

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 99-80

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) A staff report which addressed factors mandated in the Metro Code was presented to the Board 30 days prior to the hearing as required by the Metro Code.
- (c) A public hearing was held before the Board of County Commissioners on May 13, 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-0399 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 13th day of May, 1999.



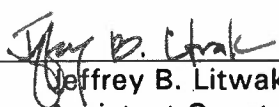
Reviewed:

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

THOMAS SPONSER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

by


Jeffrey B. Litwak
Assistant County Counsel

FINDINGS

Based on the study and the public hearing the Board found:

1. The territory contains 1.33 acres, is vacant and is evaluated at \$139,600.
2. The applicant desires annexation to obtain sewer service from the district to facilitate development of one single-family dwelling.
3. The land slopes gently toward Iron Mt. Blvd. on the south. Much of the lot is cleared. There are deciduous trees along the south and east side and mixed deciduous and evergreens on the north edge.
4. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).
5. The "Introduction" section of the Regional Framework Plan contains the following statement with regard to "Relationship With Metro Citizens":

Notification

Metro shall develop programs for public notification, especially for (but not limited to) proposed legislative actions, that ensure a high level of awareness of potential consequences, as well as opportunities for involvement on the part of affected citizens, both inside and outside of its districts' boundaries. (p.7, Regional Framework Plan (RFP))

6. The Regional Framework Plan contains a lengthy section on the 2040 Growth Concept (pp. 11-23, RFP). This concept states that "[t]he preferred form of growth is to contain growth within a carefully managed Urban Growth Boundary" (p. 11, RFP). The 2040 Growth Concept includes a map which lays out the "central city-regional centers-town centers" ideas and other general constructs of the Concept. This section of the Framework Plan has been examined and found not to contain any directly applicable standards and criteria for boundary changes.

The remaining chapters of the Regional Framework Plan were reviewed and found not to contain specific directly applicable criteria for boundary changes.

7. Policy 1 of the Multnomah Comprehensive Framework Plan states:

POLICY 1 PLAN RELATIONSHIPS

* * *

- E. In areas designated by this comprehensive framework plan as urban,

and where an applicable community plan has not been adopted, the pre-existing plan and county zoning shall remain in effect. Any change in such designations shall be consistent with this comprehensive framework plan. Where a proposed use is permitted by both the pre-existing plan and the zoning map, required permits may be issued, notwithstanding a conflict with this comprehensive framework plan.

* * *

Policy 4 deals with intergovernmental coordination.

POLICY 4 INTERGOVERNMENTAL COORDINATION

It is the County's policy to participate in intergovernmental coordination efforts with federal, state and local governments and with special service districts. The County will ensure that the responsibility and support for land use planning will be coordinated with adjacent jurisdictions through the adoption of urban planning area agreements which will recognize:

- A. That it is not the County's primary role to provide urban services, and
- B. That the County's comprehensive framework plan and component community plans and implementing ordinances will be the primary plan for unincorporated areas until and during any jurisdictional transition, and
- C. The County has a responsibility to support the planning process for unincorporated areas and,
- D. Establish and participate in a cooperative process to address the future of urban service provision issues.

In addition, it is the County's policy to support:

- 1. Accountability and responsiveness to regional and county-wide needs, and
- 2. The identification and maintenance of the urban growth boundary as adopted by Metro, and
- 3. The delivery of services necessary county-wide and in the areas outside the urban growth boundary, and

* * *

Policy 13 of the Framework Plan covers air, water and noise quality.

POLICY 13 AIR, WATER AND NOISE QUALITY

Multnomah County, recognizing that the health, safety, welfare, and quality of life of its citizens may be adversely affected by air, water, and noise pollution, supports efforts to improve air and water quality and to reduce noise levels. Therefore it is Multnomah County's policy to:

- A. Cooperate with private citizens, businesses, utilities and public agencies to maintain and improve the quality of air and water, and to reduce noise pollution in Multnomah County.
- B. Support and participate in the implementation of state and regional plans and programs to reduce pollution levels.
- C. . . . to maintain and healthful ground and surface water resources; . . .

* * *

Furthermore it is the County's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to air quality, water quality, and noise levels.

