

MINUTES

LANE COUNTY LOCAL GOVERNMENT BOUNDARY COMMISSION

Eugene City Hall
Council Chamber (777 Pearl Street)

December 6, 2007
7:00 p.m.

PRESENT: Eleanor Mulder, vice chair; Christine Larson; Karen Seidel; Renée Buchanan; Bud Stewart
(late arrival as noted)

ABSENT: Clay Myers, chair; Van Heeter, secretary

I. CALL TO ORDER – ROLL CALL

Vice chair Mulder called the meeting to order. Commissioners introduced themselves. Executive Officer Paula Taylor, boundary commission staff, called the roll.

II. APPROVAL OF EXPENSES – SEPTEMBER/OCTOBER 2007

* Moved/seconded (Larson/Seidel) to approve the expenses of September (\$13,969.08) and October (\$11,720.66) 2007. The motion passed unanimously, 4:0 (commissioners Mulder, Larson, Seidel, and Buchanan voting yes).

III. APPROVAL OF MINUTES – SEPTEMBER 27, 2007, AND OCTOBER 4, 2007

Ms. Mulder noted that she had not been present for the full meeting on October 4, 2007, and thus would not vote on the minutes.

* Moved/seconded (Buchanan/Larson) to approve the minutes of September 27, 2007. The motion passed, 3:0:1 (commissioners Larson, Mulder, and Buchanan voting yes; commissioner Seidel abstaining).

* Moved/seconded (Larson/Buchanan) to approve the minutes of October 4, 2007; the motion passed 2:2:0 (commissioners Larson and Buchanan voting yes; commissioners Mulder and Seidel abstaining).

IV. NEW BUSINESS: PUBLIC HEARING

Annexation of Territory to the City of Eugene (D. Barclay Slocum Trust)

- A. BC File C EU 07 – 56
Initiated by property owner petitions
Action under ORS 199.490(1)(c) of the boundary commission law
Received October 31, 2007
Action to be taken by January 22, 2008

Description

As submitted, the annexation area included three tax lots located in the River Road region of north Eugene, south of Beltline Road, east of River Road, north of River Avenue, west of Beaver Street, and east of Ross Lane

Property owner: D. Barclay Slocum Trust

Tax lots: 3500, 3501, and 3501, T17S R04W S13

Acres: ± 1.45

Estimate of existing population: 0 (one residential unit)

Existing land use: Residential, vacant, commercial

Existing zoning in Lane County: I-2/UL, light-medium industrial with urbanizable land overlay.

Applicable comprehensive plan: Eugene-Springfield Metropolitan Area General Plan (acknowledged in August 1982 and has been subsequently amended)

Existing public services to the property: Police (Oregon State Police, Lane County Sheriff), schools (Eugene School District 4J), roads (Lane County, City of Eugene), water (Santa Clara Water District), fire (Santa Clara RFPD), wastewater (City of Eugene), electricity (EWEB)

Reason for Annexation

The annexation was requested in order to prepare the annexation area for commercial development. The Eugene-Springfield Metropolitan Area General Plan requires properties to annex in order to receive urban services.

Vice-chair Mulder solicited *ex parte* contacts and conflicts of interest. There were none.

Commissioner Stewart arrived at the meeting. He had no conflicts of interest or *ex parte* contacts to declare.

Paula Taylor, Executive Officer, provided the notice of the hearing. There was no objection to the notice of hearing.

Ms. Taylor provided the staff report, incorporating the report and all related materials into the boundary commission record. She noted the location of the annexation request in north Eugene. The annexation, if approved, would not be effective for 45 days; at the time the annexation was submitted no electors resided within the area, which was both undeveloped and commercially developed. The three properties were currently surrounded by the city limits of Eugene and the annexation would result in the islanded area being smaller in size.

Ms. Taylor noted referrals sent to units of local government and said no responses had been received.

Ms. Taylor said the staff report addressed the boundary commission criteria for annexation and she found the criteria were satisfied. Services could be provided to the properties and the staff report described how services would be made available. She recommended approval of the annexation as submitted. If the commission chose to modify the annexation, it would have to modify its findings and reasons to reflect the modification. She invited questions.

