BEFORE THE WASHINGTON STATE BOUNDARY REVIEW BOARD FOR SNOHOMISH COUNTY

In re: CITY OF LAKE STEVENS RHODORA ANNEXATION, BRB File No. 04-2018

No. 04-2018
STATEMENT OF PROPERTY OWNER INTEREST IN FAVOR OF ANNEXATION

Lake Stevens Mountain View, I.L.C ("Mountain View"), as successor in interest to Mary Mayberry, hereby submits this prehearing brief with respect to the Petition filed by the interested Lake Stevens area residents ("Petitioners") pertaining to the City of Lake Stevens' (the "City") annexation of the collection of properties commonly known as the Rhodora Area.

I. INTRODUCTION

The matter before the Board is the proposed annexation of the Rhodora Area outside of the City of Lake Stevens. After proper notice to the City, a 60% petition was circulated in early 2018 and submitted after its completion. A petition to invoke the jurisdiction of this Board was submitted on August 8, 2018 by a group of local citizens.

II. STATEMENT OF FACTS

A. Annexation Area.

The Rhodora Area extends east from the southeast corner of the body of water known as Lake Stevens. It is bordered to the west by the City of Lake Stevens; the northern boundary is consistent with the boundaries of the nearby subdivisions; the eastern boundary is the Urban Growth Area boundary (UGA); and the southern boundary follows the Machias Cut-Off Road. The Rhodora Area is roughly 108 acres with a population of about 340 residents. The existing
County land use designations are Urban Low Density Residential and Urban Medium Density Residential.

B. **Annexation Process.**

The Rhodora Annexation originated with notice to the City of Lake Stevens via a ten percent petition pursuant to RCW 35A.14.120. Mountain View's predecessor in interest, Mary Mayberry, signed the original petition and subsequently sold the property to Mountain View. On December 12, 2017, the City Council adopted Resolution 2017-022, accepting the 10% petition and authorizing the circulation of a 60% petition. The December resolution was crafted pursuant to City Council Resolution 2016-21, creating an annexation plan and recommended zoning for future annexation areas, and an Interlocal Agreement between the City of Lake Stevens and Snohomish County adopted in 2005.

From January to March of 2018, signatures were gathered to complete the petition for submission to the City. The petition was delivered to the City on March 6, 2018. Following a certificate of non-sufficiency and the submission of a corrected petition, the City accepted the complete 60% petition.

In particular, with regard to the Fenner Plat signatures, the City of Lake Stevens was granted express authority and proxy to complete the annexation on behalf of all Fenner Plat property owners through Section 6.37 of the development’s Covenants, Conditions and Restrictions. This is why the Mayor of Lake Stevens signed as proxy for these property owners. When each Fenner Plat property owner accepted title to their property, they waived any right to protest or appeal the annexation and gave the City legal authority to sign on their behalf.¹

¹ This procedure has been preliminarily questioned by some petitioners. This Property Owner maintains that the sufficiency of the signatures is a question outside the Board’s jurisdiction but also points out that this issue has been expressly authorized by the Supreme Court of Washington. See *Yakima County (West Valley) Fire Protection District No. 12 v. City of Yakima*, 122 Wn.2d 371, 384-388, 858 P.2d 245 (1993) (waiver of right to object to petition is valid where other review procedures remain, such as the Boundary Review Board. *Id.*).
This includes the lot on which the original property owner, Susan Fenner, resided and maintained her home after the plat, as they specifically reference all lots in the legal description attached as Exhibit A. A public hearing for comment was held by the Lake Stevens City Council on June 19, 2018 and another is scheduled for September 25, 2018.

C. Invocation of BRB Jurisdiction.

The BRB’s jurisdiction was invoked under RCW 36.93.100(3)(a) on August 16, 2018 by a group of Lake Stevens area citizens. The only notice of their concerns has related to the sufficiency of the petition itself. To date, Property Owner is not aware of any further statements submitted by the Petitioners to the Board.

III. AUTHORITY AND ARGUMENT

Cities in Snohomish County are authorized to annex unincorporated areas of the County that are within the city’s designated urban growth area and are contiguous to city boundaries. RCW 35A.14.005 and .010. Procedural requirements for the 60 percent petition method of annexation are set forth in RCW 35A.14.120 and in the Washington State Boundary Review Board for Snohomish County Rules of Practice and Procedure (“BRB Rules”). Substantive requirements for annexations within Snohomish County are derived from RCW 36.93.157, .170, and .180.

The Board has limited discretion under state law with respect to its decision making authority. According to RCW 36.93.150, the Board may approve, modify, or disapprove of the proposal. However, with respect to every action except for the approval authority, the breadth of the Board’s options is limited. Any action disapproving the annexation must be based on evidence in the record that supports the conclusion the action is inconsistent with one or more of the objectives under RCW 36.93.180.

The Supreme Court of Washington has stated that a board does not need to achieve all nine of the statutory objectives or even most of them. *Spokane County Fire Protection District*
Rather, as long as a board considers the factors, singling some of them out for particular
attention, and concludes that the applicable objectives have been met, that board's decision
will be upheld. See King County v. Washington State Boundary Review Board for King County.

