

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

375 W. 4th STREET, SUITE 204
EUGENE, OR 97401
TEL (541) 954-1280
FAX (541) 343-8702
E-MAIL BILLKLOOS@LANDUSEOREGON.COM

February 17, 2010

City of Springfield and Lane County Planning Commissions
City of Springfield Planning Department
225 Fifth Street
Springfield, Oregon 97477

Re: Springfield 2030 Refinement Plan

Dear Planning Commissioners:

We represent the Willamette Water Company in the Springfield 2030 Refinement Plan proceedings and submit this letter and attached exhibits for entry into the record. The Willamette Water Company supports Concept 1, which proposes to expand the Springfield urban growth boundary (UGB) to include 235 suitable acres for employment use (420 total acres) in the Seavey Loop/Goshen area.

The Willamette Water Company

The Willamette Water Company is a Public Utilities Commission (PUC) regulated, quasi-municipal utility established in 1972. It currently serves domestic, commercial, industrial and public/institutional customers in the greater Goshen area. A map of the Willamette Water Company service area is attached hereto as Exhibit A. The current service area for the Willamette Water Company is heavily in commercial and industrial use, with non-residential customers accounting for approximately 70 percent of water usage and sales revenue. Its top customers include the BPA Alvey electrical substation, Emerald Peoples Utility District, JCI Fabricators and Conc Lumber.

The existing water distribution system in the Seavey Loop/Goshen area is robust. It is composed of approximately 40,000 feet of ductile iron main pipeline, varying from 20 inches to 6 inches in diameter. A map showing the diameters of the Willamette Water Company's water system is attached as Exhibit B. Ductile iron pipe provides a service life of over 90 years. The approximate age of the current system is 32 years. The system currently has 171 service meters, ranging in size from 3/4 inch to 8-inch. There are also 47 fire hydrants, which are utilized by the Goshen Fire Department. A map showing the hydrant and valve locations for the Willamette Water Company's system is attached as Exhibit C. The system is gravity fed by the Eugene Water and Electric Board's Bloomberg Reservoir, with an overflow elevation of 700 feet.

The Willamette Water Company currently has a 4 CFS water right on the McKenzie River. While this water right is ample to supply the projected 40 year demand in the current service area, Willamette Water has applied for an additional 34 CFS water right on the McKenzie River to supply safe drinking water to an expanded service territory in the southern Willamette Valley.

The current population of approximately 23,000 in this expanded service area is projected to grow to about 51,000 over the next 40 years. This population increase, combined with poor water quality and low water production in the area, will result in a high demand for a source of clean, treated surface water. The Willamette Water Company is positioned to fulfill this need.

As is evident from the above, Willamette Water Company has existing infrastructure in place to provide water service to the Seavey Loop/Goshen area under consideration for inclusion into the City of Springfield's UGB.

The Seavey Loop/Goshen Area Contains the Only Exception Lands Dedicated to Employment Use and is the Highest Priority Land for Inclusion into the UGB.

As staff has explained throughout the IIB 3337 process, Goal 14 and the Oregon Revised Statutes prescribe a precise hierarchy regarding the priority of land types that can be included within a proposal to expand an urban growth boundary.

ORS 197.298 sets out both the priority and the permitted exceptions for including lands within an urban growth boundary.¹ The highest priority land for consideration is land designated urban

¹ ORS 197.298 Priority of land to be included within urban growth boundary provides:

"(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

"(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.

"(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.

"(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).

"(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.

"(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

"(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:

"(a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;

"(b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or

"(c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion

reserve land. Since the City of Springfield has no urban reserve land, the city must move to the next highest priority land as prescribed by ORS 197.298(1)(b). The second priority land is land that is adjacent to the UGB that is acknowledged as an exception area or as nonresource land.

Of the areas under consideration for UGB expansion, the Seavey Loop/Goshen area is the only area that includes exception land planned for employment uses and is the area that has the highest concentration of exception land of all types. In short, if any area is brought into the City of Springfield to meet the identified employment land need, it must be land in the Seavey Loop/Goshen area.

While ORS 197.298(3)(c) allows for a city to include land of lower priority in conjunction with land of higher priority for the purposes of maximizing land use efficiency, the statute does not readily allow a city to skip higher priority lands to include lower priority lands instead. This point was made clear in DLCD's recent order to the City of Bend regarding its proposed UGB expansion. That order is attached hereto as Exhibit D (The full 156 page order is provided with the original of this letter; copies include only the cover page). In that order, DLCD concluded that the methodology and approach used by the City of Bend improperly excluded a substantial amount of land planned and zoned as exception lands in favor of including large amounts of lower priority lands. Exhibit D, page 115 of 156. As the LCDC order for Bend demonstrates, the hurdle for bypassing higher priority lands altogether in favor of lower priority lands is extremely high.

The Joint Planning Commissions should recommend that the Springfield City Council and the Lane County Commissioners include all of the acknowledged exception lands in the Seavey Loop/Goshen area, as well as those lower priority lands that will provide for maximum efficiency in providing services to those exception lands, in the new City of Springfield UGB.

Concept 1 is an efficient and defensible approach to fulfilling the City's employment land needs.

The Commercial and Industrial Buildable Lands Study/Goal 14 Analysis (CIBL) indicates that the City of Springfield needs an additional 640 acres of employment land to meet its needs over the next twenty years. With the guidance of the technical committee, staff and EcoNorthwest have developed three concepts as to how this need can be met. These three concepts are presented in the staff report.

