



# Oregon Communities For A Voice In Annexations

Promoting & Protecting Citizen Involvement in Land Use Issues

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**DEAR OCVA MEMBERS, SUPPORTERS & FRIENDS:**

### **FROM THE SECRETARY: Legislative Wrap Up**

Most of you have been receiving regular updates from us since just prior to the start of the 2007 legislative session. As we normally do after a session concludes, we are publishing a wrap up of the session from OCVA's perspective in both electronic and hardcopy forms. The latter will be sent to all member addresses on record not listing an email address. The rest of you will be receiving this electronically, plus it will be posted on our website.

I'm pleased to report that OCVA had another successful and productive session. As a result, Oregonians have gained even more protection against forced annexation and have won a greater voice in certain annexation decisions. Even better, there was far less fighting than in the 2005 session – a welcomed change – between us and our usual opponents. Let's begin with the reform of ORS 222.750: the "Island Annexation" procedure.

### **Reform Effort Began in 2005**

Having finally accomplished our long-standing goal of clarifying the ORS-195 ("Service Provider") annexation voting procedure as meaning "double majority" in the 2005 session, we announced that our next target would be island annexations. At the time, Beaverton was making most of the headlines through its intentional "islanding" of the Nike campus. This was done by annexing streets to surround the area, making it an "island" of unincorporated territory surrounded by city property. Under the existing law, "islands" could be annexed with no vote. Nike objected and took the issue to the 2005 Legislature. Senate Bill 887, passed in 2005, gave Nike and several other businesses long-term protection against forced annexation. It also placed a 2-year moratorium on forced annexations by Beaverton.

But these protections were not statewide. With ORS-195 no longer a forced annexation option, other cities, notably **Eugene**, began intentionally creating islands through street annexations. We were fielding complaints and this raised the priority for 222.750 reform.

SB 887 also created an "annexation work group." OCVA was a participant organization along with the usual list of interested parties from both the public and private sectors. The group's mission was to examine state annexation issues and make recommendations to the 2007 Legislature for changes. The work group met in the spring and summer of 2006. Our chairman, Richard Reid, was OCVA's representative and spokesperson.

## Island Annexation Reform, Cont.

### ORS 222.750 Reform on the Work Group's Agenda

The work group meetings provided an ideal venue for the issue of island annexations – particularly the intentional creation of islands – to be raised. Richard brought up the topic and made our concerns a matter of record. As a result, the final report of the work group to the Legislature stated that *“cities should not be annexing public rights of way solely to create islands.”*

This was a significant coup and provided a solid launch platform for the reform effort. That, plus the increasing incidence of intentional islanding going on, prompted our long-time ally, **Rep. Bill Garrard** (R., Klamath Falls) to launch a legislative remedy. As chairman of the House Interim Land Use Committee, he asked **Rep. Bob Ackerman** (D., Eugene, now retired) to draft legislation putting some limits and conditions on island annexation.

### LC 1245

OCVA was honored to be asked to assist Rep. Ackerman in drafting the measure. Rep. Ackerman completed his draft by late summer, 2006. It contained an outright ban on the use of streets as island boundaries and a 10-year phase in of the tax hit caused by annexations. Legislative Counsel (LC) assigned the number 1245 to the measure. In October, 2006, LC 1245 was brought before Rep. Garrard's Interim Committee for a hearing and work session. It received a 5 – 1 endorsement for introduction as a committee measure in 2007.

### On To The 2007 Session

LC 1245 was introduced as House Bill 2050, but quickly bogged down. Several clones were also introduced – chief among them HB 2760 by **Rep. Chris Edwards** (D., Eugene) - along with a number of other annexation reform measures. **Notably, once again the opponents of our “voter annexation” ordinances left their guns holstered. “VoA” now seems to be an accepted fact of life in Oregon – THANKS TO OCVA!**

In March 2007, some of the bills had a hearing in **Rep. Arnie Roblan's** (D., Coos Bay) Committee on Environment & Natural Resources (there being no “land use committee” in 2007). Rep. Roblan quickly concluded that the island annexation issue needed further study. But rather than shoving it off to the side, he commissioned a SECOND work group to iron out the differences among the numerous interested parties and come up with a final draft.

Led by **Rep. Brian Boquist** (R., Dallas) the group included, along with OCVA, representatives from Friends of Bull Mountain, legislators, all of our usual opponents and other public & private interests. Richard and I (primarily Richard) represented OCVA. HB 2760 became the vehicle and was vigorously championed by Rep. Edwards and **Rep. Brian Clem** (D., Salem). There was much debate and discussion, complicated by a fast-approaching deadline. But thanks to email and our wonderful committee administrator, **Cat McGinnis**, after 13 “dashes” (amendments), we had a final draft – literally at the last minute of the final day for bills to make it out of committee.

