



Oregon Communities For A Voice In Annexations

Promoting & Protecting Citizen Involvement in Land Use Issues

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January, 2005

DEAR OCVA MEMBERS & FRIENDS:

From The Secretary:

Greetings to all of you as we begin another year: number nine for OCVA. It was December 1996 when representatives from a half-dozen citizens' groups in Oregon met at the state capitol to "circle the wagons" against the Oregon Building Industry Association, The Oregon Association of Realtors and others who were hell-bent on outlawing voter annexation in Oregon. Thus was OCVA born. Our antagonists vowed to "kick (us) in the head" and fronted two bills to outlaw voter annexation in the 1997 Legislature: SB-1137 and SB-500. But we stopped them. And did it again in the 1999 session. And again in 2001. We enjoyed a respite in 2003 when they didn't take us on...but as the 2005 session begins, we fully expect to be back in the trenches against this determined group.

During the past year there has been a lot of news on the annexation front in Oregon. Your officers were heavily involved in two major ORS-195 land grab attempts in the Portland Metro area, fielded numerous requests for help on smaller annexation issues around the state and even spread our wings beyond Oregon. Although we've done most of our updates via e-mail – as we said we'd do in our last printed newsletter – we felt it was time for another formal newsletter to the entire membership. **Please make sure we have your current e-mail and "snail mail" addresses & phone numbers as there will be a greatly increased need for rapid communication during the 2005 session.** So, without further adieu, here is a summary of OCVA activities since our last letter:

2005 Officers: By majority vote of the OCVA Board of Directors, your 2005 officers are: **Jim Thompson**, chair; **Richard Reid**, vice chair; **Jerry Ritter**, secretary and **Brian Beinlich**, treasurer. With your ongoing support we will continue to lead OCVA in its mission to preserve and protect citizen input into land use (and other) issues.

Voter Annexation: There have been no new voter annexation initiatives in Oregon since the failed attempt in Lebanon (one of only two VA initiatives that failed in Oregon). But there have been many annexations in our member communities, most notably in **Albany** and **Salem** where a dozen proposals were on the ballot in each city. All of them passed, once again demonstrating that VA is NOT being used as an anti-growth tool.

There were some twists. In Albany, one of the larger parcels was an island being annexed under ORS-222 "island annexation" language. We received a request for help from some residents of that parcel who were upset that they didn't get to vote. Unfortunately, with island annexation, a vote is not required of the residents in the targeted area under current state law. This is normally regardless of whether the city has a voter annexation ordinance or not. It happens that Albany applies its VA ordinance to island annexations, which is a bit unusual since these are typically

viewed as “non-discretionary” and not subject to a vote by anybody. However, our local charter amendments were never intended to trump state law: they are merely an additional POLITICAL step in the process.

There were other factors in this annexation: the city held a public hearing, but some of the residents say they didn't receive notice. They therefore filed an appeal with LUBA challenging the annexation. LUBA denied the appeal on timeliness (you have 21 days). Other options are being explored. In another twist, the city council has tentatively voted NOT to implement the annexations, although they have all been approved by city voters. **The stated reason: concerns over potential Measure 37 challenges**, e.g., people claiming the annexation reduces their property values. M37 is now a 1,000 pound gorilla that could have profound impact on our local decisions.

In summary, Albany used one of the state annexation statutes to initiate the contested annexation, then applied their voter annexation charter amendment after that process. This is how our voter annexation charter amendments are supposed to work. The unusual thing about this one was that it was an island annexation which, under ORS-222, is not required to be put to a vote. LUBA had no comment on this in its review of the challenge. Presumably, that's because LUBA deals with land use issues and, as Oregon's highest courts have repeatedly ruled, the act of voting on annexations itself is not a land use decision. We can provide examples from case law that are available for review by anyone in the wonderful public domain of the Internet.