The Willamette Water Company urges the Planning Commissioners to recommend adoption of Concept 1. It represents an efficient and defensible approach to fulfilling the City's employment land needs.

As noted above, the Seavey Loop/Goshen area represents the only area for consideration that

of lower priority lands in order to include or to provide services to higher priority lands."

includes exception land planned and zoned for employment (commercial and industrial) use and contains the largest area of exception land under consideration. It is the highest priority land for consideration and must be brought into the city if the city expands at all. The question is, how much land should be brought in?

The three concepts contain two different proposals for UGB expansion into the city. Concepts 2 and 3 envision bringing in a total of 260 acres to acquire 90 acres suitable for development. Those concepts include only exception lands in the Seavey Loop/Goshen area, which results in a jigsaw puzzle configuration of parcels.

Concept 1 envisions bringing in a total of 420 acres to provide 235 acres suitable for employment land use. Consistent with the principles set forth by ORS 197.298(1) and (3), Concept 1 includes lower priority lands entirely surrounded by exception lands or areas that will allow for the maximum efficiency of land uses in order to provide facilities and services to the exception lands in the area. As you can see from the graphic for Concept 1, it fills in the gaps of the puzzle.

Because the City of Springfield must include the Seavey Loop/Goshen area in any UGB expansion, it represents responsible planning and governance to do it in the most efficient manner possible. The way to do that is by recommending that the City Council and County Commissioners adopt Concept 1. It represents an efficient and defensible decision.

One final point should be made about the Seavey Loop/Goshen area. Map 9 from the staff report, entitled "Study Area Summaries," at page 647 of the staff report indicates that the Seavey Loop/Goshen area (Area 9/10) consists of 1,791 acres/399 tax lots. While the initial study area may have been that large, the Willamette Water Company is concerned that persons may believe that the entire area is under consideration for UGB expansion. It is not. There is no way the city could justify bringing in the large areas of farmland on the eastern portion of the study area.

Only the areas envisioned by the three proposed concepts represent defensible UGB expansion decisions, and of the three, Concept 1 is the best.

The Public Facilities and Services Analysis in the Staff Report is Misleading. There are Existing Water and Fire Services Available in the Seavey Loop/Goshen Area.

The staff report for this hearing contains information prepared by the public works staff regarding the Goal 14 Boundary Location Factor 2, which requires consideration of the orderly and economic provision of public facilities and services. That information is misleading.

The information provided in the staff report assumes that it is the City of Springfield and the Springfield Utility Board that is to provide the public facilities and services. So, for example, the Seavey Loop/Goshen area is identified as having no existing water service. See Section F-28, Staff Report p. 656. As this letter explains above, that is a factually incorrect statement.

Importantly, the assumption made in the city's analysis – that the city can and should limit its

review of public facilities and services to those that it provides — is not defensible. Again, the DLCD's order in the Bend case provides guidance on this issue. In the Bend proceeding, the city established review criteria that required lots to be serviceable by "city" water and sanitary services and is within the regional stormwater plan service area. DLCD commented that the serviceable criteria was permissible "except for the limitation to city facilities" for the sanitary systems. See Exhibit D, page 118, Table 3. A notation referring to the analysis for the sanitary facilities was made for the water and stormwater facilities.

In short, the appropriate consideration is whether public facilities and services can be provided to an area in an orderly and economic manner, not whether "city" facilities and services can be provided. Here, the Joint Planning Commissions and the local governments should know that the Seavey Loop/Goshen area considered for inclusion into the Springfield UGB already has existing water and fire services.

As discussed above and shown in Exhibits A through C, the Willamette Water Company has the existing infrastructure in place to provide water to the entire area considered for inclusion into the UGB. The Planning Commissioners should understand that water is not a "constraint" for the Seavey Loop/Goshen Area (see Staff Report p. 656, F-28), and will not be "difficult" to provide water services to (see Staff Report p. 661, F-33).

The case is the same for fire and life safety issues. Attached hereto as Exhibit E is a diagram showing the Goshen Fire Department service area. That diagram shows that the Seavey Loop/Goshen areas considered for inclusion into the City of Springfield are currently provided with fire and emergency services. There is no reason why these services could not be continued into the near-term future. There is no basis to conclude that fire services are constrained or difficult to provide for this area.

It is also worth noting that the staff report discusses the fact that Springfield fire services will need to expand to serve the southern Glenwood area as it develops. Any expansion plans that include the full Glenwood area can readily incorporate services to the Seavey Loop/Goshen area. In the mean time, public fire and emergency services already exist for the area and can efficiently be continued into the near-term future.

We urge the Joint Planning Commissions to recommend adoption of Concept 1 to the Springfield City Councilors and Lane Planning Commissioners.

Thank you for your consideration.

Sincerely,


Bill Kloos

Exhibits

- Exhibit A Map – Willamette Water Company Service area
- Exhibit B Willamette Water Company Pipe Size Map
- Exhibit C Willamette Water Company Hydrant and Valve Location Map
- Exhibit D DLCDC Order 001775 – Report on Bend and Deschutes County's Amendment
to the Bend Urban Growth Boundary (cover only, full copy provided to staff)
- Exhibit E Map showing the Goshen Fire Department Service Area