Ms. Seidel expressed surprise that parcels south of Beltline were within the Santa Clara Water District. Ms. Taylor said that Beltline was not the dividing line; some properties north of Beltline were in the River Road Water District and River Road park district. Ms. Seidel was surprised the water district did not object. Ms. Taylor was similarly surprised.

Ms. Mulder opened the public hearing.

Proponent's Opening Statement

Robert Stevens, Metro Planning, 370 Q Street, Springfield, represented the property owner. He supported the staff recommendation and offered to answer questions.

Public Officials in Support

Kurt Yeiter, Senior Planner with the City of Eugene, 99 West 10th Avenue, concurred with the staff recommendations and findings. He noted that the Eugene-Springfield Metropolitan Area General Plan required annexation if development was to occur in a property within the urban growth boundary (UGB). Services were readily available. He said that Peggy Keppler of the city's engineering division was also present if the commission had questions.

Others in Support – None

Public Officials in Opposition – None

Others in Opposition – None

Those Neither in Support nor in Opposition – None

Rebuttal by Proponents – None

Ms. Mulder closed the public hearing. She called for commission discussion.

Boundary Commission Deliberation and Decision

Ms. Larson believed the annexation proposal clearly met the commission's criteria.

- * Moved/seconded (Larson/Seidel) to approve BC File EU 07 – 56 annexing territory to the City of Eugene based on the findings and reasons in the December 6, 2007, staff report. The motion passed unanimously, 5:0 (commissioners Mulder, Seidel, Larson, Buchanan, and Stewart voting yes).

Annexation of Territory to the City of Eugene (Hult & Associates LLC/Fisher)

- B. BC File C EU 07 – 58
 - Initiated by property owner petitions
 - Action under ORS 199.490(1)(c) of the boundary commission law
 - Received November 6, 2007
 - Action to be taken by February 4, 2008

Description

As submitted, the annexation area included six tax lots located southwest of Eugene, south of Bailey Hill Road, east and west of Louis Lane, and west of Warren Street

Property owner: Hult & Associates LLC and John and Joanna Fisher

Tax lots: 6400, 6500, 6701, 6801, and 7001, T18S R04W S03; and 2000, T18S R04W S03 Map 10

Acres: ± 38.84
Estimate of existing population: 7 (two residential units)
Existing land use: Residential, vacant, agricultural, timber
Existing zoning in Lane County: R-1/UL, low-density residential with urbanizable land overlay; and R-1/UL/WR, low-density residential with water resource and urbanizable land overlays
Applicable comprehensive plan: Eugene-Springfield Metropolitan Area General Plan (acknowledged in August 1982 and has been subsequently amended)
Existing public services to the property: Police (Oregon State Police, Lane County Sheriff), schools (Eugene School District 4J), roads (Lane County, City of Eugene), fire (Zumwalt RFPD contracting with the City of Eugene), electricity (EWEB)

Reason for Annexation

The property owners requested the annexation in order to prepare for future development. The Eugene-Springfield Metropolitan Area General Plan requires properties to annex in order to receive urban services.

Vice chair Mulder solicited *ex parte* contacts and conflicts of interest. There were none.

Paula Taylor, Executive Officer, provided the notice of the hearing. Ms. Mulder determined there was no objection to the notice of hearing.

Ms. Taylor provided the staff report, incorporating the report and all related materials into the boundary commission record. She also incorporated correspondence received by the commission since the packet was mailed, which included a letter from Richard and Paola Hardt, a referral response from the Zumwalt Rural Fire Protection District, and a letter from Kristen Dede and Jerry Elliott. Ms. Taylor read the cited correspondence into the record.

Ms. Taylor noted the location of the annexation request in southwest Eugene off Bailey Hill Road within the urban growth boundary. Seven tax lots in two different owners were involved, and the annexation was initiated by the property owners. The property was currently developed with two residential units but was mostly vacant or in agricultural and timber uses. It was designated in the Eugene-Springfield Metropolitan Area General Plan for low-density residential development. The annexation included two separate areas; the Hult Associates property west of S Louis Lane and the Fisher properties on the east side of S Louis Lane.

