

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: 1/16/2018 **Approx. Start Time:** 10:30am **Approx. Length:** 60

Presentation Title: Annexation Policies for Urban Growth Management Agreements (UGMA)

Department: DTD, Planning & Zoning Division

Presenters: Dan Johnson – Assistant DTD Director
Nate Boderman - Assistant County Counsel
Martha Fritzie - Senior Planner

Other Invitees: Mike McCallister - Planning Director; Mike Bezner - Assistant DTD Director

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Provide direction to Planning Staff regarding provisions in urban growth management agreements (UGMAs) about providing consent for annexation of property into cities (when County consent is required).

EXECUTIVE SUMMARY:

Clackamas County has urban growth management agreements (UGMAs) with nearly all of the 16 the cities completely or partially contained in the County. These agreements generally spell out how the City and County will coordinate in areas which are of mutual interest to both the jurisdictions, particularly areas which the city would like to see annexed into their jurisdiction at some point in the future.

UGMAs get updated/amended only as necessary and as agreed-upon by the city and county. Planning staff is currently working on an update to the UGMA with the City of Milwaukie and a new UGMA with the City of Happy Valley to identify responsibilities for the western portion of the former city of Damascus. Both these cities have proposed to include provisions in their UGMA that would provide automatic consent by the County for all annexations within the UGMA area.

Consent for Annexations

Historically, the County has had little to no role in the process of annexations; the County's role generally has been limited to confirmation that the proposed annexation was located within the respective city's UGMA area (or at least not in another city's UGMA area).

However, as the result of a March, 2016 decision by the Land Use Board of Appeals (LUBA), it has become apparent that there are some instances in which the county is required to give consent for the annexation – specifically, if the annexation area is

proposed to include county right-of way and if the annexation is proposed under the “100% Consent Method” described in ORS 222.125.

As discussed in detail in the attached policy session worksheet from 10/18/2016, there are at least eight (8) different methods by which to annex territory into a city, most of which require consent from all or a portion of the property owners.

The requirement for the County to consent to annexation is limited to one of those methods - 100% Consent annexations (ORS 222.125) - and to a lesser extent Double Majority annexations and Triple Majority annexations (ORS 222.170). As such, it is very important to note as the Board considers this issue, that the cities in the county that are most actively annexing properties – Happy Valley and Lake Oswego – are generally utilizing methods other than the 100% Consent method. Happy Valley alone annexed well over 1,000 acres of land in 2016 and 2017, using methods that do not require the county’s consent.

Therefore, regardless of the Board’s decision on this matter, the County’s role in annexations and the County’s ability to control irregular extensions (aka “cherry stems”) will remain very limited.

Staff and the Board have had conversations about this issue in the past and previous Boards made it clear that they did not want to convey all consent authority for annexations. Options for those instances in which the County is required to consent that have been discussed in the past include:

1. Bring all such proposed annexations to the Board for approval;
2. Authorize the Road Official or Planning Director to give consent for all such proposed annexations (or provide automatic consent through the UGMA);
3. Authorize the Road Official or Planning Director (or the UGMA) to give consent only to proposed annexations that meet a certain criteria and have Staff bring the rest for review to the Board. Criteria proposed for discussion include:
 - a. Proposed annexations that utilize less than a certain distance (for example ¼ mile) of right-of-way would not require a review from the Board and are automatically consented to; all others would be reviewed by the Board.
 - b. Utilizing a ratio of land area to right-of-way area to trigger the need for the Board to review the proposed annexation; the remainder would be automatically approved.

Given the very limited number of circumstances in which the cities are even using the 100% Consent method and the expressed desire of the Board for cities to take county roads that are being used to access properties being annexed; Staff is asking the Board to consider another option:

Provide automatic consent for annexations only if the city agrees to accept the transfer of the section of the roadway being used to access the annexed property, without pavement improvements or equivalent compensation.

Staff could craft language with this provision for inclusion in the UGMAs and believes the cities would agree to this concept, as it would potentially eliminate the need for a public hearing; which is required under the alternative methods of annexation but not under the 100% Consent method.