But regardless of what happened in Albany, one can certainly argue that it is fundamentally unfair to deny island residents a voice in the process – which is the argument we've used for years against the “combined vote” interpretation of ORS-195.205(5). **This may be a “mission” we should consider taking on. Let us know what you think.**

Salem: We've come to expect underhanded tactics by Salem city officials ever since the bitter, but ultimately successful fight to implement voter annexation in 2000. All the annexation proposals since then have passed, except one – a 23 acre parcel called “Hazel's Hill” – which was trounced by Salem voters earlier in the year. In the 4 years since Salem's voter annexation initiative passed, there has been major turnover at City Hall and most of the current officials are no fans of voter annexation.

OCVA's **Richard Reid** reports that, in the wake of the Hazel's Hill defeat, some developers and city councilors teamed up to delete the city's code for annexation procedures and draft a new annexation code. The council creates subcommittees of 4 members to present “recommendations” for the council's consideration. Since it takes only 5 councilors to adopt a change, the subcommittee process effectively excludes the public.

One of these subcommittees was assigned to rewrite Salem's annexation procedures. If adopted as expected in January, the new ordinance would significantly reduce the information about an annexation appearing on the ballot. In most cases, it would allow a developer to submit a “concept” plan rather than a more detailed development plan and would allow significant post-election changes to an annexation simply by applying to the community development director. And it would allow the developer to avoid any mention of social, environmental, and economic impacts on the ballot.

But there have been conflict of interest issues raised by citizens' groups, who say the Mayor and two of the councilors should recuse themselves from voting on the proposal because they received campaign donations from development interests that testified in favor of it. The city charter requires an elected city official to disclose contributions above \$501 from anyone who might benefit financial from the official's public decisions. Some of the developers pushing the change exceeded that limit, and, according to the citizens' groups, this was not disclosed during two public proceedings where the proposal was considered. So it's more “business as usual” in the state capital. If the council is ultimately successful, it will be only a matter of time before councils in our other member communities hop on that bandwagon.

Voter Annexation, Cont.: There were a number of other annexation proposals on the November ballot in OCVA member communities with mixed results. The one that generated the greatest interest from us was Happy Valley's Measure 3-147. This would have granted the city – an OCVA member community - authority to annex a large amount of land south to the Clackamas River and west to 82nd Ave. over the next 10 years without voter approval for each annexation. The city had been successful in a similar, but smaller, annexation earlier in the year which is to take place over 5 years.

The prime target of this annexation attempt was the Clackamas Town Center. But some Milwaukie officials, who would also like to annex the lucrative Town Center area, were reportedly not pleased with Happy Valley Mayor **Eugene Grant** over this proposal. Mr. Grant is no stranger to us. We've battled him on several fronts over the years. Milwaukie's Mayor was quoted as calling the Happy Valley attempt "scraping the cream off the top" and a Milwaukie city councilor referred to the proposal as a "land grab."

But when the ballots were counted, the measure fell 16 votes short! We can just imagine the reaction of city officials and fully expect that they will be right in the middle of another attempt, should it come, to outlaw voter annexation in the Legislature.

Other Annexation-Related Activities and Developments

ORS-195: Here's where we've spent most of our time and efforts during the past 8 months. The big news involved two ORS-195 annexation attempts in the Portland Metro Area. There was also an ORS-195 UGB annexation attempt made by Redmond after several years of planning by the city to annex its UGB. OCVA's **Bill Boddien** and others led the opposition in Redmond, but were ultimately unable to convince city voters not to run roughshod over the UGB. We all know how ORS-195, as it is being interpreted by the League of Oregon Cities (combined vote), effectively denies those most impacted by annexation a voice in the process. Bill's leadership in Redmond allowed us to focus on Metro.

In the first situation, the City of Tigard attempted to annex an area called "Bull Mountain." In the second, the Tualatin Hills Park and Recreation District wanted to annex a large amount of land into its district. When citizens in those areas found out about the method planned for the annexation, an uproar ensued. As with most ORS-195 annexations, practically nobody knew the gory details until the plans were considered done deals. A major reason cities use 195 is to avoid having to address concerns and opposition from citizens in the targeted area(s).