Ms. Taylor reported that the annexation, if approved, would not be effective for 45 days. Four electors lived in the annexation area and could request an election; if one was not requested, the annexation would be affective after 45 days.

Ms. Taylor said the City of Eugene reviewed the annexation and asked that the commission include the entire segment of S Louis Lane in the annexation. If the boundary commission chose to do so, it must modify the proposal. If the road right-of-way was included, it would create three separate islanded areas; the staff report included a list of the property owners within the islanded areas, who received a copy of the staff report. The city could use the provision in Oregon law to annex those areas without owner consent; the last legislature made changes to those provisions, but she was unsure how that affected the city's ability to annex the properties.

Ms. Taylor noted the referrals sent to various units of government and the response received from the Zumwalt fire district.

Ms. Taylor said the annexation appeared to meet the boundary commission criteria and the annexation of S Louis Lane was one means through, which services could be delivered to the site. There were no specific development plans but the city's evaluation supported the Metro Plan policies related to the provision of services. The information staff received led her to conclude the annexation was consistent with the boundary commission standards. The boundary commission had been asked to modify the proposal as outlined in the staff report. The commission could make a decision to include the road right-of-way after hearing public testimony; she recommended that the commission include the right-of-way and modify the findings accordingly. The staff report supported the modified proposal.

Ms. Mulder asked staff to speak to the designation of the property in regard to the overlays included. Ms. Taylor noted that the commission had seen the overlay before and suggested that city staff could speak to the issue.

Ms. Buchanan asked the city to speak to the lack of a pump facility in the area.

Ms. Mulder opened the public hearing.

Proponent's Opening Statement

Doug Weber, Weber Elliot Engineers, 1369 West 6th Avenue, Suite 220, Eugene, represented property owners John Fisher and Gretchen Pierce. He supported the staff findings and recommendations particularly that related to the inclusion of the road right-of-way.

Speaking to the natural resource area on the site, Mr. Weber said there was a creek on the east end of the site that appeared on the city's natural resource inventory. Staff and the development team worked to identify the resource and strategies to protect it.

Speaking to Ms. Buchanan's question, Mr. Weber said he spoke to staff at EWEB, who indicated the utility's capital improvement plan included a reservoir project to serve the area. Currently water was provided by a small pump station at the bottom of Bailey Hill Road. The pump station was not large enough to supply the property when developed, so EWEB had indicated that to achieve domestic and fire flow prior to construction the developer must build the reservoir at its own cost. The applicant had agreed to do so. If EWEB put a reservoir on the top of the hill, the pump station would be used to get water to it. There was a possibility the developer would be reimbursed. He stressed that urban services could be provided to the site. The purpose of the public hearing was to annex the property into the city.

Public Officials in Support

Kurt Yeiter, Senior Planner for the City of Eugene, said the city's adopted land use policies required annexation if services can be provided to any development. There was no specific development plan proposed for the property at this time, which was typical. Mr. Yeiter believed the city would request the inclusion of right-of-way even if only one house was being proposed. He indicated that the city would still recommend annexation in a water-limited situation because development could be phased and water provided in another way. He acknowledged the applicant might not be able to build the entire development until the pumps were complete. That was generally worked out through the subdivision process that followed annexation. He noted that the properties were inside the urban growth boundary and other annexations had recently occurred where utilities had been extended.

Mr. Yeiter indicated that the memorandum he authored was written before the Fisher properties were added to the annexation, but his remarks still held.

Mr. Yeiter reiterated that in such an area, where there were properties somewhat removed from the main street and there was right-of-way, it was common practice for city staff to recommend the inclusion of the rights-of-way. He did not know how wide the street would ultimately be but it was necessary for utility extensions and the provision of emergency services. He considered it a logical and reasonable extension of services.

Mr. Yeiter noted the islands that would be created and the Eugene city council policy against initiating involuntary annexations of such islands. That was a citywide policy at this time, and over the ten years he had been working on annexations the council had not done so.

