

# MINUTES

## LANE COUNTY LOCAL GOVERNMENT BOUNDARY COMMISSION

Eugene City Hall  
Council Chamber (777 Pearl Street)

August 2, 2007  
7:00 p.m.

**PRESENT:** Clay Myers, chair; Eleanor Mulder, vice chair; Karen Seidel, Van Heeter, Bud Stewart  
Christine Larson

**ABSENT:** Renee Buchanan

### I. CALL TO ORDER – ROLL CALL

Clay Myers, chair, called the meeting to order. Paula Taylor, boundary commission staff, called the roll.

### II. APPROVAL OF EXPENSES – MAY/JUNE 2007

\* Moved/seconded (Seidel/Mulder) to approve the expenses for May 2007 (\$14,938.22) and June 2007 (\$14,623.90). The motion passed unanimously, 6:0 (commissioners Myers, Mulder, Seidel, Heeter, Larson, and Stewart voting yes).

### III. APPROVAL OF MINUTES – APRIL 5, 2007 and JUNE 7, 2007

\* Moved/seconded (Mulder/Stewart) approval of the April 5, 2007, minutes. The motion passed unanimously, 6:0 (commissioners Myers, Mulder, Seidel, Heeter, Larson, and Stewart voting yes).

\* Moved/seconded (Larson/Seidel) approval of the June 7, 2007, minutes. The motion passed unanimously, 6:0 (commissioners Myers, Mulder, Seidel, Heeter, Larson and Stewart voting yes).

### IV. NEW BUSINESS: PUBLIC HEARING

\* Moved/seconded (Larson/Seidel) to postpone item IV.E. Annexation of Territory to the City of Eugene (Environ-Metal Properties LLC/River Land Properties LLC), BC File C EU 07 – 37, to the next regularly scheduled boundary commission meeting.

Ms. Larson stated that the postponement was at the request of the property owner.

\* The motion passed unanimously, 6:0 (commissioners Myers, Mulder, Seidel, Heeter, Larson, and Stewart voting yes).

Annexation of Territory to the City of Springfield (White Revocable Trust)

- A. BC File C SP 07 - 32  
Initiated by Resolution 07-24 by the City of Springfield with consents from property owners/electors  
Action under ORS 199.490(2)(a)(B) of the boundary commission law  
Received June 27, 2007  
Action to be taken by September 25, 2007

Description

The annexation area included one tax lot located in south Springfield, north of Jasper Road and North Street, west of Filbert Lane, south of Redwood Drive, and east of Hazelnut Lane

Property owner: Terrence William White Revocable Trust (696 Country Club Rd, Eugene)

Tax lot: 600, T18S R02W S06 Map 11

Acres: ± 0.36

Estimate of existing population: 0 (one residential unit)

Existing land use: Residential

Existing zoning in Lane County: LDR/UF-10, low-density residential with urbanizing fringe 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 (Springfield School District 19), roads (Lane County, City of Springfield), fire (Willakenzie Rural Fire Protection District contracting with the City of Springfield), wastewater (onsite individual subsurface sewage disposal system)

Reason for Annexation

The property owner requested annexation to prepare the site for additional residential development. The Eugene-Springfield Metropolitan Area General Plan required properties to annex in order to receive urban services.

Clay Myers, chair, called for *ex parte* contacts or conflicts of interest. There were none.

Paula Taylor, Executive Officer, reviewed the notice of the public hearing. No objection was voiced to the adequacy of notice given for the public hearing.

Ms. Taylor provided the staff report, incorporating the staff notes and related materials into the public record in accordance with the boundary commission's administrative rules. She stated that action on the proposal had to be taken by September 25, 2007, and the property owner had requested annexation of a single lot located in south Springfield. She said the property had one residential development on it and was proposed for additional residential development and was within the urban growth boundary of the Eugene-Springfield Metropolitan Area General Plan.

Ms. Taylor said that staff had determined that the annexation was consistent with the boundary commission's standards, the property was contiguous to the City of Springfield, required services could be provided and it was in an area entirely surrounded by appropriate boundaries of the City of Springfield. She said the City of Springfield had initiated annexation after receiving consents from the property owners and there were no electors registered within the territory. She said if the

annexation was approved it would become effective upon passage of the final order and the staff recommended approval and the findings in the staff supported that recommendation.

Mr. Meyers opened the public hearing.

Proponent's Opening Statement – None

Public Officials in Support

Andy Limbird, Springfield Planning Division, stated that the City of Springfield concurred with the staff report. He said the purpose of the annexation was to allow the existing dwelling to connect with the city sewer and to facilitate a land division of property. He said the Springfield city council had passed a resolution in support of the annexation.

Others in Support – None

Public Officials in Opposition – None

Others in Opposition – None

Those Neither in Support or Opposition – None

Rebuttal by Proponents – None

There being no further requests to speak, Mr. Myers closed the public hearing and opened the item for discussion.

- \* Moved/seconded (Seidel/Mulder) to approve BC File C SP 07 - 32 annexing territory to the City of Springfield, based on the findings and reasons in the August 2, 2007, staff report. The motion passed unanimously, 6:0 (commissioners Myers, Mulder, Seidel, Heeter, Larson, and Stewart voting yes).