### **Not Everything We Wanted – But A Significant Improvement**

The process of getting a bill passed involves a lot of give and take. Very seldom do you get a slam dunk like our HB 2484 in 2005. The difference between that effort and HB 2760 was that the latter evolved through negotiations BEFOREHAND, rather than through heated committee battles and floor votes. We therefore pretty much knew beforehand what would fly and what wouldn't. The result was a unanimous endorsement by Rep. Roblan's committee.

We were not able to retain the total ban on streets as island boundaries. The final draft permitted up to 25% of an island boundary to be made up of public rights of way. LC advised that the 10 year tax phase in provision raised constitutional issues, and it was pulled. In its place, a minimum delay of 3 years was imposed between a decision to use ORS 222.750 and the actual annexation. A public hearing requirement was included and finally, as we had strongly urged, an emergency clause was inserted.

The whole process was remarkably cordial: no knock down drag outs, no dirty tricks and no bloody noses when it was all over. The League of Oregon Cities didn't like the final draft, but didn't fight it. HB 2760-13 sailed through both chambers by better than 10:1 majorities and was signed into law on June 27, becoming effective on signature thanks to the emergency clause. **As a result, the "island annexation" process is now considerably fairer, and there will be less incentive for cities to intentionally annex streets to create islands.**

As usual, we had great support from our board and members – and also from **Nike Corporation** and their government affairs rep., **Julia Brim-Edwards**. Given their experience, we opened up a dialog with Ms. Brim-Edwards early in the process, and she became a dedicated proponent of the reform effort. We are thankful for her help and the support we received from all of **YOU!** I especially want to note the role played by our Eugene UGB affiliate, the **River Road/Santa Clara Property Owners Association**. They've been at the forefront of the street annexation fight for several years. Also for the leadership of Reps. Edwards, Boquist, Clem, Roblan and a number of other legislative allies who made this happen....i.e., basically almost the entire population of 900 Court St.! And of course **Governor Kulongoski** for signing the bill.

**This revision should stop the wholesale annexation of public rights of way to intentionally create islands**, which was the reform movement's prime directive. The task of passing 2760 consumed about 90% of my OCVA efforts during the 2007 session. I believe it was time well-spent. It took 10 years to reform ORS-195.205-215 and only 2 years to reform ORS 222.750. Both successes infused a needed dose of fairness into Oregon's annexation processes.

### **HB 3303**

There were about a dozen annexation bills introduced in 2007, including the near-clones of HB 2760 (cloning is a common practice in the hope that at least one of the "clones" will move). Of the others, **HB 3303**, introduced by Rep. Clem, was of particular interest to us because it dealt with **Voter Annexation**. Specifically, it provided that in OCVA member communities with "the vote," unincorporated "islanders" targeted for annexation under ORS 222.750 would be allowed to participate in the vote through a single majority (combined) ballot.

### **HB 3303, Cont.**

We were initially going to oppose the bill. We didn't like the fact that it gave only "islanders" near our member communities a voice. We also didn't like the "combined" vote provision for the same reason we didn't like it when it was still part of ORS-195. We preferred a "double majority" version, **HB 3304**. However, Rep. Clem was one of our strongest allies in this session, and his constituents included some large island areas within the Salem UGB. It also became clear that 3304 wasn't going to fly. Salem is one of our member communities (after a long, dirty battle) and these folks very much wanted a voice in any annexation attempt against them.

We agreed to take a neutral position on the bill. 3303 went through both chambers by large majorities and was signed into law. **So for those of you in communities with "the vote," if your city goes after an "island," those residents will now be able to participate in the vote.**

### **Other Successful Annexation-Related Bills**

**HB 3013:** Introduced by **Rep. Jerry Krummel** (R., Wilsonville...and soon to retire from the Legislature), this bill prohibited cities from launching annexation against territories within their UGBs that are themselves trying to incorporate as separate cities. It was in direct response to Tigard's plan to quash the Bull Mountain incorporation effort last year. We supported this bill. It went through both chambers with little opposition and was signed into law.

**SB 417:** Introduced by **Sen. Vicki Walker** (D, Eugene) and several Lane County cosponsors, 417 abolished the Lane Co. Local Government Boundary Commission – the last active boundary commission in the state. The B.C. was one of the most arrogant government bodies we've ever dealt with. It served, with extremely rare exceptions, as merely a rubberstamping authority for any annexation a Lane Co. city wanted. Responding to numerous complaints about the commission's total lack of accountability to the voters, the Lane. Co. delegation went after it. I'm pleased to report that SB 417 was also successful.

