

EXHIBIT 2

TO: Multnomah County Board of County Commissioners

FROM: Chet Hagen, Dunthorpe-Riverdale Service District Program Manager

Date of Staff Report: January 25, 2022

Date of County Board Hearing: March 3, 2022

DUNTHORPE-RIVERDALE SERVICE DISTRICT ANNEXATION PETITION STAFF REPORT

Petitioners: Property Owners – David A. and Shaina G. Weinstein

Subject Property: Located at 13175 SW Iron Mountain Blvd: Tax Lot 21E03AA00900, NE 1/4 Sec. 3, T2S R1E, W.M., Clackamas County, Oregon and Tax Lot 1S1E34DD -03000, SE 1/4 of Section 34, T1S, R1E, W.M. Multnomah County, Oregon
(See attached legal description and map)

1. Staff Recommendation/Action Requested: Approval of annexation petition
2. Financial Impact to Multnomah County: None
3. Legal Issues: None
4. Link to Current County Policies: None
5. Citizen Participation: By the time of the hearing, notice of the Multnomah County Board of County Commissioners hearing on the annexation petition will consist of: 1) Published notice in the Oregonian; 2) Mailed notice to the Petitioners, affected local governments, all property owners within 100 feet of the area to be annexed, and all recognized neighborhood or community organizations whose boundaries include the subject property; and 3) weatherproof posting of the hearing notice on a sign located in the public right-of-way adjacent to the subject property. Notice of this hearing includes information on how to provide testimony.

6. Other Government Participation:

The Dunthorpe-Riverdale Service District (“District”) is a county service district that provides sanitary sewer service in unincorporated Multnomah and Clackamas counties and for which the Multnomah County Board of County Commissioners serves as the governing body (“District Board”). The District Board has approved and endorsed the annexation petition as is required by statute.

The property proposed to be annexed to the District is located in both Clackamas County and Multnomah County. However, because Multnomah County is the District’s principal county, as defined in ORS 198.705(17), the Multnomah County Board of County Commissioners (“County Board”) must decide whether to approve the annexation petition. ORS 198.725.

The property proposed to be annexed is also located partially within the City of Lake Oswego’s Urban Service Boundary (Clackamas County tax lot) and partially within the City of Portland’s Urban Service Boundary (Multnomah County tax lot). As discussed below, neither City objects to the annexation, but Lake Oswego will require the Petitioners to sign an annexation contract in accordance with the City’s Comprehensive Plan.

PETITION UNDER ORS 198.857

Petitioner initiated a consent annexation petition under ORS 198.857. The petition meets the requirement for initiation of annexation proceedings set forth in ORS 198.857(2) and Metro Code 3.09.040(A) (lists Metro’s minimum requirements for petition). If the County Board approves the proposal, the boundary change would become effective on the date described in Metro Code 3.09.060(A)(4).

THE SUBJECT PROPERTY

The territory that is proposed to be annexed (“subject property” or “affected territory”) is located generally on the south edge of the District at 13175 SW Iron Mountain Blvd: Tax Lot 21E03AA00900, NE 1/4 Sec. 3, T2S R1E, W.M., Clackamas County, Oregon, and Tax Lot 1S1E34DD -03000, SE 1/4 of Section 34, T1S, R1E, W.M. Multnomah County, Oregon. A full legal description and map of the subject property is attached to this staff report.

The subject property is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB). The subject property is .89 acres, currently has one dwelling located on the Clackamas County tax lot, and is valued at \$870,520.00.

The portion of the subject property that lies within Clackamas County is covered by an Urban Growth Management Agreement between Clackamas County and the City of Lake Oswego. The agreement acknowledges that areas covered by the agreement can and should ultimately be provided with a full range of services by the City of Lake Oswego and that this should be accomplished through annexation to the City. However, the subject property is not currently contiguous to the City, though it is within the City's Urban Service Boundary.

The portion of the subject property that lies within Multnomah County is covered by an Urban Planning Area Agreement between Multnomah County and the City of Portland. The agreement acknowledges that areas covered by the agreement can and should ultimately be provided with a full range of services by the City of Portland and that this should be accomplished through annexation to the City. However, the subject property is not currently contiguous to the City, though it is within the City's Urban Services Boundary, and the City is not pursuing annexations in the area at this time.

The proposed annexation would not result in the withdrawal of the subject property from the legal boundary of any county, city, district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory; Metro; or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory.

JURISDICTION

The property to be annexed lies within Clackamas County and Multnomah County. However, Multnomah County is the "principal county," as defined in ORS 198.705(17), in the District, and the Multnomah County Board of County Commissioners therefore has jurisdiction to determine whether to approve the annexation petition pursuant to ORS 198.725 and 198.857.