Speaking to the waterside protection zone, Mr. Yeiter said the city, through the Goal 5 process, identified resources that required protection. The city had identified the resources and the Lane County Board of County Commissioners concurred with the properties to be protected. The overlay was automatically applied to such properties when annexed. The UL overlay dropped off the property at the same time.

Mr. Yeiter referred to the response submitted by the Zumwalt fire protection district, saying the district contracted with the city to provide fire protection services; it collected property taxes and paid those to the city to provide services should services be required. When properties were annexed to the city they were automatically withdrawn from the fire district so the taxes would no longer go to the district. The city periodically modified its contract with the districts to reduce the charges to the district as annexation occurred. He said the district might be feeling more of a reduction in income than a reduction in what the city charged, so there may be net negative impact on the district.

Speaking to the issues of erosion and street access, Mr. Yeiter said the city addressed those issues when development plans were presented. He said that Ms. Keppler was present to answer questions about those issues.

Responding to a question from Ms. Buchanan, Ms. Keppler said that when the city reviewed development applications, staff considered the number of vehicles that would use the road. Developments must dedicate and pave the right-of-way of the proposed street. The city would look at a minimum of two-way travel when determining lane width. Ms. Keppler clarified only developing property owners would be required to dedicate right-of-way. If the developer did not like the city's recommendation for the right-of-way, the city considered public needs and the proportionality nexus to acquire the appropriate amount of property from the property owner. Properties outside the development were not affected.

Ms. Buchanan expressed concern about the effect of the right-of-way widening on the adjacent property owners near Bailey Hill Road.

Ms. Keppler indicated the paved area would be modified. The applicant would do all the improvements for the property in question. The developer may have to pave 20 feet of surface for travel but would not be required to do sidewalks or other amenities such as street lights or trees. Ms. Buchanan asked if that would affect how much traffic would be on the road. Ms. Keppler said not necessarily. She speculated the road would be medium-volume.

Ms. Mulder said that whether the properties were annexed or not, the traffic impact would be the same. Ms. Keppler concurred.

Ms. Larson asked if there would be an opportunity for residents to comment during the development application process. Ms. Keppler said yes, and noted the outreach and input opportunities that occurred, as well as the appeal process. Because the developers planned a planned unit development (PUD), there would be three public input opportunities.

Mr. Stewart thought it “inescapable” that the property owners would lose frontage. Ms. Keppler said that in the case of existing structures inside the setback, the improvement did not make it nonconforming or require people to set back their houses. The right-of-way in front of their houses would not change. Shrubs in the right-of-way would be removed.

Mr. Stewart objected to that because he thought there should be an entire new access to the area. Ms. Keppler said that in the absence of an application she could not state clearly what would happen.

Ms. Mulder said that whether the lane was annexed or not the same problems would exist if South Louis Lane was to be a travel lane. \

Others in Support – None

Public Officials in Opposition – None

Others in Opposition

Richard Hardt, 2199 Bailey Hill Road, Eugene, wished to confirm that the required street improvements would not be assessed to the properties outside the area to be annexed. He thought many of the questions that were raised suggested the annexation of the property was “somewhat premature” and the reason for the application was the fact the boundary commission was going away.

Ms. Keppler said that when a development application was received, the developer was responsible for developing and improving the right-of-way directly adjacent to their property. The developer could petition the city to do the work, and the city would petition the property owners for their interest in establishing a local improvement district (LID). For some time, the city had not supported the approach. The city had consistently required the developer to take care of those responsibilities, so the adjacent property owners would not be assessed.

Jerry Elliott, 2275 S Louis Lane, Eugene, noted the current condition of the road, which needed to be improved. He was concerned about the potential it was a high-impact lane and the impact on his property would be substantial. For that reason, he was opposed to any more annexations or development near his property. If the road was annexed and the property developed, he questioned whether the road would become another “Warren Road,” which he considered a high-speed road. He preferred to see the developer purchase more property to provide another access developed for the proposed development.

Ms. Mulder asked Mr. Weber to comment.

