



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
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January 20, 2022

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Annexation to Clackamas County Service District No. 1

Purpose/Outcomes	Conduct Public Hearing/Approve Order for CL 21-008
Dollar Amount and Fiscal Impact	None
Funding Source	Not Applicable
Duration	Permanent
Previous Board Action	None
Strategic Plan Alignment	Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries
Counsel Review	1/4/2022 JM
Procurement Review	Item is an Approval of Annexation not subject to procurement review
Contact Person	Ken Martin, Boundary Change Consultant - 503 222-0955 Jeff Munns, Assistant County Counsel
Contract No.	Not Applicable

BACKGROUND

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District No. 1 is such a district.

Proposal No. CL 21-008 is a proposed annexation to Clackamas County Service District No. 1 ("District").

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Notice posted online (<https://www.clackamas.us/meetings/bcc/business/2022-1-20>); 3) Published notice twice in the Clackamas County Review; 4) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. Also as required by statute (ORS 198.720(1)) the City of Happy Valley has approved this petition.

This proposal was initiated by a consent petition of property owners. The petition meets the requirement for initiation set forth in ORS 198.855, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District. The territory contains 1.0 acres, one single family dwelling and is valued at \$146,333.

REASON FOR ANNEXATION

The property owner desires sewer and stormwater services from the Service District to serve the existing development.

CRITERIA

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership ("WES") as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the proposed findings. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

¹ A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (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 affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (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.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plans as stated in the findings attached in the proposed order. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration. The territory, if annexed into the District, will be served by Water Environment Services pursuant to that certain ORS 190 Partnership entered into by the District with the Tri-City Service District and the Surface Water Management Agency of Clackamas County, as amended from time to time.

RECOMMENDATION

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-21-008, annexation to Clackamas County Service District No. 1.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving a
Boundary Change Proposal No.
CL 21-008



Order No. _____

This matter coming before the Board at this time, and it appearing that the owner of all the land in the territory to be annexed has petitioned to annex the territory to Clackamas County Service District No. 1;

It further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

It further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

It further appearing that this matter came before the Board for public hearing on January 20, 2022 and that a decision of approval was made January 20, 2022;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 21-008 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Clackamas County Service District No. 1 as of January 20, 2022.

ADOPTED this 20th day of January, 2022.

BOARD OF COUNTY COMMISSIONERS

Tootie Smith, Chair

Chanin Bays, Clerk to the Board

FINDINGS

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

1. The territory to be annexed contains 1.0 acres, 1 single family dwelling and is valued at \$146,333.
2. The property owner desires sewer and stormwater services from the Service District to serve the eventual redevelopment of the property with a new single family dwelling following the construction of a new roundabout at the intersection of SE 172nd and Scouters Mountain Road.
3. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership (“WES”) as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

4. Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:
 1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
 2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
 3. The proposed effective date of the boundary change.

Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:

¹ A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

- (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (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 affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (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.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plans as stated in the findings below. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District.

5. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

6. The PUBLIC FACILITIES AND SERVICES Element of the County Comprehensive Plan contains the following Goal:

POLICIES

Sanitary Sewage Disposal

* * *

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.
7. The territory is inside the City of Happy Valley and its land use plan designation/zoning is Mixed Use Residential Multifamily (MUR-M2).
8. 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 urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
9. WES, as the service provider for the District, has a sewer line in SE 172nd that can serve the property.
10. The Sunrise Water Authority serves the site from lines in SE 172nd Avenue.
11. The area receives police service from the City of Happy Valley which contracts with the Clackamas County Sheriff's Department for service.
12. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the County Service District for sanitary sewers.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 4 & 8 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The Board notes the original public facility plan for this area does call for sewer service by the District.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plans (Clackamas County Comprehensive Plan and the Happy Valley Comprehensive Plan) and concludes this proposal complies with them. All other necessary urban services are available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District, through Water Environment Services, has service available to the area to be annexed as noted in Finding No. 9. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.



EXHIBIT A

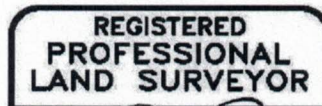
Description

A tract of land and a portion of right-of-way, located in the Northeast One-Quarter of Section 31, Township 1 South, Range 3 East, Willamette Meridian, City of Happy Valley, Clackamas County, Oregon, and being more particularly described as follows:

Commencing at the north one-quarter corner of said Section 31, also being on the centerline of SE 172nd Avenue; thence along said centerline, South $01^{\circ}35'57''$ West 2149.99 feet to the westerly extension of the north line of Document Number 2021-041468, Clackamas County Deed Records; thence along said westerly extension, South $89^{\circ}14'46''$ East 30.00 feet to the northwest corner of said deed, and the Point of Beginning; thence along the north line of said deed, South $89^{\circ}14'46''$ East 116.32 feet to the northwesterly corner of Document Number 2021-041635, Clackamas County Deed Records; thence along the north line of said deed, South $89^{\circ}14'46''$ East 239.68 feet to the northeast corner of said deed; thence along the easterly line of said deed the following three (3) courses: South $01^{\circ}35'57''$ West 59.00 feet, North $89^{\circ}14'46''$ West 86.00 feet, South $01^{\circ}35'57''$ West 85.98 feet to the most southerly southeasterly corner of said deed; thence along the south line of said deed, North $89^{\circ}14'46''$ West 255.62 feet to the southerly southeasterly corner of said Document Number 2021-041468; thence along the south line of said deed, North $89^{\circ}14'46''$ West 10.38 feet to the southwest corner of said deed; thence along the west line of said deed, North $01^{\circ}35'57''$ East 144.98 feet to the Point of Beginning.