REASON FOR ANNEXATION

The petitioner desires sanitary sewer service to serve an existing single-family dwelling.

AVAILABILITY OF SERVICES

District sewer services are available to serve the subject property and the existing dwelling. In particular, the existing dwelling can be served from a District sewer line that is in an easement on the north end of the subject property in Multnomah County.

CRITERIA

Oregon Revised Statute Chapter 198 provides that, when determining whether to approve an annexation petition, the County Board shall "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

ORS 198.857(4).

A second set of criteria can be found in the Metro Code. To approve a boundary change, the County Board must apply the criteria and consider the factors set forth in Metro Code Section 3.09.045(D) and (E). To approve a boundary change, the County Board must:

- 1) Find that the boundary change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.065;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the District and any county, city, district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory; Metro; or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- 2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

In addition, the County Board must consider whether the annexation petition covers property that lies outside the UGB. Finally, ORS 197.175 requires that the annexation of property to a district be done in accordance with the statewide planning goals.

Staff has addressed the criteria listed above in the attached Findings, Reasons for Decision, and Conclusions.

STAFF RECOMMENDATION.

Based on the attached Findings, Reasons for Decision, and Conclusions, staff recommends the annexation petition for the subject property described in the attached legal description and map be **approved**.

FINDINGS, REASONS FOR DECISION, AND CONCLUSIONS

Based on the staff report and the public hearing, the Multnomah County Board of County Commissioners finds that:

1. Petitioners David A. and Shaina G. Weinstein ("Petitioners") filed an annexation petition to annex territory described in the legal description and map attached to these Findings, Reasons for Decision, and Conclusions ("subject property") to the Dunthorpe-Riverdale Service District ("District"). The Petitioners desire sanitary sewer service to serve an existing dwelling on the subject property.
2. The subject property lies within Clackamas County and Multnomah County. According to Oregon Revised Statute ("ORS") 198.725, when two counties are affected by annexation proceedings, the county board in the "principal county," as defined in ORS 198.705(17), has authority to be the decision maker. Multnomah County is the "principal county" for the Dunthorpe-Riverdale Service District and the Multnomah County Board of County Commissioners ("County Board") therefore has jurisdiction to determine whether to approve the annexation petition for the subject property.
3. The subject property is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).
4. The subject property contains .89 acres, one single-family dwelling located on the Clackamas County portion of the property, and is valued at \$870,520.00.
5. The subject property is a single parcel, but includes two separate tax lots: one in Clackamas County and one in Multnomah County.
 - a. The tax lot located within Clackamas County is zoned R-30, which allows single family dwellings on 30,000 square foot lots. The Clackamas County tax lot is .67 acres, or approximately 31,438 square feet. The Clackamas County tax lot contains one existing single family dwelling and no other dwellings are proposed.
 - b. The tax lot located in Multnomah County is zoned R-20, which allows single family houses, accessory dwelling units (ADU) and duplexes on corners on 20,000 square foot lots. The Multnomah County tax lot is .22 acres, or approximately 9,800 square feet. The Multnomah County tax lot contains no existing dwellings and no new dwellings are proposed.
6. ORS Chapter 198 directs the County Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."
7. To approve a boundary change, the County Board must also apply the criteria and consider the factors set forth in Metro Code Section 3.09.045(D). To approve a boundary change the County Board must:
 - 1) Find that the change is consistent with expressly applicable provisions in:

- (A) Any applicable urban service agreement adopted pursuant to ORS 195.065;
- (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
- (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the District and any county, city, district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory; Metro; or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory;
- (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;
- (E) Any applicable comprehensive plan;
- (F) Any applicable concept plan; and

2) Consider whether the boundary change would:

- (A) Promote the timely, orderly and economic provision of public facilities and services;
- (B) Affect the quality and quantity of urban services; and
- (C) Eliminate or avoid unnecessary duplication of facilities and services.

8. To approve a boundary change, the County Board must also apply the criteria and consider the factors set forth in Metro Code Section 3.09.045(E), which provides, "A city may not annex territory that lies outside the [Urban Growth Boundary] UGB, except it may annex a lot or parcel that lies partially within and partially outside the UGB."
9. ORS 197.175 requires that annexation of property to a district be done in accordance with the statewide planning goals.
10. The Land Conservation and Development Commission required each jurisdiction requesting acknowledgement of their comprehensive 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 completed and by which the urban growth boundary may be modified." OAR 660-003-0010(2)(c). This takes the form of urban growth management agreements between cities and counties.
11. The portion of the subject property that lies within Clackamas County is covered by an Urban Growth Management Agreement between Clackamas County and the City of

Lake Oswego. The agreement acknowledges that areas covered by the agreement can and should ultimately be provided with a full range of services by the City of Lake Oswego and that this should be accomplished through annexation to the City. However, the subject property is not currently contiguous to the City.