A more aggressive position would be to try and negotiate with cities to accept UGMA revisions requiring all roadways, above the local access roads which are currently automatically transferred, to be transferred without additional payment or pavement improvements if such roadway is used for purposes of annexation.

FINANCIAL IMPLICATIONS (current year and ongoing):

Current Year - \$500,000 budgeted to facilitate road transfer

Ongoing – Long term road maintenance liability

Is this item (Road Transfer Funding) in your current budget? YES NO

What is the cost? \$500,000 What is the funding source? Road Fund

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?
Providing services to residents, property owners, the development community and businesses so they can experience safe, thriving and well-planned community, make informed decisions, invest and develop property.
- How does this item align with the County's Performance Clackamas goals?
Building Trust through Good Government

LEGAL/POLICY REQUIREMENTS:

The requirement for the County to consent to annexation is limited to 100% Consent annexations (ORS 222.125) - and to a lesser extent Double Majority annexations and Triple Majority annexations (ORS 222.170).

PUBLIC/GOVERNMENTAL PARTICIPATION:

Where applicable, staff has informed city representatives of the on-going discussion with the Board related to annexation issues.

OPTIONS

- 1.) Direct staff to craft language to be included in the UGMAs with cities, which would provide the County’s consent for annexations completed under the 100% Consent method, but only if the city agrees to accept the transfer of the section of the roadway being used to access the annexed property without any additional compensation of road improvements. Direct staff to bring all other proposed annexations which require County consent to the Board for review.

- 2.) Direct staff to craft language to be included in the UGMAs with cities, which would require the transfer of the section of the roadway being used to facilitate annexation under any set of circumstances, without any additional compensation of road improvements.

- 3.) Direct staff to bring all annexations which require County consent to the Board for review.

RECOMMENDATIONS:

Staff respectfully recommends the Board direct Staff to craft language to be included in the UGMAs with cities, which would provide the County’s consent for annexations completed under the 100% Consent method, but only if the city agrees to accept the transfer of the section of the roadway being used to access the annexed property, without additional compensation or road improvements. Direct staff to bring all other proposed annexations which require County consent to the Board for review.

ATTACHMENTS:

- a. Policy Session Worksheet (10/18/2016) discussing annexations and related issues

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Martha Fritzie @ 503-742-4529

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 10/18/2016 **Approx Start Time:** 10:30 AM **Approx Length:** 60 min

Presentation Title: Annexations

Department: Department of Transportation and Development (DTD)

Presenters: Dan Johnson – Assist. Director

Mike McCallister – Planning Director

Nate Boderman – County Counsel

Other Invitees: Barbara Cartmill – Director, Martha Fritzie – Senior Planner

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

No formal action is requested. Information Only.

EXECUTIVE SUMMARY:

Annexation Concurrence

On June 28th staff met with the Board to discuss a March 11, 2016 decision by the Land Use Board of Appeals (LUBA) remanding an annexation land use decision processed by a city. The grounds for remand was predicated on the use of a portion of County public right-of-way (ROW) to facilitate annexation. LUBA concluded that the County, based on the chosen method for requesting the annexation, had ownership interest in the ROW and that consent was required by the County in order to utilize the ROW in question as a method to facilitate the annexation. In addition, LUBA's opinion found that language within the current Urban Growth Management Agreement (UGMA) with this particular city did not suffice to meet the criteria of overarching consent to any or all annexations of this nature.

Prior to the LUBA opinion, the County had played no formal role except the confirmation that the proposed annexation was located within the respective city's Urban Growth Management Area defined under negotiated Urban Growth Management Agreement.

Annexations Generally

To date, the County has had little to no role in the process of annexations. As such it is important to not only understand the various processes for annexation but also those most frequently used.

Annexations of territory into cities may or may not require the consent of those within the affected area (area to be annexed). The two most common annexation procedures where consent is not required are "island annexations" and "health hazards annexations."

- Island Annexations (ORS 222.750): This procedure allows a city to annex, subject to a number of provisions, property without consent where the territory to be annexed is

Attachment a.