### **Failed Annexation-Related Bills**

One bill we had hoped to pass was Rep. Krummel's **HB 3012**. This sought to limit the widespread practice of "**hostage**" annexation, where a city demands a consent to annex for granting building and/or other permits to an unincorporated property owner within its UGB. The League of Oregon Cities didn't like this one, and it seemed to us from early on in the session that the 74<sup>th</sup> Legislature didn't have the same willingness to go to the mat with The League as their 2005 predecessors did. 3012 essentially ran out of time in Rep. Roblan's committee and wasn't advanced. **But Hostage Annexation is the next process we intend to address. There are already plans for a renewed legislative effort in the works.**

**HB 3409 and HB 3412** were two bills introduced by **Rep. Larry Galizio** (D., Tigard) for a Tigard city councilor (**Gretchen Buehner**) who was unhappy with the Bull Mountain incorporation effort. They were designed to make it more difficult for territory to incorporate, and to revoke the prohibition, won in 2005, against a neighboring city vetoing such incorporation efforts. We opposed both bills and neither got a hearing. Ms. Buehner has made it clear that she thinks cities, not citizens, should make annexation decisions. I'm betting we haven't heard the last from her.

### **Beaverton Gets Spanked . . . again**

...this time by the Oregon Supreme Court. As previously noted, Beaverton intentionally "islanded" the Nike campus and was planning to annex it until the 2005 Legislature stepped in. SB 887 put the Nike campus (and the properties of several other businesses) off limits to forced annexation. But the "island" also included some additional property. One parcel, owned by **Wells Real Estate**, was targeted by Beaverton for annexation. The city claimed the Wells property could be annexed because it was a contiguous "island." But since it is a portion of an encircled area that now has immunity from annexation, the Court said "NO!" The case is *Costco Wholesale v. City of Beaverton, S53777*, which can be found on the Dept. of Justice's website. It's a good read as it includes some history of annexation law in Oregon which OCVA helped write.

Beaverton's city government has been giving us lots of ammunition for the annexation reform effort in Oregon for several years now. That trend seems unlikely to change, despite the multiple "spankings" the city has earned.

In summary, I think we can once again be proud of the accomplishments we've made and/or had a hand in during the past 2 sessions to further our goal of enhancing "the public voice" in annexation decisions. We were able to convince a great majority of legislators of what we all know is true: **FORCED ANNEXATION SIMPLY ISN'T FAIR!** It was through YOUR support that this became possible. **THANK YOU, ONE AND ALL!!**

### **Addressing Growth's Impact On Schools: SOME PROGRESS**

OCVA has long sought to reform Oregon's system development charge (SDC) laws. These currently prohibit a city from charging SDCs for schools and some other vital public services. All our previous efforts to change that have been buried by the powerful Homebuilders Association and other development interests. Communities all over the state have found out that growth absolutely does not pay its way and that schools are usually the largest unfunded cost of growth. We've long said "something's got to give." It finally did in 2007 with 2 successful bills.

**SB 1036**, sponsored by half the Legislature, allows school districts to impose a \$1.00/sq.ft "construction excise tax" up to \$25K per building in new development to help defray the cost of new school facilities. Certain exemptions are made for projects such as low-income housing and hospitals. While not as good as allowing SDCs for schools, it will help some. **And it was supported by the Homebuilders!** You therefore might guess there are strings attached, and you'd be right. School districts can't impose similar fees for any OTHER public service. And of course, it lessens the chance of passing true SDC reform. There's a method to every madness.

Prior to the passage of **SB 336**, introduced by long-time ally **Sen. Kurt Schrader** (D., Canby), a city was prohibited from even considering the impact on schools when permitting new development. **This has been one of the main drivers of the voter annexation movement.** SB 336 has lifted that prohibition, provided that a school district has developed a school facilities plan and met other parameters required in the bill. While not SDC reform, these measures are at least a start. True SDC reform remains a goal and we will continue to pursue the issue.

### **Other Legislation**

One final bill I want to talk about is HB 3025, sponsored by the Homebuilders, Realtors, the League and others of the regular opposition camp. The list of sponsors alone raised more red flags than you'd see at a May Day celebration in Havana. What the bill basically does is establish that approval – or denial – of a new subdivision is not a “land use decision.” Presumably, the purpose was to lessen the avenues for appeal of such decisions. It appeared early on that with that level of firepower behind it, this one was going to soar (it did), and our resources were consumed with the annexation measures. It remains to be seen what the long-term impacts will be.