* * *

Policy 17 calls for the County to identify communities and develop and maintain community plans. No County community plan covering this area has been developed.

Policy 21 deals with housing choice.

POLICY 21 HOUSING CHOICE

The County's policy is to support and assist in the provision of an adequate number of housing units at price ranges and rent levels affordable to the region's households and to allow for a variety in housing location, type and density.

* * *

Policy 32 deals extensively with capital improvements.

POLICY 32 CAPITAL IMPROVEMENTS

- A. Give first priority to capital maintenance and existing facility replacement and upgrading excluding:
1. Sanitary sewer system management where first priority will be given to elimination of expanded use of private disposal systems and

* * *

- C. Encourage the creation of a unified long range public facilities and services plan by all service providers in the County which coordinates long term capital resource and expenditure analysis and capital improvements programming.

* * *

- F. Coordinate plans for public services and facilities with plans for designation of urban growth boundaries, urbanizable land, rural uses, and for the transition of rural to urban uses.

* * *

Policy 37 of the County's Comprehensive Plan relates to Utilities.

POLICY 37 UTILITIES

The County's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

Water And Disposal System

- A. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or
- B. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
- C. There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface

- D. disposal system; or
There is an adequate private water system, and a public sewer with adequate capacity.

Drainage

- E. There is adequate capacity in the storm water system to handle the run-off; or
- F. The water run-off can be handled on the site or adequate provisions can be made; and
- G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

Policy 38 of the County Comprehensive Framework speaks to facilities.

POLICY 38 FACILITIES

The County's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

School

- A. The appropriate school district has had an opportunity to review and comment on the proposal.

Fire Protection

- B. There is adequate water pressure and flow for fire fighting purposes; and
- C. The appropriate fire district has had an opportunity to review and comment on the proposal.

Police Protection

- D. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.

- 8. The County zoning on this property is R-30.
- 9. 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.

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."

Clackamas County and the City of Portland entered into the LCDC required land use planning coordination agreement. In Clackamas County these agreements were called Dual Interest Area Agreements (as opposed to the term UPAA used in Mult. County) and it was first entered into by the two entities in June of 1980. The agreement was modified in April of 1985 to make the dual interest area boundary coterminous with the City's newly adopted Urban Services Boundary. In the area of this annexation proposal, the new boundary is along the Multnomah-Clackamas County line. Thus the territory proposed for annexation to the District is clearly within the ultimate service area of the City of Portland.

10. During the late 1950s and through the 1960s, the national economy was growing and increasing revenues were available to all levels of government throughout the Country. During the 1970s the revenue picture began to turn around. Like other governments, Multnomah County began to experience declining revenues from federal and state sources and increasing costs of service provision due to growing population and inflation.

By the early 1980s, Multnomah County was facing substantial budgetary shortfalls and was increasingly concerned about tax equity issues. Consequently, on March 15, 1983, the Multnomah County Board of Commissioners passed Resolution A. Resolution A stated the County's policy that it's revenues should be spent for County-wide services available to all residents of the County and announced that it's resources were insufficient to continue current municipal service levels. The County recognized that a full range of municipal services is needed within the urban unincorporated area. To provide time to transition from municipal services provided by the County to urban services provided by cities the County phased out its provision of municipal services over a three year period. The County's expectation was that over that period, unincorporated areas within the Urban Growth Boundary would annex to cities which could plan for the provision of municipal services. While the urban area of east Multnomah County did not all get annexed to cities within the three year period, the policy established by Resolution A is still generally considered to be the County's policy.

11. This territory is within the Service Area Boundary established by the City of

Portland as part of its Comprehensive Plan. Areas within the boundary are assumed to be eventually most logically served by the City. Ultimately annexation of these areas to the City is also assumed. In the interim the City acknowledges that these areas will continue to receive services from existing sources. In this particular area the City agrees to sewer service being provided by the District so long as the applicants agree to the ultimate annexation of the property to the City. This agreement takes the form of a signed document which is recorded and runs with the property. In it the property owners agree to ultimate annexation and waive the right to remonstrate against annexation. The property owners in this instance have signed and recorded such a document.

12. 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.
13. The property owners requested and received an evaluation of the site for possible use of a septic system. The site was rejected as unsuitable in a January 20, 1999 report.

