states that another criteria to be addressed is "whether the proposed change will promote or not interfere with the timely, orderly and economic provisions of public facilities and services." The Board finds that the County Service District can provide the urban service it controls to the site immediately in adequate quantity and quality. The surrounding area is urban. This proposed development is "infill" development in character. As set out in findings

number 10 through 13, the full range of urban services and facilities is available to this area.

6. Metro Code 3.09.050(d)(6) says: "If the proposed boundary change is for annexation of territory to Metro, a determination by the Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criteria for approval. The Board finds this criteria to be inapplicable since this is not an annexation to metro.

EXHIBIT B

Proposal No. MU-0699

DESCRIPTION:

The following described property lying in County of Clackamas and Multnomah and State of Oregon.

Beginning at a cross in a rock at the Northeast corner of Tract 9 of ELK ROCK VILLAS, situate in Section 2, Township 2 South, Range 1 East of the Willamette Meridian, and Section 35, Township 1 South, Range 1 East of the Willamette Meridian; thence along the Northerly line of said Tract 9 on a course of North $66^{\circ}21'40''$ West 172.01 feet, more or less, to an iron pipe at the Northwest corner of said Tract 9 in the center line of a 15 foot road; thence along the center of said road Southerly and along the Westerly line of said Tract 9 as follows; 72.38 feet along a curve to the right, with a radius of 150 feet, the long chord of which bears South $44^{\circ}09'$ West 71.69 feet; thence 66.12 feet along a curve to the left, with a radius of 150 feet, and on the Westerly line of said Tract 9, to an iron pipe; thence South $66^{\circ}13'$ East 221.05 feet to an iron pipe on the Easterly line of said Tract 9 which is South $23^{\circ}47'$ West 128.64 feet from the place of beginning; thence North $23^{\circ}47'$ East 128.64 feet to the place of beginning, said land being in Tract 9 in ELK ROCK VILLAS and approximately the North one-half of said Tract 9.

EXCEPT tract conveyed to Alfred T. Osgood and Caryl E. Osgood, husband and wife, by deed recorded March 23, 1943, in Volume 304 of Deed at Page 371, Records of Clackamas County, Oregon.

Also the following described real property situate in Multnomah County, State of Oregon, to-wit:

Lot 9, North of county line, ELK ROCK VILLAS, according to the dule recorded plat thereof on file in the office of the County Clerk of Multnomah County.

RECEIVED
99 OCT -7 PM 4:41
VICKI K. ERVIN
DIRECTOR OF ELECTIONS

PROPOSAL NO. MU0699
DUNTHORPE-RIVERDALE COUNTY SERVICE DIST.
Figure 2