That mostly sums up OCVA's interest and involvement in the 2007 session. You always want to walk away with SOMETHING positive – and once again, we did. As always, it has been a privilege to serve as your legislative affairs representative. We've done some good things together and I'm hopeful that we can continue to do so. I'm now going to turn this over to **Richard and Brian**, both of whom deserve all of our thanks and appreciation for their work on behalf of OCVA and our mission. May **THE FORCE** continue to be with us!

### **From the Chair:**

It's the first day of Labor Day weekend. The alarm goes off at 4:15 and Susan and I drag ourselves out of bed and drive to get a better look at the Aurigid meteor shower not seen on earth for 2000 years.

After Susan sees a “falling star,” we find a spot and settle in with binoculars. We spy a couple of satellites hurtling along and chat about The Great Void, a vast empty area in the firmament; the equivalent of unexplored terra firma where ancient maps warned, “Here be Monsters.”

We saw no more meteors but as always, when captivated by the heavens, we are reminded of the limits to our earthly existence. In my opinion, the real “monster” on earth is the irrational belief in an endless supply of water, soil, and air. Some seem intent on pillaging as much as possible. Today only 3 per cent of the earth's surface remains unscathed. In the lust for “more,” Darwin's insight is overlooked: “fittest” means most able to fit in an environmental niche.

For centuries, rivalry between “fitting” and “consuming” has been showing up on battlefields (Iraqi oil) in the courts (the Kelo decision) in elections (Measure 37) and in legislatures (the OCVA-endorsed restraints on annexation).

For now, those unwilling to fit their behavior to the reality of dwindling resources seem to have the upper hand. But that won't last in Oregon as long as OCVA stands in the path of the “monsters” and fights for alternatives to greed.

Thanks to everyone in and out of OCVA who choose “fitting” over “consuming.”

### **Annexations and referenda:**

In news of a more local nature, we were recently informed by an attorney that the referendum process can't be used to overturn a City Council-initiated annexation. We were surprised to hear this, since we know that the citizens of Stayton have had two referenda on annexations. Apparently the issue revolves around whether such an action is a legislative or a quasi-judicial decision. The case law regarding this is unclear, and may vary depending on the exact nature of the annexation.

What *is* clear is that amending the City Charter to require VoA makes it difficult to challenge the citizen's basic right to vote. It eliminates all of the uncertainty and legal wrangling. If you're considering a VoA campaign in your town, our OCVA website has all the information you need to get started.

### **Open Board positions:**

Your officers periodically contact all Board members to determine who remains willing to continue in a board capacity. Our latest round of inquiries has revealed a few open Board positions. Board membership is an opportunity to have more input into setting OCVA's priorities and agenda. Being a Board member isn't difficult: mostly you need to be in touch, which means checking your email regularly, especially during Legislative sessions, and responding to requests by the officers for input. If you or anyone you know is interested in serving on OCVA's Board, please let Jerry, Brian, or me know. Contact information is at the end of this newsletter.

### **From the Treasurer:**

There's not much to add from my corner of the world. OCVA's finances remain healthy. I am pleased to report that we've had terrific voluntary support from our members, including several significant contributions from individuals and organizations. Your donations, coupled with our extremely low overhead, mean that once again we will not need to ask for dues this coming year. Considering all our achievements, I'd have to say that OCVA is probably one of the best bargains in the universe for our members. Thanks to all of you who help make it happen!

We continue to grow as an organization. Since we no longer collect dues, the only way we can gauge our membership is by the size of our Alert List, which grew 13% in 2005 and another 11% since January of 2006. This is a case where growth is a good thing!

I'll leave you with this local news update: In May, after defeating three previous attempts over two years, voters in nearby **North Plains** approved a fourth proposal to annex land to the city. Thanks to an aggressive new-voter-registration and get-out-the-vote drive by the proponents, voters narrowly approved a development of 105 houses to be built on 24 acres over three years. The power of voting on annexations is clear -- had North Plains not had "the vote," they would have seen 700 houses on 144 acres developed in 7 to 10 years. That would have been 97% of their 20-year land supply, "used up" in 1/2 to 1/3 of its intended time. Voting on annexations remains one of the most potent tools citizens have for reining in developers -- *and* City officers who ignore the wishes of their constituents.

If you have any stories about how VoA is working in your community, we'd enjoy hearing them.

Well, that about wraps it up for our latest newsletter. We invite your comments. And as Jerry says:

**MAY THE FORCE CONTINUE TO BE WITH YOU!**

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