Citizens' groups in both target areas contacted us for help. We subsequently spent a considerable amount of time communicating with them and interfacing with attorneys they had hired. **One of those attorneys uncovered a bombshell: a previously unknown (by anybody, including the city attorneys) section of ORS-268 which requires Metro area cities to use ORS-222 exclusively to annex property.** 222 requires a vote of either just the target area or a double majority with city voters. On top of that, the Beaverton City Council, after hearing an earful from angry citizens, refused to buy into the THPRD annexation plan. Since an ORS-195 annexation plan requires agreements among local governments, special districts and service providers, getting one or more of these entities to refuse to buy into the plan can throw a monkey wrench into the process.

Tigard proceeded with the Bull Mt. annexation attempt under ORS-222 and got it thrown back in their faces by nearly 90% of the Bull Mt. citizens. Tigard city electors voted 65% in favor of the annexation, but with double majority, either group has veto power. So you can see how this would have worked under ORS-195.

Needless to say, the Metro cities are furious and have apparently made plans to repeal that pesky ORS-268 provision, reportedly with the help of Senator Ginny Burdick. So watch for a bill coming soon in the 2005 session – which we will, of course, oppose. We have expressed our concerns to Senator Burdick.

As we predicted 5 years ago, ORS-195 has become THE biggest and most contentious annexation battle in the state. It is a positively awful law. You are all familiar with our attempts to get some much-needed fairness written

into the statute. So far, The League of Oregon Cities and its allies in the development community have stopped us – but we’ve lined up supporters for another attempt in 2005. **And when that happens, we’ll need your help, so watch your e-mail.**

Other Annexations: We’ve been receiving 1 - 3 requests for help on annexation issues from around the state nearly every month lately. A recent example came from **Scio**, where a group of property owners requested annexation of their parcel so they could develop it. Residents of nearby properties are objecting, citing lack of infrastructure, cost, and quality of life concerns. Unfortunately, this appears to be an ORS-222 annexation under another definition of “double majority,” where those requesting annexation own more than 50% of the land area and more than 50% of the assessed value. In that case, the annexation can happen without any further vote – **unless the city is an OCVA member community** – which Scio is not. What we’ve found (which we pretty much knew anyway) from the requests we get is that there is very little understanding of annexation law among Oregon citizens. And cities use this to their great advantage.

OCVA Goes Beyond Oregon: We still get e-mails from our newfound friends in the UK (see last newsletter), but on topics other than annexation. So when we received a request for help from a citizens’ group near **Durango, Colorado**, we saw it as a worthy cause and an opportunity to network and “spread our wings.” This group was incredibly well-organized, but badly outgunned and outfinanced. They were trying to implement a voter annexation ordinance and were up against the identical opposition tactics we’ve all come to know so well. We shared our knowledge of Oregon’s voter annexation experience and helped them dispel rumors being spread by the opposition that Oregon voters were repealing their VA ordinances. In the end, their effort failed 55% - 45%, but it was a gallant try by a very dedicated group and it was our pleasure to work with them. As the U.S. population continues to expand and resources continue to dwindle, these issues will come up in ever greater numbers.

So – it’s been a busy year on the annexation front. Regarding all the foregoing comments about the various statutes, please remember that none of us is an attorney and therefore none of the above – nor anything that follows – can be construed as legal advice. However, we do have a lot of experience and knowledge of these situations, as do many of you.

SYSTEM DEVELOPMENT CHARGE UPDATE: In the wake of the Tualatin Hills Park District’s failed annexation attempt, the district is imposing significant SDCs on new development within its jurisdiction. In **Philomath**, former OCVA chair **Jeff Lamb** reports that the city has imposed what may be the highest sewer SDCs in the state by raising the SDC from around \$1,400 to \$5,200. The city council had previously raised the street SDC. Philomath Mayor Chris Nusbaum was quoted as saying, ***“We are going to grow. Growth is expected, and I don’t think it’s fair for our current citizens to pay for future growth.”*** WOW! what a novel concept!