Annexation of Territory to the City of Springfield (Horton)

- B. BC File C SP 07 – 34  
Initiated by Resolution 07-25 by the City of Springfield with consents from property owners/electors  
Action under ORS 199.490(2)(a)(B) of the boundary commission law  
Received June 28, 2007  
Action to be taken by September 26, 2007

Description

The annexation area included a portion of one tax lot located in south Springfield, north of Mt. Vernon Road, east of S 57<sup>th</sup> Street, south of Ridge Court, and west of Weyerhaeuser Booth-Kelly Road

Property owners: Don and Lauren Horton (780 S 57<sup>th</sup> St, Springfield)

Tax lot: part of 5300, T18S R02W S04 Map 11

Acres: ± 1.25

Estimate of existing population: 4 (one residential unit)

Existing land use: Residential, vacant

Existing zoning in Lane County: LDR/UF-10, low-density residential with urbanizing fringe 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 (Springfield School District 19), roads (Lane County, City of Springfield), fire (Willakenzie Rural Fire Protection District contracting with the City of Springfield), wastewater (onsite individual subsurface sewage disposal system)

Reason for Annexation

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

Clay Myers, chair, called for *ex parte* contacts or conflicts of interest. There were none.

Paula Taylor, Executive Officer, reviewed the notice of the public hearing. No objection was voiced to the adequacy of notice given for the public hearing.

Ms. Taylor provided the staff report, incorporating the staff notes and related materials into the public record in accordance with the boundary commission's administrative rules. She stated the annexation was initiated by Springfield city council resolution after receiving consents from property owners and electors; the property was in south Springfield in the same vicinity as the prior annexation. She said the owners had requested annexation to prepare for additional residential development. She said action on the proposal had to be taken by September 26, 2007, and the annexation would become effective upon passage of the final order.

Ms. Taylor said that staff had determined that the annexation was consistent with the boundary commission's standards and the report contained findings and reasons in support of approval of the request as submitted.

In response to a question from Ms. Larson, Ms. Taylor clarified that there were four residents and one registered voter; the registered voter had consented to the annexation.

Mr. Myers opened the public hearing.

Proponent's Opening Statement – None

Public Officials in Support

Andy Limbird, on behalf of the City of Springfield, commented that the property was 1.40 acres and due to a property line adjustment on an adjacent property inside the city limits approximately 10 percent of the property was already inside the city limits and not being proposed for annexation. He said the property abutted the city limits and the purpose of the annexation was to facilitate a subdivision of the property for single detached residential development and also to extend the city street that currently terminated at the eastern boundary of the site.

Others in Support

Don Horton, property owner, said the plan was to subdivide the property in order to develop low-income housing with prices at just under \$200,000. He felt the development would meet a need for affordable housing.

Public Officials in Opposition – None

Others in Opposition – None

Those Neither in Support nor Opposition – None

Rebuttal by Proponents – None

There being no further requests to speak, Mr. Myers closed the public hearing and opened the item for discussion.

- \* Moved/seconded (Seidel/Mulder) to approve BC File C SP 07 - 34 annexing territory to the City of Springfield, based on the findings and reasons in the August 2, 2007, staff report. The motion passed unanimously, 6:0 (commissioners Myers, Mulder, Seidel, Heeter, Larson, and Stewart voting yes).

Annexation of Territory to the City of Eugene (Future Trends LLC)

- C. BC File C EU 07 – 38  
Initiated by property owner petition  
Action under ORS 199.490(1)(c) of the boundary commission law  
Received July 3, 2007  
Action to be taken by October 1, 2007

Description

As submitted, the annexation area included one tax lot located in the Santa Clara region of north Eugene, north of Beltline Road, east of River Road, south of River Loop No. 1, west of Dalewood Drive, and north of Banton Avenue

Property owner: Future Trends LLC (2170 Todd St, Eugene)

Tax lot: 2100, T17S R04W S11 Map 14

Acres: ± 3.50

Estimate of existing population: 1 (one residential unit)

Existing land use: Residential

Existing zoning in Lane County: R-1/UL, low-density residential with urbanizable lands 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 additional residential development. The Eugene-Springfield Metropolitan Area General Plan required properties to annex in order to receive urban services.

Clay Myers, chair, called for *ex parte* contacts or conflicts of interest. There were none.

Paul Taylor, Executive Officer, reviewed the notice of the hearing. No objection was voiced to the adequacy of the notice.

Ms. Taylor provided the staff report, incorporating the staff notes and related materials into the public record in accordance with the boundary commission's administrative rules. She stated that the annexation was initiated by property owner petition and was located in the Santa Clara area; the territory consisted of one tax lot. She distributed a letter from the City of Eugene addressing the issue of "islanding" that was sent to owners of properties that would be totally surrounded by the city if the annexation was approved. She incorporated the letter into the public record. She said passage of a final order would not become effective for 45 days during which time any eligible elector could request an election; at the time the annexation was submitted there were no active electors registered within the annexation area.

Ms. Taylor stated that an analysis of the annexation determined it was within the urban growth boundary of the metropolitan plan, was proposed for low-density residential development and planned for that use. She said the staff report had been sent to the owners of the two tax lots that would be an island if the annexation was approved. She said those properties were not proposed for annexation at this time and the City of Eugene had emphasized in its letter its practice of supporting voluntary annexations. She said the Santa Clara fire district objected to the annexation and the letter and staff response was attached to the staff report. She said that staff had determined that the annexation was consistent with the boundary commission's standards and the report contained findings and reasons in support of approval of the request as submitted.

