



Commissioners

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Clark County Planning Commission
1300 Franklin Street
Vancouver, WA 98660

Re: Public Facilities Zoning Classification

Dear Planning Commission,

Clark Public Utilities respectfully requests the rezoning of all of its properties currently zoned as Public Facilities back to their original zoning classification that they held prior to the 2016 Clark County Comprehensive Plan Update.

Up until recently, Clark Public Utilities was unaware that its various properties had been rezoned as Public Facilities. The utility discovered this change when one of its property sales collapsed earlier in the year after the purchaser refused to accept the parcel with the Public Facilities zone classification.

The utility understands that the County adopted the Public Facilities classification and designated/rezoned the utility's properties to this classification as part of its 2016 County Comprehensive Plan Update. However, the utility was unaware of this wholesale change to the designation and zoning of its properties to Public Facilities until well after the Plan Update was adopted. It was thus not able to address the significant impact that this zoning change would have on its operations prior to its implementation. Recognizing that the Commission likely provided public notice, via publication, when this zoning classification was established, the utility was not provided actual notice of this proposed change. While it may be that the utility could have discovered this change in policy and zoning had it reviewed the 2016 changes to the Comprehensive Plan, modifications to the Plan in prior years have always been negligible regarding utility interests, and therefore, close monitoring was not justified. Since the utility could not have anticipated such an unprecedented and significant change in its property interest during that last Plan update, it should have been specifically notified of this action so that it could have been involved in the process.

After speaking with Planning Department staff, the utility now understands that under the new process it will take over a year to reestablish the zoning classification of any parcel to a use other than Public Facilities. Unfortunately, the utility's management of

its property holdings is likely much more dynamic than that of other municipalities and such delay will have a significant impact on its operations. In the last few years, in addition to property sales, the utility has had to perform various transactions including boundary line adjustments, property exchanges, and easement grants. These transactions will no longer be possible without first obtaining a Comprehensive Plan and zoning amendment to change the Public Facilities designation.

In addition to significantly delaying the surplus of its unneeded properties, this change will prevent the utility from conducting its normal operational activities. Given the strict use restrictions on the Public Facilities designation, the utility will be unable to grant easements to other entities or perform boundary line adjustments in the future.

The utility is frequently approached by governmental and private entities requesting easements across its lands. These easements are normally required as reciprocity for easements given to the utility for a particular project. Because property zoned Public Facilities can only be used for specific municipal purposes, the utility has no means for granting these easements in the future.¹ The entire parcel would have to be rezoned to a designation other than Public Facilities in order for the utility to grant an easement on the property, which is impossible if the property is still primarily used for a municipal purpose. This same restriction would also prevent the utility from entering into boundary line adjustments to resolve encroachment disputes with its neighbors.

In addition to granting easements to other utilities and private entities, the utility is also often approached by other municipalities, including Clark County, for easements/sales during road widening projects. Since only Park & Ride facilities, school bus facilities, and transit stations are identified as permissible transportation uses within the Public Facilities classification under Clark County Code 40.230.090, it would appear that the utility would also be unable to accommodate those requests in the future. The only avenues now available to acquire those interests by other municipalities will either be eminent domain proceedings, which will likely significantly delay those projects, or a Comprehensive Plan and zoning amendment to a designation other than Public Facilities that would allow such uses.

Given the significant impact that this zoning designation has on Clark Public Utilities, and by extension various other entities, the utility is requesting that the Commission consider specially excluding municipal utilities from the Public Facilities classification, and reestablish the original zoning classification for their property holdings, during the next Comprehensive Plan Update. If the purpose of the Public Facilities designation is to maintain consistency and recognize existing public facilities, it would seem that a Public Facilities overlay would accomplish the same effect without the adverse consequences associated with amending the Comprehensive Plan and removing the underlying zoning classifications.

¹ While the Public Facilities designation identifies utility use as permissible, that use appears to be limited to municipal utilities. It would appear that private utilities, such as Northwest Natural, would be unable to use an easement from Clark Public Utilities, on lands designated as Public Facilities, for their operational activities.

On behalf of Clark Public Utilities, thank you for your consideration.

Sincerely,


John Eldridge
Legal Counsel