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surrounded entirely by the corporate boundaries of the city, or the boundaries of the city and a body of water or Interstate 5.

- Health Hazard Annexations (ORS 222.840): This procedure permits annexation of property in such circumstances where the Department of Health Services declares that the affected property is a danger to public health. Dangers to public health could include impure or inadequate water systems that expose the public to “communicable or contagious disease-producing organisms” that present a “clear possibility that the public is being exposed to physical suffering or illness”.

There are a number of annexation procedures that do require the consent, to varying degrees, of those within the affected area (area to be annexed). Consent is required for the following types of annexations:

- Voter Approved Annexation (ORS 222.111)
- Area Election (ORS 222.140)
- Consent of Landowner (Industrial land valued greater than \$7 million) (ORS 222.050)
- 100% Consent (ORS 222.125)
- Triple Majority [ORS 222.170(1)]
- Double Majority [ORS 222.170(2)]

100% Consent vs. Double Majority vs. Triple Majority

The pending policy decisions that flow from the LUBA case requires the County to consider when it will provide consent for annexations that require consent of those within the affected area. While there are a number of processes to facilitate an annexation, those most relevant to this topic involve the 100% Consent Annexations, Triple Majority Annexations and Double Majority Annexations. Note that emphasis has been added where there is a reference to consent and public right of way.

- 100% Consent (ORS 222.125): This was the type of procedure specifically at issue in the LUBA case. 100% Consent Annexations eliminate the need for an election when the consent is obtained from 100% of the property owners, and 50% of the electors in the affected territory. Electors for the purposes of these discussion are defined as those registered voters residing within the affected territory. In circumstances where the property or properties are vacant, no electors are required to consent as 50% of zero residents is zero. A county with jurisdiction of *public right of way proposed to be annexed has been deemed to be an “owner” for purposes of this statute*. Any single property owner withholding consent would prohibit a city from using this procedure. As it relates to the County’s participation in annexation requests, the 100% Consent process is the only process whereby the County could unilaterally prevent an annexation from moving forward under the context of the recent LUBA decision. However, this authority does not limit a city’s ability to pursue any one of the other annexation options noted above.
- Triple Majority Annexation [ORS 222.170(1)]: This procedure eliminates the need for an election when consent is obtained from a majority of land owners who own a majority of real property representing a majority of the assessed value of the land within the affected territory. It should be noted that ORS 222.170(4) specifically provides that *public right of way shall not be considered when determining land owners*, area of land or the assessed value for purposes of calculating consent requirements, unless the owner of the right of way files a statement with the city consenting to, or opposing the annexation. Even where the County specifically files a statement with the city regarding its position on a particular consent, the city will only need to obtain County consent

where it is necessary to meet the minimum requirements set forth under the statute in order to process annexations under this particular procedure.

- Double Majority Annexation [ORS 222.170(2)]: This procedure eliminates the need for an election when consent is obtained of a majority of the electors that own a majority of the land within the affected territory. Although Counsel is aware of no authority that has applied ORS 222.170(4), *stating public right of way shall not be considered when determining land owners*, to Double Majority Annexations, it appears reasonable to assume that provision would be equally applicable to annexations processed under ORS 222.170(2). As is the case with Triple Majority Annexations, the city will only need to obtain County consent where it is necessary to meet the minimum requirements set forth under the statute in order to process annexations under this particular procedure.

Urban Growth Management Agreements (UGMA's)

Of the seventeen (17) cities located in or abutting the County, there are fifteen (15) that currently have active UGMA agreements. See Attachment A for summary of UGMA agreements. These agreements generally spell out how the City and County will coordinate in areas which are of mutual interest to both the jurisdictions. While these agreements are generally consistent to form, they can vary greatly as it relates to specific items of concern to the particular city.

The County has negotiated terms of its UGMAs with each of the cities. The language contained in these agreements varies, and some agreements contain specific requirements regarding annexation consent while others do not. Those cities with current UGMA's referencing specific annexation requirements include Canby, Lake Oswego, Oregon City, Sherwood, and West Linn.