The above described tract of land contains 1.00 acre (43,634 square feet), more or less.

9/22/2021

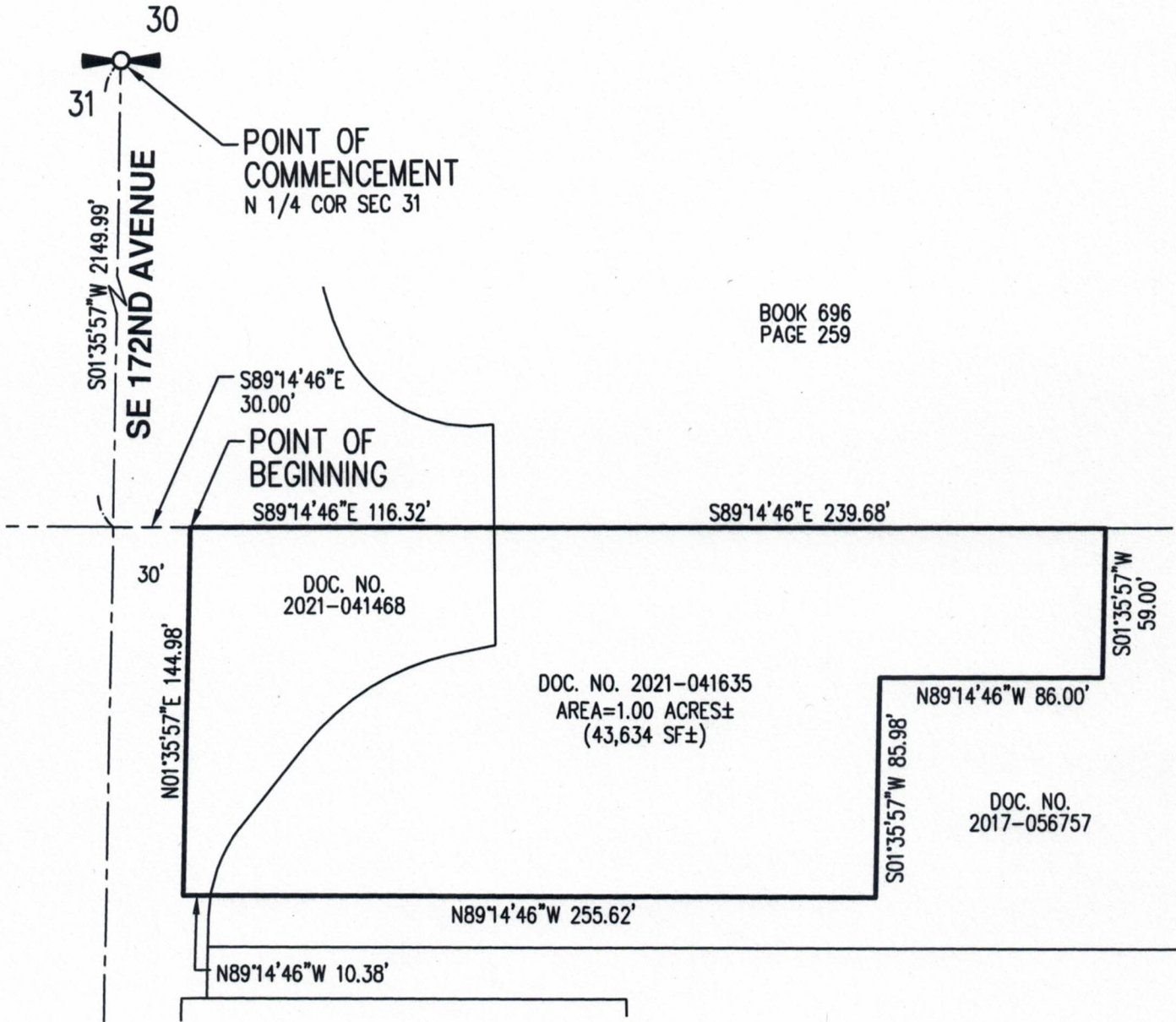


OREGON
JANUARY 11, 2005
ROBERT D. RETTIG
60124LS

RENEWS: 12/31/22

EXHIBIT B

A TRACT OF LAND AND A PORTION OF RIGHT-OF-WAY,
 LOCATED IN THE NORTHEAST 1/4 OF SECTION 31,
 TOWNSHIP 1 SOUTH, RANGE 3 EAST, WILLAMETTE MERIDIAN,
 CITY OF HAPPY VALLEY, CLACKAMAS COUNTY, OREGON



BOOK 696
PAGE 259

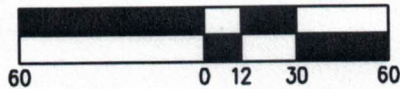
9/22/2021

REGISTERED
PROFESSIONAL
LAND SURVEYOR

PREPARED FOR

PLEASANT VALLEY DEVELOPMENT, LLC
 604 W EVERGREEN BLVD
 VANCOUVER, WA 98660

SCALE: 1" = 60 FEET



OREGON
 JANUARY 11, 2005
 ROBERT D. RETTIG
 60124LS

RENEWS: 12/31/22

DESCRIPTION MAP

AKS ENGINEERING & FORESTRY, LLC
 12965 SW HERMAN RD, STE 100
 TUALATIN, OR 97062
 503.563.6151 WWW.AKS-ENG.COM



EXHIBIT
B

DRWN: WCB
CHKD: RDR

AKS JOB:
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