Mr. Myers determined commissioners had no questions of Ms. Taylor.

Mr. Myers opened the public hearing.

#### Proponent's Opening Statement

Bob Sherman, Future Trends LLC, asked that annexation be approved so the property could be developed consistent with criteria in the metro plan.

#### Public Officials in Support

Ann Siegenthaler, City of Eugene Planning Division, stated that the city supported the annexation proposal and concurred with the staff report findings. She said the proposed annexation was consistent with metro plan policies, which anticipate that land within the urban growth boundary would ultimately be annexed to the city. She said the parcel could be served by urban services and facilities that would allow the parcel to be developed to its anticipated density.

#### Others in Support – None

#### Public Officials in Opposition – None

#### Others in Opposition

John Dotson, 2447 Canterbury Street, Eugene, spoke to the two properties that would be islanded by the annexation and referred to Supreme Court findings in a case involving Coos County.

Greg Scheid, 99 Natchez Court, Eugene, submitted a letter and photographs. He also submitted a letter from a neighbor, Mona Byrne. He expressed concern about the effect of smoke created when the developer was burning outbuildings in June and the amount of dust created from excavation at the site. He was also concerned about the potential fire hazard from stacks of brush cleared from the site and interference with natural drainage.

Mr. Myers said that the concerns expressed by Mr. Scheid were valid, but should be raised during the development stage of the project as they were outside the purview of the boundary commission.

Ms. Larson suggested that the information submitted by Mr. Scheid be forwarded to the City of Eugene's fire department and public works agency.

#### Those Neither in Support nor Opposition

Lee Stuhr, 2980 Dalewood Street, Eugene, also expressed concern with the impact on natural drainage in the area if it was filled during development. He also submitted a letter from a neighbor.

#### Rebuttal by Proponents

Ms. Siegenthaler noted that the issues raised by previous speakers were related to the development phase, rather than the annexation phase. She said if the annexation was approved the city would assume responsibility for code enforcement and development permit reviews, including drainage.

There being no further requests to speak, Mr. Myers closed the public hearing and opened the item for discussion.

Ms. Taylor noted the neighbor's letter Mr. Stuhr submitted was from James Thomas, 3070 Dalewood Street.

Ms. Larson asked that the letters submitted by speakers be forwarded to the appropriate agencies.

In response to a question from Ms. Larson, Ms. Taylor clarified that there was one resident on the property, but no registered voters.

\* Moved/seconded (Seidel/Larson) to approve BC File C EU 07 – 38 annexing territory to the City of Eugene, based on the findings and reasons in the August 2, 2007, staff report.

Mr. Stewart noted there was a letter from the Santa Clara Water District objecting to the annexation and asked if that objection needed to be addressed in another venue. He said the water district made a valid point regarding the loss of customers and asked if that should be referred to another agency.

Ms. Larson pointed out there was an intergovernmental agreement between the City of Eugene and the Santa Clara fire and water districts governing the transition of urban services from Santa Clara to Eugene as annexations occurred.

Ms. Taylor added that the issue of losing customers was a valid concern but the metro plan acknowledged that would occur and eventually the district would no longer be a financially viable unit of government and would need to be dissolved. She said discussion of a transition plan had not yet started. She said the issue was outside the scope of the boundary commission's jurisdiction as the commission was obliged by the Metro Plan to acknowledge that cities were the logical providers of services.

- \* The motion passed unanimously, 6:0 (commissioners Myers, Mulder, Seidel, Heeter, Larson, and Stewart voting yes).

Annexation of Territory to the City of Eugene (Stapleton)

- D. BC File C EU 07 – 30  
Initiated by property owner petition  
Action under ORS 199.490(1)(c) of the boundary commission law  
Received June 22, 2007  
Action to be taken by September 20, 2007

Description

As submitted, the annexation area included one tax lot located in the Santa Clara region of north Eugene, north of Beltline Road, east of River Road, south of Hunsaker Lane, north of Helen Street, and west of Ross Lane  
Property owner: Nathan Stapleton (PO Box 40505, Eugene)  
Tax lot: 5000, T17S R04W S12 Map 31  
Acres: ± 0.79  
Estimate of existing population: 4 (one residential unit)  
Existing land use: Residential  
Existing zoning in Lane County: R-1/UL, low-density residential with urbanizable lands 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 property for additional residential development. The Eugene-Springfield Metropolitan Area General Plan required properties to annex in order to receive urban services.

Clay Myers, chair, called for *ex parte* contacts or conflicts of interest. There were none.

Paula Taylor, Executive Officer, reviewed the notice of the hearing. No objection was voiced to the adequacy of the notice.

Ms. Taylor provided the staff report, incorporating the staff notes and related materials into the public record in accordance with the boundary commission's administrative rules. She said the annexation had been requested by the property owner and at the time of the request there were no

registered voters. She said if approved, the annexation would become effective in 45 days. She said the property was contiguous to the city limits of Eugene and in an area where other properties had been annexed. She said the City of Eugene supported the annexation and had requested modification of the annexation area to include segments of Helen Street and Ross Lane.

Ms. Taylor stated the annexation was within the urban growth boundary of the Eugene-Springfield metropolitan area and designated for residential development and intended for that use. She said an objection from the Santa Clara Water District, along with her response, were included with the staff report. She said the annexation met the boundary commission's standards and the commission had two options: approve as submitted annexation of a single tax lot or modify the area to include segments of Ross Lane and Helen Street. She said staff recommended the modified annexation based on the findings and reasons contained in the staff report.