The District has an 8 inch sewer line running northwest to southeast along the northeast side of Lot 15 of Strahorn Addition. The applicants will access this line with a pressure line which will run in an easement granted by the owner of the two lots to the south. Because of the low density in this area the District has not and will not likely in the future run a gravity line along Iron Mountain Blvd.. Consequently service to lots such as this one will be provided by private pumps and pressure mains feeding to the aforementioned District line.

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.

14. The territory receives water service from the Palatine Hill Water District. The Water District has a 10 inch line in Iron Mt. Blvd. adjacent to the site.
15. 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.
16. 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.
17. Other services are provided generally by Multnomah County. This includes police protection, transportation, tax collection, etc.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The introduction section of the Regional Framework Plan calls for Metro to encourage a high level of public awareness of its actions. The Board notes that a public hearing was held on this matter and that extensive notice of that hearing was given including: 1) posting of notices in the vicinity of the annexation 45 days prior to the hearing; 2) mailed notice to necessary parties 45 days prior; 3) two published notices; 4) notice by first class mail to every property owner within 100 feet. The Board concludes this hearing and notice is consistent with this section of the Regional Framework Plan.
2. The Metro Code at 3.09.050 (e) (2) calls for consistency between the Board decision and any "specific directly applicable standards or criteria for boundary changes contained in comprehensive plans, public facilities plans . . ." The Board has reviewed the applicable comprehensive plan which is the Multnomah County Comprehensive Plan and finds approval of this annexation to be consistent with the very few directly applicable standards and criteria in that plan.

Policy 4 of the County's Comprehensive Plan acknowledges that it is not the County's primary role to provide urban services and that it is the County's policy to deliver services that are necessary county-wide. The Board finds this decision to allow provision of an urban service by an entity other than the general County is in keeping with this policy.

Policy 13 calls for the County to "cooperate with citizens, businesses, utilities and public agencies to maintain and improve the quality of . . .water . . ." The Board believes annexing this property to an entity which provides sewage treatment is in

accord with this principle.

Policy 21 says it is the County's policy to support allowing for a variety of housing location, type and density. Without annexation to this District no housing would be allowed here because as noted in Finding No. 14 the property could not develop on a septic tank.

Policy 37, Utilities, calls for the County to find that water and sewer are available prior to making a quasi-judicial decision. Given the possibility that this annexation decision falls in this category, it can be found sewer and water service are available as noted in Findings No. 14 & 15. Drainage facilities are also available as provided by the Dunthorpe-Riverdale CSD.

Policy 38, Facilities, likewise calls for certain findings. With regard to the requirement for a finding that the appropriate school district has had an opportunity to respond, the Board notes that the Riverdale School District was sent an individual notice of this proceeding. On fire protection, the property is within the Multnomah County R.F.P.D. # 11 which contracts for service with the Lake Oswego city fire department. The District Board and the city department were both individually notified of this request. The Board also finds with regard to police protection that this area is served by County Sheriff's Department.

3. The Board finds that this proposal is consistent with Multnomah County-City of Portland UPAA which requires the County to notify the City of any quasi-judicial decisions which may affect the City. The Board notes that the record states the City was notified of this proposal. Furthermore it is noted that this territory is within the City's identified urban services area and that the property owners have agreed to ultimate annexation and this agreement has been recorded and runs with the property.
4. Multnomah County Resolution A established a county policy of emphasizing county-wide services and refraining from the delivery of urban services in the urban area. The Board finds this action to be consistent with the intent of Resolution A.
5. Metro Code 3.09.050 (e) (3) states that another criteria to be addressed is that "The affected entity [the county service district] can assure that urban services are now or can be made available to serve the affected territory, by its own forces or by contract with others." The Board finds the District's services are adequate to serve this area. Those services and the financing thereof are covered in more detail in Finding No. 14.

EXHIBIT B

Proposal No. MU-0399

LEGAL DESCRIPTION

Lot 14, Strahorn Addition, a duly
recorded subdivision in Mult. Co.,
Oregon. SE 1/4 SE 1/4 Sec. 34, T1S
R1E, W.M., Mult. Co., Oregon

APPROX
1/16 COR.