Senator Kurt Schrader, our long-time ally and tireless crusader for SDC reform, thinks we may have another shot at it in the 2005 session. He’s advised us that he plans to talk to **Senator Charlie Ringo**, who sponsored SB-500 in the 2003 session. Unfortunately, that bill died in committee. But as we’ve long said, something’s got to give. Even Redmond city officials, after seeing school bond after school bond go down at the polls, have grudgingly acknowledged that school SDCs should be considered.

It doesn’t take a rocket scientist to see that the current system for financing schools (and police and libraries) has broken down and is woefully inadequate. That’s because growth does NOT pay its way, despite the constant claims to the contrary by the development lobbies. OCVA has supported SDC reform since we were established, and will continue to do so.

SLAPP-Happy in Josephine County?: In what may have been the first test of the anti-SLAPP protections we were able to implement with our co-sponsorship of the successful HB-2460 in 2001, a Josephine Co. Circuit Court has thrown out 4 of 9 allegations against a defendant. The defendant – a public activist who has had quite a bit of success with LUBA appeals – was sued by two developers for \$3 million. He has spoken out against one of their proposed projects and had previously won two LUBA appeals against the same developers. Does this sound

familiar? It did to the *Grants Pass Courier*, whose editor opined that the suit “**sure looks like a SLAPP to keep him and others concerned about their neighborhoods quiet.**” The charges ranged from “implied defamation” to “interference with economic relations,” “trespass” and “unconscionable tactics.” Of course, this is not being referred to as a SLAPP by the plaintiffs...but if it looks like a duck and walks like a duck...

As previously mentioned, the court has thrown out the charges it felt were directly related to the defendant’s right of free speech in a public forum, under Oregon’s new SLAPP protection. But the plaintiffs have asked for the court’s reconsideration, and the other charges remain. This offers a clue as to how plaintiffs plan to get around the new SLAPP protection: they simply throw in a bunch of other charges that are not directly related to free speech.

The **Goal One Coalition**, a citizens’ group whose mission is to “champion the role of citizens in decisions affecting the livability of their communities and the sustainable use of the natural environment” has set up the “Right to Speak & Petition Fund” to help with the defendant’s legal expenses. The fund’s director, Mike Walker, said, “**filing a lawsuit against Steve because of his efforts to preserve and protect his community is an obvious attempt at intimidation.**” Those wishing to contribute can make checks payable to the Goal One Coalition, and in the “For” space on the check, write “*Doob legal expense fund restricted donation.*” The address is 3388B Merlin Road #195, Grants Pass, Oregon, 97526.

The November Election: There will be quite a few new faces in the Oregon House of Representatives this month. Not so much in the Senate, where most of the last session’s members are back. As we did prior to the 2003 session, we sent every incoming legislator a letter and fact sheets describing the issue of voter annexation, relevant court decisions, and warning them that our opponents are likely to try again to outlaw VA and revoke our local charter amendments. Recall that in 2003 they didn’t take us on for the first time in 3 sessions. **Don’t plan on that respite to continue!**

The statewide issue of potentially greatest importance to our mission is Measure 37. M37 could have major implications for us. We’ve already noted one pertinent city council action based on M37 and others are bound to follow. Watch for a growing flood of M37 claims around the state.

Two local races were of particular importance to us: the mayoral races in **Turner** and **West Linn**. We’re pleased to report that OCVA chair **Jim Thompson** was given another term as mayor of Turner. The news wasn’t so good in West Linn where OCVA’s **David Dodds** failed in his re-election bid. David has been a vocal leader in the SDC reform effort in Oregon, and West Linn has some of the state’s higher SDCs as a result. But in that process, he made a lot of enemies among “the powers that be” as we all do when we tangle with the entrenched power bases in our communities. We know David won’t give up the good fight and we look forward to seeing him return to public office eventually.