12. The City of Lake Oswego has established an Urban Service Boundary, and the subject property is within the City's Urban Service Boundary.
13. In light of the Urban Growth Management Agreement and the location of a portion of the subject property in the Lake Oswego Urban Service Boundary, the Lake Oswego Comprehensive Plan is the applicable comprehensive plan for the Clackamas County portion of the subject property.
14. The Lake Oswego Comprehensive Plan calls for sewer services ultimately to be provided by the City. However, Lake Oswego's Comprehensive Plan and Public Facilities Plan allow for interim sewer service to be provided by the District prior to the subject property's annexation to the City.
15. The City does not oppose annexation of the subject property to the District because the property is not currently contiguous to the City. However, the City's position that it does not oppose annexation of the subject property to the District is dependent on the Petitioners signing an Annexation Contract with the City. The City's position is based on Lake Oswego Comprehensive Plan Urban Service Boundary and Urban Growth Boundary Policy A-5 (Volume I, part 2, page 167, adopted March 18, 2014), which states:

A-5. 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; and*
 - d. The service district can maintain an adequate level of service over both the short and long term.*
16. The portion of the subject property that lies within Multnomah County is covered by an Urban Planning Area Agreement between Multnomah County and the City of Portland. The agreement acknowledges that areas covered by the agreement can and should ultimately be provided with a full range of services by the City of Portland and that this should be accomplished through annexation to the City. However, the subject property is not currently contiguous to the City, and the City is not pursuing annexations in the area at this time.
 17. The City of Portland has established an Urban Service Boundary, which has also been adopted as the Urban Planning Area Agreement boundary, and the subject property is within that boundary.

18. In light of the Urban Planning Area Agreement and the location of a portion of the subject property in the Portland Urban Service Boundary, the Portland Comprehensive Plan is the applicable comprehensive plan for the Multnomah County portion of the subject property.
19. Chapter 8 of the City of Portland's Comprehensive Plan acknowledges the City's ultimate primacy as service provider but also calls on the City to coordinate with other urban service providers within the urban services area prior to the ultimate timely annexation of the area to ensure effective and efficient service delivery.
20. Policy 8.18 of the City of Portland's Comprehensive Plan provides, "Prohibit service district expansion or creation within the City's Urban Services Boundary without the City's expressed consent." A similar statement is found in the City of Portland's Citywide Systems Plan, Chapter 6, which serves as the City's Public Facility Plan. The City of Portland has consented to this annexation.
21. 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. There are no ORS 195 urban service agreements or cooperative planning agreements between the Dunthorpe-Riverdale Service District and other entities.
22. There is no applicable annexation plan adopted pursuant to ORS 195.205 for the subject property.
23. There is no concept plan that covers the subject property.
24. The Dunthorpe-Riverdale Service District is a separate governmental entity, which has as its governing body the Multnomah County Board of County Commissioners. The District provides collector sanitary sewer service in the Dunthorpe-Riverdale portion of Multnomah and Clackamas Counties and is the only entity with sewer lines in the area of the subject property. Through an agreement with the City of Portland, sewage from the District is treated at the City's Tryon Creek regional sewage treatment plant. While previously staffed and run by County employees, the District infrastructure is now maintained by the City of Portland through a contract. The proposed dwelling can be served from a District line that is in an easement on the north end of the property within Multnomah County.
25. The subject property receives water service from the Palatine Hill Water District.
26. The subject property is within the Riverdale Rural Fire Protection District.
27. The subject property is served by the Clackamas County Sheriff.
28. Other services are provided generally by Clackamas County and the City of Lake Oswego.