Mr. Myers opened the public hearing.

#### Proponent's Opening Statement

Nathan Stapleton, owner of the property, asked that the boundary commission approve the annexation including the rights-of-way. He asked that the original request be approved if the commission did not wish to include the rights-of-way.

#### Public Officials in Support

Ms. Siegenthaler stated that the City of Eugene supported the annexation proposal and concurred with the finding and reasons in the staff report. She said the request to modify to include to segments of right-of-way adjacent to the subject parcel would connect the Stapleton property and about a dozen other previously annexed parcels to the main body of the incorporated city. She explained that the street annexation would also fill gaps in previously annexed portions of rights-of-way to connect those streets up to the logical terminus. She noted that no islands of unincorporated property would be created by the annexation. She asked that just the parcel be annexed if the commission could not support annexation of the rights-of-way.

#### Others in Support – None

#### Public Officials in Opposition – None

#### Others in Opposition

John Dotson, 2447 Canterbury Street, Eugene, objected to including street rights-of-way in the annexation. He urged the commission to view a map of only street annexations in order to see the pattern of incremental annexation of streets.

#### Those Neither in Support nor Opposition – None

#### Rebuttal by Proponents – None

There being no further requests to speak, Mr. Myers closed the public hearing and opened the item for discussion.

- \* Moved/seconded (Seidel/Mulder) to modify BC File C EU 07 – 30 to include portions of Ross Lane and Helen Street rights-of-way as requested by the City of Eugene.

Ms. Larson said the request from the city was an example of a good choice for annexing streets.

- \* The motion passed unanimously, 6:0 (commissioners Myers, Mulder, Seidel, Heeter, Larson, and Stewart voting yes).
- \* Moved/seconded (Mulder/Larson) to approve BC File C EU 07 – 34 annexing territory to the City of Eugene, including the modification to add rights-of-way, based on the findings and reasons in the August 2, 2007, staff report. The motion passed unanimously, 6:0 (commissioners Myers, Mulder, Seidel, Heeter, Larson, and Stewart voting yes).

Annexation of Territory to the City of Eugene (Environ-Metal Properties LLC/River Land Properties LLC)

- E. BC File C EU 07 – 37  
Initiated by property owner petition  
Action under ORS 199.490(1)(c) of the boundary commission law  
Received July 3, 2007  
Action to be taken by October 1, 2007

Description

As submitted, the annexation area included one full tax lot and a portion of another located in southeast Eugene, north of 30<sup>th</sup> Avenue, south of Everglade Street, and northwest of Bloomberg Road

Property owners: Environ-Metal Properties LLC (PO Box 834, Sweet Home) and River Land Properties LLC (PO Box 832, Sweet Home)

Tax lots: all of 701 and part of 702, T18S R03W S10

Acres: ± 130.00

Estimate of existing population: 0

Existing land use: Vacant, forest

Existing zoning in Lane County: AG/WR/UL, agriculture with water resource and urbanizable lands 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)

Reason for Annexation

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

This item was postponed to the next regularly scheduled boundary commission meeting.

Annexation of Territory to the City of Florence (Ures, et al./Rhododendron Drive/Sebastian Street)

F. BC File C FL 07 – 36

Initiated by Resolution No. 8, Series 2007, by the City of Florence with consents from property owners/electors

Action under ORS 199.490(2)(a)(B) of the boundary commission law

Received July 3, 2007

Action to be taken by October 1, 2007

Description

As submitted, the annexation area included 43 tax lots located along the westerly boundary of the City of Florence, east and west of Rhododendron Drive, north of Rhodowood Drive, and north and south of Sebastian Street; including portions of Rhododendron Drive and Sebastian Street

Property owners: Refer to Exhibit IV-F-1 in the August 2, 2007, staff report incorporated herein by reference

Tax lots: 2000, 2001, T18S R12W S04 Map 44; 100 to 4100, T18S R12W S09 Map 11

Acres: ± 44.96 (± 34.38 acres in tax lots; ± 10.58 acres in road rights-of-way)

Estimate of existing population: 4 (three residential units—two under construction)

Existing land uses: Residential, vacant, road right-of-way

Existing zoning in Lane County: RA, suburban residential; RA/MH, suburban residential with mobile home district overlay

Applicable comprehensive plans: 1988 City of Florence Comprehensive Plan and the Realization 2020 Comprehensive Plan for the City of Florence, Oregon (acknowledged in August 1982 and has been subsequently amended)

Existing public services to the property: Police (Oregon State Police, Lane County Sheriff), schools (Siuslaw School District 97J), roads (Lane County), fire (Siuslaw Rural Fire Protection District #1), wastewater (onsite individual subsurface sewage disposal systems), water (Heceta Water District), electricity (Central Lincoln PUD), library (Siuslaw Public Library District), port (Port of Siuslaw), ambulance (Western Lane Ambulance District)

Reason for Annexation

The tax-lotted portion of the annexation area was planned for residential development.

Annexation to the City of Florence will ensure that urban services would be provided to a developing area. The Florence Comprehensive Plan and the 2020 Realization Plan support the annexation of properties in order to receive urban services.

Clay Myers, chair, called for *ex parte* contacts or conflicts of interest.