A. The Factors in RCW 36.93.170 to be Considered by the Board Support the Annexation.

Of the factors to be considered under RCW 36.93.170(1), many provide direct support
for approving the annexation of the Rhodora Area. Specifically, the Board should look to land
area and land uses, comprehensive plans, zoning, development regulations, interlocal
annexation agreements, and the likelihood of significant growth in the area and in adjacent
incorporated and unincorporated areas during the next ten years. Lake Stevens and Snohomish
County have an active annexation interlocal agreement, executed in 2005. The Lake Stevens
comprehensive plan assumes annexation of the entire UGA in the future and Lake Stevens
Resolution 2016-021 supports annexation of the entire UGA over the course of the next several
years. As discussed elsewhere in this Statement, the Rhodora Area annexation boundaries are
logical and the current development is generally urban in nature and supported by urban
facilities and services. Based on these considerations and consistent with the Growth
Management Act, the City of Lake Stevens is the best provider of municipal services and to
regulate future development in the Rhodora Area.

Of the factors to be considered under RCW 36.93.170(2), there is clear evidence that
efficient, effective, and robust delivery of municipal and other governmental services will be
achieved by approving this annexation. In addition, the Board should look to the effect of
ordinances, governmental codes, regulations and resolutions on existing uses and the probable
future needs for such services and controls. Further development and growth is very likely to
occur in the Rhodora Area in the near future and every level of local government has planned
for this through appropriate Growth Management Act measures, and the Board should
acknowledge and take this into consideration. The Rhodora Area has a mix of development
served by public sewer and private septic systems. With annexation, sewer extensions will be
more likely and certainly increasingly critical for the area when septic systems start to fail at
the end of their natural service life.

B. The Proposed Annexation Meets the Objectives of the Boundary Review Board.

There is no evidentiary basis to disapprove the annexation. Utilizing the factors to be
considered under RCW 36.93.170, it is clear that the proposal meets the applicable objectives
in .180, particularly (1)-(4) and (8). Comparatively, objectives (5), (6), (7) and (9) do not apply
in this case.2

1. Objective RCW 36.93.180(1): Preservation of natural neighborhoods and
     communities.

The City of Lake Stevens is aptly named after the body of water that it nearly surrounds.
This annexation adds a piece to the completion of that puzzle. The Rhodora Area is entirely
within the Snohomish County Urban Growth Area for Lake Stevens, and so this annexation is
consistent with the long range plan for development. The proposed annexation area currently
consists of predominantly large single family residential lots.

The Rhodora Annexation would preserve four complete subdivisions: North Star,
Fenner and Sterling Heights 1 & 2. Thus, the boundaries do not break up, divide, or otherwise
separate established neighborhoods. To the contrary, this annexation further the inclusion of
the Lake Stevens area into the City of Lake Stevens community. The rhetoric of the City of

2 Objective 5 is not relevant as the annexation adds area to a long existing City; objective 6 is not relevant because
there are no inactive special purpose districts concerned; objective 7 is not relevant because there are no apparent
impractical boundaries; and objective 9 is not relevant because there are no designated long term productive
agricultural or resource lands.

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Lake Stevens 2015 – 2035 Comprehensive Plan clearly identifies an intention to pursue annexation of the area surrounding Lake Stevens. See Chapter 1, pg. 2, 5. In accordance with the adopted Resolution 2017-022, the proposed zoning for the Rhodora Annexation area is proposed to be HUR (High Urban Residential) with a land use designation of Medium Density Residential.

2. **Objective RCW 36.93.180(2): Use of physical boundaries, including but not limited to bodies of water, highways, and land contours.**

The proposed annexation uses physical boundaries as follows:

- The southern boundary follows Machias Cut-Off Road.
- The eastern boundary runs along a large, existing residential neighborhood that backs up to the Rhodora Area. The eastern boundary of the Rhodora Area is also the boundary of the Lake Stevens Urban Growth Area, thus completing annexation for this portion of the UGA.
- The northern boundary would run along the back of an existing residential neighborhood and then along property lines near the crest of a hill where steep slopes are present adjacent to the Area’s NE boundary line.
- The Rhodora Area’s western boundary is contiguous with the current City limits.

3. **Objective RCW 36.93.180(3): Creation and preservation of logical service areas.**

The proposed annexation is consistent with the service territories of any districts/special districts (e.g. fire district, school district, sewer district, water service, etc.) in the area. This proposed annexation supports logical service areas as it would include all of 18th St. SE in a single jurisdiction’s service area for road maintenance. The current 2005 Interlocal Agreement between the City of Lake Stevens and Snohomish County will govern the big picture transition of services.

There is nothing irregular about the Rhodora Area boundaries proposed for annexation. As the City of Lake Stevens continues to incorporate areas around Lake Stevens, islands of unincorporated County territory will be reduced. As noted above, the Rhodora Area annexation will, in part complete annexation of the current UGA to the Area’s eastern boundary.

5. **Objective RCW 36.93.180(8): Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character.**

The proposed annexation area is within the Lake Stevens Urban Growth Area and urban level development is planned to occur whether or not the area in question is within the City of Lake Stevens. The proposed zoning designation is roughly consistent with the current use of the land and current zoning designations. Existing development in the Rhodora Area is urban in character. For example, the North Star final plat was recorded in November 2014 and the Fenner subdivision’s final plat was approved and recorded in November 2010. Both subdivisions have a range of five to six dwelling units per acre, a common urban residential density. While there is lower density development as well, such a mix is very common even in incorporated cities such as this; the annexation is consistent with the manner in which the area is developing.

**IV. CONCLUSION**

The Boundary Review Board should approve the annexation as proposed. The annexation furthers the goals and objectives described above, especially when considering the factors specified for review. The Rhodora Area is poised for urban growth and this annexation will ensure that this growth is metered by comprehensive land use policies.
DATED this 13th day of September, 2018.

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