Based on the foregoing findings, the Multnomah County Board of County Commissioners concludes that:

1. ORS 198.857 requires consideration of any service agreement between a local government and the District. Metro Code 3.09.045(D)(1)(a) requires that any District boundary change be consistent with expressly applicable provisions of urban service agreements adopted pursuant to ORS 195.065. The District is not a party to an urban service agreement. Therefore, these provisions are inapplicable, or if applicable, no inconsistencies exist.
2. Metro Code 3.09.045(D)(1)(b) requires that any District boundary change be consistent with expressly applicable provisions of any applicable annexation plan adopted pursuant to ORS 195.205. No City of Lake Oswego, City of Portland, or District annexation plan covers the subject property. Therefore, this provision is inapplicable, or if applicable, no inconsistencies exist.
3. Metro Code 3.09.045(D)(1)(c) requires the County to find that the boundary change is consistent with any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the District and a necessary party, as defined in Metro Code 3.09.020(J). The District is not a party to a cooperative planning agreement under ORS 195. Therefore, this provision is inapplicable, or if applicable, no inconsistencies exist.
4. Metro Code 3.09.045(D)(1)(d) calls for consistency between the boundary change and any expressly applicable provisions contained in any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services. The Cities of Lake Oswego and Portland have Public Facility Plans contemplate that sewer services may be provided by the District prior to City annexation if certain conditions are met (execution of an Annexation Contract in the case of Lake Oswego and consent from the City in the case of Portland). Here, those conditions have been met. Therefore, the proposed annexation is consistent with the applicable public facility plans.
5. Metro Code 3.09.045(D)(1)(e) calls for consistency of the boundary change with expressly applicable provisions in any applicable comprehensive land use plans. ORS 198.857 requires consideration of the applicable comprehensive plan. ORS 197.175 requires that annexation of property to the District be done in accordance with the statewide planning goals.
 - a. In light of the Urban Growth Management Agreement between Clackamas County and Lake Oswego, and the location of a portion of the subject property in the Lake Oswego Urban Service Boundary, the Lake Oswego Comprehensive Plan is the applicable comprehensive plan for the Clackamas County portion of the subject property. The Lake Oswego Comprehensive Plan was adopted pursuant to the statewide planning goals and therefore consistency of the annexation with the Lake Oswego Comprehensive Plan demonstrates consistency with the statewide planning goals. The Lake Oswego Comprehensive Plan calls for sewer services ultimately to be provided by the City. However, Lake Oswego's Comprehensive Plan allows for interim sewer service to be provided by the District prior to the subject property's annexation to

the City, and the proposed annexation therefore is consistent with the Comprehensive Plan. In addition, the annexation petition is consistent with Lake Oswego Comprehensive Plan Urban Service Boundary and Urban Growth Boundary Policy A-5 (Volume I, part 2, page 167, adopted March 18, 2014). As noted in Finding 15, the Comprehensive Plan allows annexation of the subject property to the District because the Petitioners have agreed to execute an Annexation Contract addressing eventual annexation to the City.

- b. In light of the Urban Planning Area Agreement between Multnomah County and Portland, and the location of a portion of the subject property in the Portland Urban Service Boundary, the Portland Comprehensive Plan is the applicable comprehensive plan for the Multnomah County portion of the subject property. The Portland Comprehensive Plan was adopted pursuant to the statewide planning goals and therefore consistency of the annexation with the Portland Comprehensive Plan demonstrates consistency with the statewide planning goals. The Portland Comprehensive Plan calls for sewer services ultimately to be provided by the City. However, Portland's Comprehensive Plan allows for interim sewer service to be provided by the District, with the City's consent, prior to the subject property's annexation to the City. The City has consented to the annexation, and the proposed annexation therefore is consistent with the Comprehensive Plan.
6. Metro Code 3.09.045(D)(1)(f) requires consideration of any applicable concept plan. There is no concept plan that covers the subject property. This provision therefore is inapplicable or, if applicable, no inconsistencies exist.
7. Metro Code 3.09.045(D)(2)(a) requires consideration of whether the boundary change would "[p]romote the timely, orderly and economic provision of public facilities and services." The District already provides service to the areas surrounding the subject property. As a result, connection to the District's sewer facilities will be more efficient, both economically and in terms of timing, than extending other possible sewer connections. The County Board therefore concludes that annexation promotes the timely, orderly and economic provision of this service.
8. Metro Code 3.09.045(D)(2)(b) calls for consideration of whether the boundary change will affect the quality and quantity of urban services. Given the size of the District, this one-parcel annexation will have little or no impact on the District's ability to provide services and is only a minimal increase in the quantity of urban services. Therefore, the boundary change would not significantly affect the quality or quantity of urban services.
9. Metro 3.09.045(D)(2)(c) requires consideration of whether the boundary change would "Eliminate or avoid unnecessary duplication of facilities or services." Annexation legitimizes service provision by the District, which is the only entity with sewer lines in the area of the subject property. Therefore, provision of these services by another entity would result in unnecessary duplication of facilities and services in the area.
10. Based on the foregoing Findings, Reasons for Decision, and Conclusions, the County Board concludes that the annexation petition meets the necessary criteria for approval.