Commissioner Heeter declared that he resided in Florence and was a real estate broker with an active license. He noted the recent controversy over development issues in the community and said while the annexation was not the major controversy it was part of the issue. He acknowledged having a number of conversations with individuals in the community that were “casual” and not substantive and stated he had not formed a bias as a result of those conversations. He had not had contact with the developer or any of the developer’s employees as far as he was aware and had no financial interest in the project. He did not believe he had a conflict of interest and felt he would be able to weigh the public testimony and the written record and apply the boundary commission’s standards.

There were no questions regarding Mr. Heeter's declaration.

Paula Taylor, Executive Officer, reviewed the notice of the hearing. No objection was voiced to the adequacy of the notice.

Ms. Taylor reviewed the annexation request and incorporated the staff notes and related materials into the public record in accordance with boundary commission law. She said the annexation was initiated by city council resolution using the double majority method after receiving consents from owners and electors. She noted that additional information had been submitted after preparation of the staff report and that material was provided to each commissioner and incorporated into the record.

Ms. Taylor said the validity of the initiating process used by the City of Florence had been challenged by Daniel Stotter on the basis that there were no electors in the annexation area. She said a brief history of the double majority provisions in state law was included in the staff report along with an explanation of how the boundary commission had used the process in the past, which concluded that it was permissible if there were no electors. She said staff had determined it was a valid filing and proceeded with the staff review.

Ms. Taylor described the annexation area consisting of 43 tax lots and some existing road rights-of-way of Rhododendron Drive and Sebastian Street. She said consents were received from nearly all of the property owners. She reviewed the correspondence contained in the additional information packet. She said that development in the annexation area would consist of two subdivisions: Fawn Ridge West and Fawn Ridge East. She said both subdivisions had received approval from Lane County for subdivision and development and it was expected the county would provide final plat approval for the Fawn Ridge East subdivision. She said if the boundary commission did not approve the annexation, the development proposals would proceed. She said the annexation had been reviewed and was supported by both the Florence city council and planning commission and it would not create any islanded area; Rhododendron Drive would be the infrastructure used to provide a variety of urban services. She indicated that the City of Florence would not withdraw the territory from the Heceta Water District and explanatory materials were included in the related materials.

Ms. Taylor remarked there were currently two comprehensive plans for the City of Florence: the 1998 county co-adopted comprehensive plan and a more recent 2020 comprehensive plan approved by the city and acknowledged by the state. She said the county had not yet co-adopted the 2020 plan and therefore the city addressed both comprehensive plans in its analysis. She said staff had determined that the annexation met the boundary commission's standards and recommended approval of the annexation; findings and reasons supporting that recommendation were included in the staff report.

Mr. Myers opened the public hearing.

#### Proponent's Opening Statement

Jerome Lidz, attorney for City of Florence, described the procedural dilemma related to the Fawn Ridge development. He said the initial plan was for the county to approve the subdivision proposal and when the subdivision plats had been approved and recorded the properties would be annexed to the City of Florence. He said that Fawn Ridge West had been approved and the plat recorded, but the final plat for Fawn Ridge East had not yet been approved; although approval was anticipated the

recording date of the final plat was still uncertain. He asked the boundary commission to hold the public hearing and receive all of the public testimony, then hold the record open for purposes of receiving notification of the subdivision plat and delay a decision until both halves of the subdivision were ready to be annexed. He said that development was already occurring in Fawn Ridge West and it was in the property owners' interest, as well as the city's interest, to know if there would be a city sewer connection.

In response to a question from Ms. Seidel, Ms. Taylor said the commission could hold a full public hearing, close the hearing and then limit any new information to final status of the Fawn Ridge East subdivision plat. She said the commission could then set a date for a meeting to make its decision on the annexation.

Ms. Mulder asked why Lane County was involved in the matter. Ms. Taylor replied that the county had authority in that area, which was outside of the city limits but inside the urban growth boundary.

Mr. Heeter asked if the public hearing could be continued. Ms. Taylor replied that the hearing could be continued to the commission's October meeting if there was no objection, but the commission also had the option of holding a special meeting to take action on the item.

Ms. Larson preferred to hear the public testimony and then close the hearing.

Ms. Taylor commented that the commission could make a decision regarding closing the hearing after receiving the public testimony.

Continuing with his presentation, Mr. Lidz said the primary reason for the annexation proposal was to make city services available to urban density development. He said in this case the property was being developed and the alternative to annexation was urban level density without urban level services. Regarding whether there could be a double majority annexation when there were no electors in the area to be annexed, he said that was consistent with the commission's past practices and the objection raised by Mr. Stotter did not cite any decisions that it could not be done. He said the purpose of a double majority process was to protect the interests of electors registered in the area to be annexed; if there were no electors there were no such interests that required protection. He felt the proposal would also have met the criteria for a triple majority.

Mr. Lidz asserted that the wisdom of the development was not at issue; the question was whether the development received sanitary sewer service and police protection and the people living there contributed to the City of Florence's expenses for providing urban services. He said there were two groups of opponents: residents of subdivisions along Rhododendron Drive who opposed forced annexation of their property and nearby residents who opposed growth. He emphasized the city had no proposal to compel anyone to annex to the city and annexing Fawn Ridge would not create an island. He said it was understandable that people did not want to see growth in their neighborhoods, but development was inevitable at the edges of a city. He noted the county had already approved the development and it would proceed whether or not it was inside or outside the Florence city limits.