Mr. Weber said that development issues always exist on a property being annexed into an urban situation. The development team was not aware of what all the challenges were. There was no

development anticipated for the Fisher property at this time, although development was contemplated on the Hult property. The city's development code and regulations would require the property to be developed in a safe and fair manner for everyone. Property owners between Bailey Hill and the development site would not have to pay for road improvements. The time for the city and public to address development concerns was at the PUD stage. The property was within the UGB and the property owner was requesting annexation. He said that in the past the commission had encouraged people to bundle annexations to save time, and the application was an effort to do that.

There being no further requests to speak, Ms. Mulder closed the public hearing.

Boundary Commission Discussion and Deliberation

- * Moved/seconded (Seidel/Larson) to modify the application to include S Louis Lane right-of-way.

Ms. Buchanan asked if public services had to be available to the development now. Ms. Taylor said that the annexation in question was a very typical annexation. Annexations in the River Road/Santa Clara area were less typical because of the immediate availability of services. Boundary commission law indicates that services must be available in a reasonable manner. The Metro Plan provided more direction to the commission when reviewing annexations to Eugene and Springfield. While it did not set a specific time frame, it made reference to capital improvement programs and five-year plans, providing broad direction. If the property was available for development, it suggested that it could be served. EWEB planned to serve the property, but it was a matter of time; if it came to pass that the developer wanted the service sooner, the developer had indicated willingness to finance the development of those facilities. She said there were other property owners in the area that planned to submit annexation applications. While development might not happen for many years, having service in front of a property was not a commission criterion.

Ms. Larson pointed out that the annexation was inside the UGB and it was assumed services would be available. Properties that were impossible to serve were left out.

Mr. Stewart indicated he would abstain from the vote as he intended to oppose the main motion.

- * The motion passed, 4:0:1 (commissioners Mulder, Seidel, Larson, and Buchanan voting yes; commissioner Stewart abstaining from the vote).

- * Moved/seconded (Larson/Seidel) to approve BC File C EU 07 – 58 annexing territory to the City of Eugene based on the findings and reasons in the December 7, 2007, staff notes, as modified to include S Louis Lane right-of-way.

Ms. Larson said that it is imperative the concerned neighbors keep their ears to the ground and not wait for the required notice to participate.

- * The motion passed, 4:1:0 (commissioners Mulder, Larson, Seidel, and Buchanan voting yes; commissioner Stewart voting in opposition).

V. OTHER BUSINESS

A. Court of Appeals Challenge

Ms. Taylor recalled the commission's approval of an annexation in Florence in September and the three legal petitions that followed to appeal the decision. She was in the process of preparing the public record and would submit it later in December. She asked the commission how much it wanted to do to defend the decision, noting that the commission had been abolished as of July 1, 2008, and the city would have to defend the appeal in the absence of the commission.

Responding to a question from Ms. Seidel, Ms. Taylor said the appeals did not identify the issues; that would not occur until the record was in place. In the past, the boundary commission had indicated willingness to prepare the record but the defense of the decision would be limited because of limited resources. She did not see how the commission could afford a briefing. The state Appellate Division would feel obligated to do something but she did not know what that was.

Ms. Larson thought the case had implications for how annexation was done in Oregon. Ms. Taylor agreed.

Ms. Larson suggested that the commission could write a letter to Florence indicating the commission could not do justice to the appeal because of a lack of resources and recommending that the city take over the case. She also thought the commission should recommend Florence contact other cities who might have an interest in the appeal. Ms. Mulder or Mr. Myers could sign the letter. Ms. Taylor said she would draft a letter and send it out.

B. Boundary Change Transition Update

Ms. Taylor reported that three cities, Creswell, Springfield, and Junction City, as well as Lane County, had contracted with LCOG to assist their transition plans for processing annexations. She thought there was a growing understanding among councils and planning commissions about the complexity of annexation. She did not anticipate that Lane County would have code language adopted by January 2008. She noted that the county was currently discussing the appropriate fees for processing applications.

The commission had a general discussion of the transition process.

C. Other

There were no other items.

Ms. Mulder adjourned the meeting at 9:00 p.m.

Eleanor Mulder, Vice Chair
Lane County Local Government Boundary Commission

(Recorded by Kimberly Young)