

Voting On Annexations – A Long-Established Right

Excerpts From Case Law

Provided by Oregon Communities For A Voice In Annexations

Introduction

Oregon's highest courts (Appeals & Supreme) have repeatedly held that voter approval (or rejection) of discretionary annexations is a key part of the annexation process. "Discretionary" annexations are those not required by state law. They would not include, e.g., annexation due to health hazard.

Case law has made it clear that discretionary annexation is a two-part process. The first part of the process is "quasi-judicial" wherein a governing body (typically a city council), after conducting all required studies and planning, determines that a proposed annexation meets all legal criteria and therefore CAN occur.

The second part of the process is "political," wherein the electorate decides if the proposed annexation SHOULD occur. This action is neither governed by, nor subject to Oregon land use law. Excerpts from three relevant cases follow:

Bear Creek Valley Sanitary Authority vs City of Medford (130 Or. App.24 (1994))

"The decision by a city or other governing body that proposes an annexation is an act of planning that must comply with the land use laws. However, the subsequent acts that are necessary to finally adopt or reject the proposal, generally a popular vote...are not controlled by nor subject to the land use laws."

Heritage Enterprises vs Corvallis (708 P.2d 601 (OR. 1985))

"The separate decision of the electorate whether to annex, as opposed to the determination whether the proposed annexation would comply with the comprehensive plan, was not a 'land use decision' within the meaning of ORS chapter 197." (note: "Heritage" was a challenge of the first voter annexation charter amendment, passed by Corvallis in 1976. The decision upheld the charter amendment)

Gile vs McIver (831 P.2d 1024, 1026 (Or. App. 1992))

"The annexation and incorporation cases differ in a significant respect from this one (a zone change). They deal with processes that entail two decisions: a land use decision by the governing body and, assuming that it is affirmative, a later and separate 'political' decision by the voters that does not depend on land use requirements."

See also *Petersen vs Klamath Falls*, (566 P.2d 1193, 1196 Or. 1977), and *Stewart vs Corvallis*, (617 P.2d 921, 922 (Or. App. 1980)).

In addition, the Oregon Legislature has repeatedly rejected attempts by building and real estate interests during the past 2 decades to deprive citizens of the right to vote on annexations.