Mr. Lidz noted the objection from Heceta Water District, but since the district would continue to serve the Fawn Ridge subdivisions after annexation it was unclear how there would be a negative impact on the district. He said a member of the water district's board raised a concern that the district might not have sufficient water to serve the subdivisions and if that occurred, the city could

provide water service to Fawn Ridge, although the plan was for Heceta Water District to provide service.

Mr. Lidz clarified a reference in the staff report to an agreement by the property owner to finance a wastewater line in Rhododendron Drive. He said currently, as a condition of the county's approval of the subdivisions, the property owner was obliged to construct street improvements to Rhododendron Drive and during the process of coming to that agreement the parties concluded it was more appropriate to invest in public infrastructure so residents of the subdivision could receive urban services. He said if the county released the owner from his obligation he would contribute \$925,000 to the city's installation of a sewer line along Rhododendron Drive.

Mr. Lidz remarked that many of the comments the commission had received were the same as those received by the Florence planning commission and a point-by-point response to those was included in the agenda packet. He said the decision should be based on whether the proposal met the commission's adopted policies and standards on annexation, as detailed in the staff report.

#### Public Officials in Support

Mike Miller, Florence Public Works, stated that the city had always planned that the Fawn Ridge East and West developments would be provided service by the Heceta Water District; however, the city had surplus capacity if the water district concluded it could not provide service. He said the city could provide service through an existing intertie with the water district or construct a new water distribution line to the development in conjunction with construction of the sewer line. He said the city had capacity to provide sanitary sewer service to the development.

David Livesay, GSI Water Solutions, related that he had been asked by the City of Florence to evaluate the potential for any water quality problems associated with septic drain field seepage and any benefits that may result from having sanitary sewer service to the proposed annexation. He described the methodology, including researching problems that had occurred in other communities across the state, that he used to reach the conclusion that there was a potential for problems and it was in the public's interest for the city to provide sanitary sewer service to the development. He provided copies of his report and resumé for the record.

In response to a question from Ms. Seidel, Mr. Livesay said the development density of the Fawn Ridge subdivisions was approximately one-half acre lots.

Sandra Belson, Florence Community Development Director, related that the issue of annexation was raised when the county sent the city referrals as part of the development process. She said the first approach to the annexation was to include the state land along the ocean on the west side of Fawn Ridge and that could have resulted in some confusion as including that land would have created an island. She said the city had decided a year ago that the state land would not be included and only the properties that would benefit from the development and require urban services would be annexed. She said Rhododendron Drive was included as the service corridor to Fawn Ridge to accommodate the sanitary sewer and provide a roadway to the subdivision for police patrol and emergency vehicle access. She said no properties that objected to annexation were included in the proposal, even though they were between Fawn Ridge and the city limits. She said that recent legislation further protected those property owners from forced annexation.

Ms. Belson said the last change to the annexation request during the city's process was the addition of two properties to the north of Sebastian Street at the property owners' request and Sebastian Street would be the service corridor to those properties. She said the city process had followed city policies regarding public notification as required by Goal 1 and public hearings were held by the city council and the planning commission and properly noticed. She said the record was held open and there was ample opportunity for public testimony before the city council made its decision.

Ms. Belson said the city had been using the Realization 2020 plan since it was adopted in 2002. She said Florence had been in periodic review for a number of years and it was still in that process; as tasks were completed and the state signed off on them, the comprehensive plan was amended. She said co-adoption would occur once periodic review was finished. She said Realization 2020 was in compliance and recognized by the state as the city's comprehensive plan, but the intergovernmental agreement with Lane County required co-adoption. She said the annexation complied with both the 1998 comprehensive plan being used by the county and Realization 2020. She pointed out that testimony in the record indicated the annexation did not comply with the plans, but did not provide any specifics. She said the city believed it had used the appropriate process and findings indicated compliance with the comprehensive plan and consistency with boundary commission standards.

Ms. Belson submitted letters from Branch Engineering demonstrating all of the improvements within both subdivisions had been completed and signed off on by the city. She emphasized that annexation of a street was different than assuming jurisdiction for it; Rhododendron Drive and Sebastian Street would remain under the jurisdiction of Lane County after annexation until a process for surrender was completed.

#### Others in Support

Mike Reeder, 800 Willamette Street, Eugene, attorney for the developer, clarified that the developer had no agreement to finance the installation of a wastewater line in Rhododendron Drive prior to development. He said the only agreement was installation of dry lines and that had been completed. He said all septic tests had been done and approved by Lane County sanitation, but if there was an agreement with the City of Florence to provide wastewater, that was a better option.

Mr. Reeder supported the city's request for a postponement and explained the county's delay was due to typographical errors on the letters of credit that secured the obligations of the developer to make the agreed upon improvements. He emphasized that the developer's agreement with the city was that Fawn Ridge East would not be annexed until there was recording of the final plat. He said that was within the commission's authority under OAR 191-005-0070 and ORS 199.495 allowed an annexation to be conditioned upon the occurrence of a certain event. He noted that development would occur in the area with or without annexation. He said the city, the developer and an individual who would become the first elector in the annexation area were in support of the annexation.

Mr. Heeter indicated confusion regarding whether or not there was an agreement with the city regarding the provision of sanitary services to the development.