More Local Shenanigans: We encounter underhanded tactics by local governments all around the state, which is one reason so many people have such a low opinion of government at all levels. The City of **Coburg**, just north of Eugene, has one of the biggest police forces per capita in Oregon. They had a lucrative ticketing operation going on the stretch of I-5 that runs by Coburg and that’s where a big chunk of the city’s revenue came from: about \$750 per city resident last year. That stretch of road became Oregon’s most notorious speed trap. However, after numerous citizen complaints, a bill was passed in the 2003 Legislature prohibiting cities from citing drivers for infractions committed outside their city limits – and the land on which the I-5 roadbed lies was not in the Coburg city limits. So, faced with a potentially significant budget hit, the city initiated annexation proceedings for 60 acres of land, including the land through which I-5 runs near the city. There were no citizen objections, so the annexation was rubber stamped by the Lane Co. Boundary Commission. The Coburg Speed Trap is back in business.

Shortly thereafter, it was revealed that Coburg has been running a budget deficit and a \$230,000 shortfall was “discovered” – even though the budget was reported as being “balanced” in April. The *Eugene Register Guard* reported that the city recorder was fired, the police chief resigned, the city was named in a defamation lawsuit by a

former police officer and the city councilors were “surprised” by the shortfall. Ain’t small town politics fun? **Just watch your speedometer when driving on I-5 past Coburg!**

Message From The Chair:

As OCVA starts its ninth year of existence it makes one wonder where the time has gone. We've generally been successful in our Legislative endeavors, especially in protecting our goals regarding annexations. Perhaps we can find some “friends” in this session to assist in dealing with our objectives regarding System Development Charges (SDCs.) These are costs that should be passed on to developers especially now when cities are in budget restraint to simply retain existing services to their citizens. I can speak from experience as I was re-elected to another two year term as Mayor of the City of Turner. I attend numerous meetings with other city officials. Budget issues, along with the passage of Measure 37, top the list of concerns. In Turner we are still dealing with the proposed electrical generation plant and we've been told this should come to a head sometime in the first part of 2005 - it's been in process since the Legislature passed HB 3788 (which allows expedited approval of power plants) in June of 2001.

I hope you all enjoyed a great holiday season and we look forward to working with you again in 2005. I would be remiss if I failed to mention the outstanding work that Secretary Jerry Ritter and Treasurer Brian Beinlich do for our organization. Quite frankly, without them I'm afraid OCVA would be a place in the history books.

Message From The Treasurer:

I haven't much to add to Jerry's and Jim's comments. Jerry has done his usual superb job of summarizing the activity since our last formal newsletter. Going forward, we'll be on the lookout for challenges to voter annexation. We'll need to work hard to solidify the “double majority” interpretation of ORS-195. We'll want to keep our eyes on the changes to the UGB amendment process being proposed at DLCD. And perhaps we'll be able to help our “leaders” finally recognize the need for SDC reform. Of course, all of this will occur in the context of the 1000 lb. gorilla of Measure 37. It should make for an “interesting” year. **As the session progresses, we'll be relying on the OCVA Alert List to keep in touch, so please, be sure we have your e-mail address if you have one, especially if you are receiving this newsletter in printed form.**

We will not be asking for dues this year, since our finances are in good shape. We've considerably reduced our printing and mailing expenses by using electronic newsletter delivery. And many of our members chose to send in dues and donations last year, even though we didn't ask for them. We are truly grateful for your support.

Depending on the Legislative climate, we may consider hiring a lobbyist part-time to help us with a challenge to voter annexation should one materialize, or in support of a coalition to advance SDC reform. Such a move might strain our finances. But we'll let you know before we take such an action. We also expect to post a Microsoft Access database on our web site with the addresses of all legislators, to assist members in writing letters to the Legislature on important topics. We'll let you know when that becomes available.

In closing, all of us at OCVA look forward to working with you to achieve OCVA's goals in the coming Legislative session. We wish all of you a happy and successful New Year.

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