

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 00-169

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 and ORS 198 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 October 19, 2000 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.

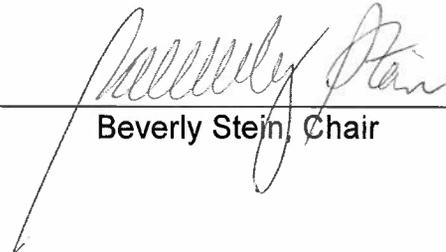
The Multnomah County Board of Commissioners Orders:

1. On the basis of the Findings and Conclusions listed in Exhibit "A", Proposal No. MU-0900 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 19th day of October, 2000.

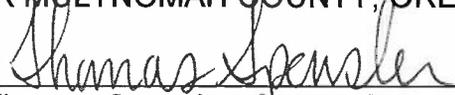


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Beverly Stein, Chair

THOMAS SPONSLER, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 

Thomas Sponsler, County Attorney

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 0.99 acres and one single-family dwelling.
2. The Multnomah County Board is the decision-maker on this annexation even though the territory to be annexed lies within Clackamas County. ORS 198.850 says petitioners may file an annexation petition with the county board. ORS 198.705 (7) defines "county board" as the board of county commissioners of the principal county. ORS 198.705 (16) says "Principal County" is the county, which contains the majority of the assessed value of the annexing district. The majority of the assessed value of the Dunthorpe-Riverdale County Service District is in Multnomah County.
3. The property owner desires sanitary sewer service to replace a failed septic system.
4. Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

A second set of criteria can be found in the Metro Code. That Code states that a final decision shall be based on substantial evidence in the record of the hearing and that the written decision must include findings of fact and conclusions from those findings. The findings and conclusions shall address seven minimum criteria:

1. Consistency with directly applicable provisions in ORS 195 agreements or ORS 195 annexation plans.
2. Consistency with directly applicable provisions of *urban planning area agreements* between the annexing entity and a necessary party.
3. Consistency with directly applicable standards for boundary changes contained in Comprehensive land use plans and public facility plans.
4. Consistency with directly applicable standards for boundary changes contained in the Regional framework plan or any functional plans.
5. Whether the proposed boundary change will promote or not interfere with the timely, orderly and economic provision of public facilities and services.

6. If the boundary change is to Metro, determination by Metro Council that the territory should be inside the UGB shall be the primary criteria.
7. Consistency with other applicable criteria for the boundary change in question under state and local law.

The Metro Code also contains a second set of 10 factors which are to be considered where no ORS 195 agreements have been adopted and the boundary change is being contested by a necessary party.

5. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB). Neither the Regional Framework Plan nor the Regional Growth Management Functional Plan contains criteria for deciding boundary changes for sanitary sewer districts.
6. The applicable plan here is the Clackamas County Comprehensive Plan. That plan identifies this area as LDR - Low Density Residential. The Land Use section of the Plan states:

Low Density Residential areas are those planned for an average up to six units per gross acre (exclusive of density bonuses and Conditional Uses).

Policy 4.0 of the Public Facilities Element of the Clackamas County Comprehensive Plan says:

Insure that sewerage facilities in Clackamas County are developed and maintained by the appropriate sanitary district, county service district or city.

The territory is zoned R-30 which allows single family dwellings on 30,000 square foot lots. The property is already developed with a single-family dwelling.

7. LCDC required each jurisdiction requesting acknowledgement of their plan to include in the plan a written statement "... setting forth the means by which a plan for management of the unincorporated area within the urban growth boundary will be implemented and by which the urban growth boundary may be modified." This takes the form of urban planning area agreements (UPAA's) between each city and county. In Clackamas County these agreements are called Urban Growth Management Agreements (UGMA's).

The territory to be annexed to the Dunthorpe-Riverdale CSD is within the "dual interest area" identified in the Urban Planning Area Agreement between Clackamas County and Lake Oswego.

Clackamas County and the City of Portland also have a land use planning coordination agreement. The agreement specifies that the dual interest area

boundary is coterminous with the City's Urban Services Boundary, which is on the Multnomah-Clackamas County line. Thus the territory proposed for annexation to the District is not included in the Clackamas County-Portland UPA.

8. This territory is within the area, which Lake Oswego assumes will ultimately be a part of the City. Lake Oswego's Comprehensive Plan allows for service by the Dunthorpe-Riverdale District so long as the applicants agree to the ultimate annexation of the property to the City. Comprehensive Plan Policy 22 states:

22. The City shall 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 concluded that the requirements of *a*, *b* & *d* above were met and therefore requested the property owners sign a petition for future annexation. The property owners have 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 this part of Multnomah or Clackamas counties to date.
10. The District has an 8-inch sewer line in Edgecliff Road adjacent to the area to be annexed.

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.

11. The territory receives water service from the Palatine Hill Water District
12. The territory is within the Multnomah County Rural Fire Protection District #11 (also known as Dunthorpe-Riverdale RFPD #60). This District provides fire protection services via a contract with the City of Lake Oswego.
13. The site is within Clackamas County Service District for Enhanced Law Enforcement. This district provides police protection in addition to that provided generally countywide.
14. The Riverdale School District services this area and it is within the Portland Community College District. The jurisdictional boundaries of Tri-Met, Metro and the Port of Portland also cover the territory.
15. Other services are provided generally by Clackamas County.

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 in . . . 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 sewer lines 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 Clackamas County Comprehensive Plan and finds approval of this annexation to be consistent with the plan.