City Coordination

At the request of the County Administrator, staff met with city partners on September 28th to discuss the topic of annexation. More specifically, an opportunity for information sharing and forum to discuss concerns. Attendees included representatives from Sandy, Wilsonville, Oregon City, Gladstone, Milwaukie, Lake Oswego, and Happy Valley. The following is a summary of comments and concerns raised:

- Applicability of LUBA Decision: Only applies to Double Majority annexation requests.
- Role of Service Districts: While a more phased adjacent annexation plan may make sense for those cities providing a complete compliment of services, a large area of the County's urban area is served by independent service districts. As such, any concern of service provision confusion is minimized as there would be no change for a large number of the services currently provided.
- Annexation Patterns: Majority of cities have Cherry Stems (irregular extensions of city jurisdictions) and Islands (areas which have not chosen to annex yet).
- Growth Management Policies: Some cities, those that generally do not rely on districts for service provision, do have policies recommending against irregular extensions (aka Cherry Stems) annexations.
- Reasons for Annexation vary by Jurisdiction: While private property owner wishes may be a catalyst for a large number of annexation requests, annexations for necessity, in

the case of provision of sanitary sewer for health hazard abatement, are common. Health hazard abatements tend to require irregular extensions.

- Purpose of UGMA agreements: Identifies areas of interest for the cities. Where the city has interest in developing growth management policies allowing an opportunity to participate in planning, coordinating and provision of service.
- Role of County Policy Discussion: If the Urban Services Policy to date has been to support transfer of Urban Services to Cities, should Annexation Policy direction make it easier or harder for willing property owners to annex.
- General Request: Request the County not impose additional requirements for annexation beyond those already prescribed by state law, or make other procedural changes that would add uncertainty to the annexation process for property owners or the city.

Staff has attached correspondence submitted from cities. See Attachment B – Comments from City of Lake Oswego dated October 7, 2016, Attachment C – Comments from City of Happy Valley dated October 10, 2016, and Attachment D - Comments from Beery Elsner & Hammond (City of Happy Valley contract counsel) dated October 11, 2016. In addition, the City of Milwaukie provided a summary of Comprehensive Plan provisions related to growth included as Attachment E. Other cities did provide e-mails with general summary of annexation requests and comments which were incorporated into the comments above.

Summary

With the issuance of the aforementioned LUBA decision, development of a new process for issuing consent is required. Though staff is advancing development of such a process, it is important to note the following:

- The requirement that the County consent to annexation is limited to 100% Consent Annexations, and to a lesser extent Double Majority Annexations and Triple Majority Annexations; therefore, the ability to control irregular extensions (aka Cherry Stems) is limited;
- The County has negotiated terms of its UGMAs with each of the cities. The language contained in these agreements varies, and some agreements contain specific requirements regarding annexation consent while others do not;
- Discussions with the cities suggests a desire to continue to support the transfer of urban services from the County to the cities and a desire to not complicate the annexation process any more than currently required by state law;
- Furthermore, majority of those cities represented in the discussion believe irregular annexations are legitimate and, in some instances, required; and
- Note that this discussion relates to annexations only- transfer of roadway jurisdiction is a separate, but related, discussion.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? N/A

What is the funding source? N/A

STRATEGIC PLAN ALIGNMENT:

- How does this item align with the County’s Performance Clackamas goals?
 - Building Trust Through Good Government

LEGAL/POLICY REQUIREMENTS: N/A

PUBLIC/GOVERNMENTAL PARTICIPATION: Where applicable, staff has informed city representatives of the on-going discussion with the Board related to this new direction from LUBA.

OPTIONS:

Informational purposes only. No options or recommendations are presented for consideration.

RECOMMENDATION: N/A

ATTACHMENTS:

Attachment A: Urban Growth Management Agreement Summary dated October 12, 2016

Attachment B: October 7, 2016 comments from City of Lake Oswego

Attachment C: October 10, 2016 comments from City of Happy Valley

Attachment D: October 11, 2016 comments from Berry, Elsner, & Hammond LLP

Attachment E: City of Milwaukie – Comprehensive Plan Growth Elements Summary

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Dan Johnson @ 503-742-4325.