Mr. Reeder said the developer's position was that the April 2006 agreement currently in effect with the city assured that neither Fawn Ridge East nor Fawn Ridge West would be annexed to the city prior to final subdivision approval by Lane County and recordation of the final plats. He said there had been informal discussions among the county, city and developer regarding whether that section of Rhododendron Drive should be improved to current county standards when the rest of the street

was not, or whether the money would be better spent if the developer used \$925,000 of his own funds to help fund installation of a sewer system. He said there would be no formal agreement until a decision on annexation was made and certain conditions were satisfied.

Jim Hurst, the developer of the Fawn Ridge subdivisions, stated he was in negotiations regarding the sewer trunk line and did intend to install it, but could not do it until the property was annexed. He did not want it to appear he had agreed to install the main trunk line before the subdivisions were begun. He had installed sewer lines in the subdivisions and fully intended to provide funds for the connecting sewer line when the annexation was completed.

Mr. Lidz stated the city was committed to installing a sanitary sewer connection between the city limits and the Fawn Ridge subdivisions; the only question was whether or not there would be a contribution from Mr. Hurst and an agreement had been reviewed by the city council, which authorized the city manager to sign it.

#### Public Officials in Opposition

Robert Hursh, Heceta Water District chairperson, clarified the timeline of negotiations between the district and the City of Florence on an intergovernmental agreement to provide water. He said negotiations were suspended in May because three of the five board members were not elected and the new members had not yet taken a position. He stated the water district was opposed to the annexation because it would cause financial jeopardy. He hoped the record could remain open and the annexation postponed until such time as an agreement could be reached with the city to protect the district's tax base and revenue.

Mr. Heeter asked how the district would be affected financially if it was still going to provide water to the annexed area. Mr. Hursh explained the district had two types of debt: bond debt, which encumbered anyone in the water district when it was approved, and a loan from the state's revolving fund to construct filtration plants. He said the district obtained its water from Clear Lake and was limited to withdrawing one million gallons of water per day and the district had come close to that limit numerous times. He said as growth occurred within the urban growth boundary and in the district, demand for water became the district's problem and, therefore, the district wanted an intergovernmental agreement that specified the city would not remove growth from that particular area unless it was by mutual agreement.

Ms. Seidel commented that Resolution 3 from the City of Florence addressed that issue. Mr. Hursh reiterated the district had no agreement with the city, not even for surplus water. He asked the commission to keep the record open until an agreement was reached.

#### Others in Opposition

Daniel Stotter, attorney representing Citizens Against Annexation, 541 Willamette Street, Eugene, submitted written testimony for the record and indicated he would address three substantive issues and two procedural issues. He distributed a copy of the double majority annexation statute, ORS 199.490(2)(a)(B). He said the commission was bound by the statute and reviewed its provisions. He said the term "majority" meant more than half and gave several examples of what constituted a majority and what did not. He said that having zero electors and zero consents did not represent a majority or meet the intent of the statute; at most it was a tie. He said the staff's argument that in the

past the commission had determined zero was a majority of zero did not mean that was true; if the commission had erred in the past that did not make it true today.

Mr. Stotter disagreed with staff's determination there were no other methods for annexation. He said there was a triple majority system, requiring no electors, that had been determined to be constitutional and distributed a court decision illustrating that point. He asserted there was another mechanism that could be used when there were water quality concerns that did not require a majority of electors. He summarized his points by saying the statute had not been met; it was ludicrous to say that because something happened in the past it was true and the Oregon courts had determined there was no problem with the privileges and conclusions clause. He said the double majority mechanism could not be used if there was no majority.

Continuing, Mr. Stotter cited the statutory procedural requirements and said the requirement that a governing body file a notice of intent with the boundary commission before soliciting statements of consent had not been met. He said written consents were obtained before the filing of notice and, therefore, did not meet the procedural requirement and the annexation should be denied. He asserted there was evidence in the record that indicated landowner consents were required in order for the landowners to obtain their land use approvals and the courts had determined that was unlawful.

Mr. Stotter declared the law required the boundary commission to independently review the land use requirements. He said the commission could conduct its own review of the land use requirements, determine which comprehensive plan applied and whether it had been met, or defer "rubber stamp" to the city and violate the law. He concluded by formally objecting to any continuance to the October meeting as the annexation should simply be denied because the statute was not met.

Liam Sherlock, 777 High Street, Eugene, attorney representing a property owner to the north and adjacent to the subject property, characterized the annexation as a classic cherry stem, leapfrogging proposal. He incorporated in the record by reference comments from Debby Todd and the Citizens Against Annexation. He said the proposal was not orderly development under Florence's comprehensive plan. He said the development would be serviced by a road and water supply not under the jurisdiction of the city and no resolution regarding the sewage system had been achieved. He asked why land would be annexed to a city if not to provide essential public services. He said even calls for police assistance would be confusing in terms of whether they were from an annexed or unannexed property in the area and there was no agreement with the water district regarding the provision of water services in the future. He noted the commission was to provide an impartial forum for the resolution of local jurisdictional questions and he did not feel the findings had sufficiently addressed Heceta Water District's issues.

Mr. Sherlock commented that the sewer system was also a point of confusion. He heard the developer indicate an intent to provide funding, but that was based on unspecified conditions. He questioned how the balance of the cost of that infrastructure would be paid for. He said the development was not orderly because it jumped over a third of a mile of unannexed residential areas to benefit a new development that would require an extension of services but bypass existing development; orderly development would serve those properties first.

Mr. Sherlock concluded by asking if a continuance was allowed, it be conditioned upon approval of an intergovernmental agreement between Heceta Water District and the City of Florence. He agreed with Mr. Stotter that there was an alternative process that could have been used and asked that the annexation application be denied.