The Board notes that Lake Oswego's Comprehensive Plan contains a policy, which is applicable to this area. The Board finds that Policy 22 of the City's Comprehensive Plan requires the property owners to agree to future annexation to the City and the Boards finds that the owners have done so.

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, which recognizes that this area may ultimately be a part of Lake Oswego.
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 inconsistent 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. As set out in findings number 10 through 15, 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.
7. As required by ORS 198 the Board considered the local comprehensive plan for the area (see Reason No. 2). Also with regard to the ORS 198 criteria the Board found that there was a service agreement between Dunthorpe-Riverdale CSD and “a local government” (City of Portland). That agreement provides service capacity for the area to be annexed and assures that the system will be maintained and operated.

EXHIBIT B

Proposal No. MU-0900

The northerly one-half of Block 89, DUNTHORPE, Clackamas County, Oregon, described as follows:

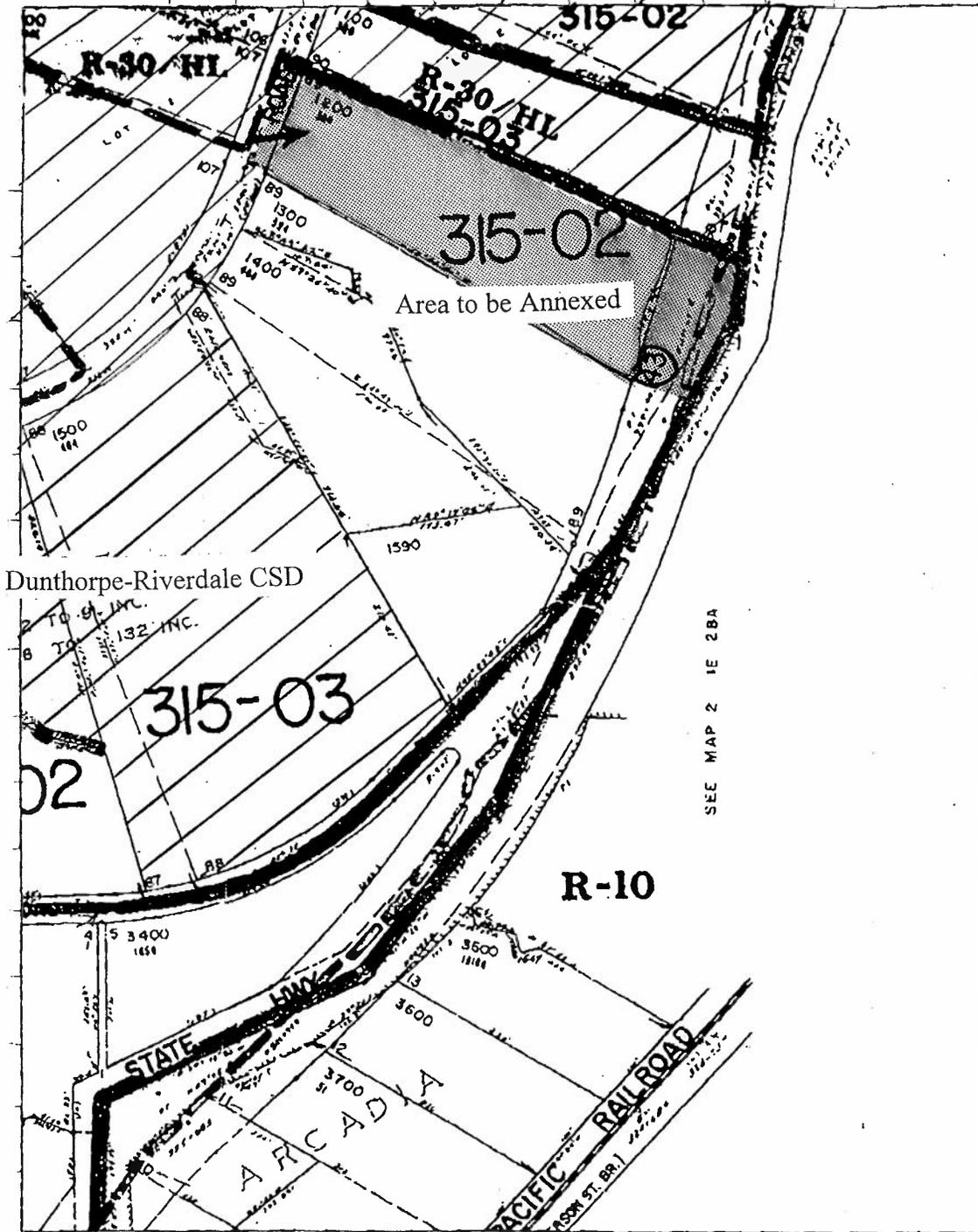
BEGINNING at the Northwest corner of Block 89, DUNTHORPE, in the center of Edgecliff Road; thence South $65^{\circ} 06' 03''$ East 489.58 feet to the Northeast corner of said Block 89; thence South $8^{\circ} 41' 00''$ West 72.61 feet; thence South $29^{\circ} 21' 30''$ West along the center of Pacific Highway 93.86 feet; thence north $59^{\circ} 26' 40''$ West 494.43 feet to a point in the center of Edgecliff Road; thence Northeasterly along the center line of Edgecliff Road 115.15 feet to the point of beginning.

Proposal No. MU0900



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Annexation to the Dunthorpe-Riverdale County Service District
Clackamas Co.
Section 2S1E02BB



PROPOSAL NO. MU0900
DUNTHORPE-RIVERDALE COUNTY SERVICE DISTRICT
Figure 2