### Those Neither in Support nor Opposition

John Dotson, 2447 Canterbury Street, Eugene, noted regarding the concerns about extension of sewer service that there were a number of alternatives to septic systems and a sewer line to handle waste management.

### Rebuttal by Proponents

Mr. Lidz said the statute presumed the double majority was there to protect electors and if there were none, protection was not necessary. He said if the triple majority process had been used the proposal would have satisfied those requirements as well. Referring to Mr. Stotter's assertion that the commission had erred in previous determinations, he suggested the commission seek its own legal counsel in the matter of past practices. He disagreed with Mr. Stotter's statement that the consents were invalid and did not feel Mr. Stotter had standing to raise that issue; only someone who felt his or her consent was invalidly obtained could make that complaint to the commission. He said it was not necessary for the commission to determine which comprehensive plan applied, but the answer was simple: inside the city limits the Realization 2020 plan applied; the 1998 plan applied to county actions.

Mr. Lidz also disagreed that the annexation was not orderly development. He cited OAR 191-030-0020, which recognized that the boundary change process was inherently incremental and there would be decisions that created seemingly illogical boundaries in the short term. He affirmed that the city would build a sewer system and the only question was whether there was a contribution from the developer, although the city would proceed regardless. He said the estimated cost of the system was less than the proposed \$925,000 contribution. He said the Heceta Water District had not articulated a specific concern that the city could address; it was not the district's authority to decide if annexation could occur but rather to decide if it would provide service. He asked the commission not to condition any decision on an intergovernmental agreement between the district and the city.

Mr. Myers asked if it was the city's position that it would provide water if an agreement could not be reached. Mr. Lidz confirmed it was the city's intent.

Ms. Larson asked for clarification of the relationship between Resolution 6 and Resolution 3. Mr. Lidz replied that Resolution 6 was a 2006 resolution and Resolution 3 was from 2007.

Bob Willoughby, Florence City Manager, stated the 2006 resolution established a policy that the city would not withdraw from the urban growth boundary the territory of the Heceta Water District except for an area along Highway 101. He said the 2007 resolution repealed Resolution 6 to the extent the properties in the area along Highway 101 would be withdrawn from the district when annexed. He said the purpose was to assure the water district that the city had no intent to harm it financially.

In response to a question from Mr. Heeter, Mr. Lidz said his opinion was that the consents were not illegal and there was no one with standing in the matter who was raising a concern that the consent was compelled.

Regarding Mr. Stotter's assertion that consents were required of landowners in order to obtain land use approval, Ms. Belson pointed out that Jim Hurst was the developer and as far as she knew all of

the other consenting property owners bought their property after the subdivision was approved and all land use actions taken. She said if the city annexed and withdrew property from Heceta Water District, the property was still obligated to pay the bonded indebtedness.

Mr. Myers asked if development could occur inside the city limits without connecting to the city sewer. Ms. Belson said if sewer service was available a connection was required.

Mr. Miller said the cost estimate for construction of the sewer line to Fawn Ridge was \$830,000, including a 30 percent contingency.

The commission held a discussion of procedural options and the need for legal counsel related to issues raised during public testimony.

- \* Moved/seconded (Heeter/Larson) to direct staff to follow up on the boundary commission's concerns about the legal questions raised during the public hearing and to obtain legal interpretation and legal advice on how to proceed. The motion passed unanimously, 6:0 (commissioners Myers, Mulder, Seidel, Heeter, Larson, and Stewart voting yes).
- \* Moved/seconded (Larson/Seidel) to close the public hearing. The motion passed unanimously, 6:0 (commissioners Myers, Mulder, Seidel, Heeter, Larson, and Stewart voting yes).

Mr. Myers closed the public hearing.

- \* Moved/seconded (Seidel/Mulder) to continue BC File C FL 07 - 36 annexing territory to the City of Florence to a special meeting on September 27, 2007, for purposes of boundary commission deliberation only. The motion passed unanimously, 6:0 (commissioners Myers, Mulder, Seidel, Heeter, Larson, and Stewart voting yes).

## **VI. OTHER BUSINESS**

### **A. Boundary Change Transition Update**

Ms. Taylor reported that the boundary commission would not accept new applications after December 31, 2007, and cities in Lane County would accept applications on their own behalf. She said there had been a request for discussions about how Lane Council of Governments (LCOG) could assist cities in preparing for their new authority to process boundary changes. She said there was interest in developing a scope of work and related costs and Lane County appeared to be willing to coordinate efforts among cities to prepare for the transition in January 2008.

Ms. Taylor said she had been meeting with other LCOG staff to develop a proposal and disseminate it to cities, followed by a meeting with planning staff from small cities and a meeting with staff from Eugene, Springfield, and Lane County. She said despite growing concerns from developers, property owners and cities about the transition, she was committed to assisting the commission during its final months of regular business.

Mr. Heeter left the meeting at 10:15 p.m.

Ms. Mulder indicated she would be interested in receiving information about the new annexation laws.

In response to a question from Mr. Myers, Ms. Taylor said she had no estimate of how many times the commission would meet in 2008 to conclude its business.

Mr. Myers adjourned the meeting at 10:25 p.m.

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Clay Myers, Chair  
Lane County Local Government Boundary Commission

(Recorded by Lynn Taylor)

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