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BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

HOME BUILDERS ASSOCIATION	)	
OF CORVALLIS,	)	
	)	LUBA NO. 79-002
Petitioner,	)	
	)	
vs.	)	
	)	FINAL OPINION
CITY OF CORVALLIS,	)	AND ORDER
	)	
Respondent.	)	

Appeal from City of Corvallis

Willard E. Fox, Salem, argued the cause and filed the petition for review for petitioner.

Richard D. Rodeman, Corvallis, argued the cause and filed the brief for respondent.

Bagg, Referee; Reynolds, Chief Referee; Cox, Referee; participated in the decision.

Affirmed. 4/23/80

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, § 6(a).

1 BAGG, Referee

2 NATURE OF THE DECISION TO BE REVIEWED.

3 Petitioners seek review of City of Corvallis Ordinance  
4 No. 79-62. Ordinance 79-62 implements section 88 of the  
5 Corvallis City Charter requiring voter approval of any annexa-  
6 tion of property to the city. The ordinance prescribes one  
7 annexation election per year and includes provisions for city  
8 council review of all annexation proposals prior to submitting  
9 the proposals to the voters. Petitioners allege that the ordi-  
10 nance is unconstitutional as it implements an unconstitutional  
11 charter provision requiring submittal of "quasi-judicial annexa-  
12 tion decisions" to the voters. In addition, Petitioners assert  
13 that the ordinance is invalid because it implements Section 88  
14 of the city charter which violates LCDC goals 2, 9, 11 and 14.  
15 Petitioners finally allege that the ordinance itself violates  
16 LCDC goals 2, 9, 10 and 14 in that growth is inhibited and costs  
17 of development are increased.

18 We do not directly review the validity of Section 88 of the  
19 Corvallis City Charter. Notwithstanding the issue of whether  
20 we have authority to review a city charter provision, this pro-  
21 vision was adopted in 1976, clearly more than 30 days before the  
22 Notice of Intent to Appeal was filed. Ordinance No. 79-62,  
23 requires exactly the same thing as the charter - submission of  
24 annexation proposals to the voters. In addition, the ordinance  
25 specifies the procedure to be followed in submitting such pro-  
26 posals to the voters. Petitioners have challenged both aspects

1 of Ordinance No. 79-62. Addressing Ordinance 79-62, we have  
2 reviewed the question of submitting annexations to the voters  
3 and the procedure for doing so and find no invalidity based  
4 upon the facts as we understand in this case. See also  
5 Opinion and Order on Motion to Dismiss dated March 24, 1980.

6

7 FACTS

8 By initiative on November 2, 1976, the voters of the  
9 City of Corvallis enacted Section 88 to the City Charter.  
10 R 50. The amendment required all annexations to be voted  
11 upon by persons residing in the city. The process was used  
12 in May of 1977, when voters annexed two areas of the city.  
13 In January, 1978, two other proposals were presented, one  
14 involving an area for light industrial use and the other for  
15 residential use. The industrial annexation passed, and the  
16 residential annexation failed. In November, 1978, the voters  
17 rejected six annexations and passed one. See the summary,  
18 "Annexations, May 17, 1977 to Present," R 144-145. In the  
19 November, 1978 election, one individual proposed an annexation  
20 and ran a newspaper ad including a property map each day for  
21 seven days, beginning ten days before the election. Readers  
22 were asked to contact him if they had questions, and none did.  
23 He claimed that according to a survey done by a marketing  
24 firm, 80 percent of the persons going to the polls could not  
25 even locate his property. Tr 62-63.

26 / /

1           The failure of the largest number of annexations in November  
2 of 1978 led the city to examine the problems of implementing  
3 the charter provision. R 43. The review culminated in the  
4 adoption of Ordinance 79-62 on October 1, 1979.

5           The ordinance sets up a procedure whereby an application  
6 for annexation must be filed before the last day in October.  
7 The application is reviewed by staff and a public hearing  
8 is held, conducted by the planning commission, to evaluate  
9 the proposal and determine what zoning is appropriate. A  
10 recommendation is forwarded to the city council for possible  
11 placement on the ballot.

12           In order to facilitate city council review of each annexa-  
13 tion proposal, section 3 of the Ordinance provides that the  
14 application must include a comprehensive series of state-  
15 ments on the availability of public services, demand  
16 for services, methods of financing, maintenance costs, land  
17 uses, development concepts, aesthetic, social and physical  
18 impacts, a statement of need for the urban use to be annexed,  
19 available land within the city, immediate and short term demand  
20 and phasing of the development. In Section 4, the Planning  
21 Commission and the City Council conduct comparative evalua-  
22 tions and decide which annexation or annexations "are most  
23 beneficial to the city and to a majority of its citizens."  
24 The next section provides for publication of information on  
25 the annexation, including findings upon which the City Council  
26 based its decision to schedule a particular annexation. An

1 exceptions process is provided to relieve applicants from the  
2 provision of the ordinance when the city finds health hazards,  
3 limited development potential, administrative error or other  
4 reason for an exception exists. City Charter, Section 88,  
5 requiring referenda of all annexation proposals and ordinance  
6 no. 79-62 provide the only means whereby the city of Corvallis  
7 may annex property.

8 The City of Corvallis Comprehensive Plan estimates that  
9 the city will accommodate approximately 80,000 people to,  
10 presumably, the year 2000. Comprehensive Plan, p. 8-10.  
11 The comprehensive plan provides that the Corvallis urban  
12 growth boundary has a capacity of 80,952 people and "is  
13 sufficient to accommodate the planning period population."  
14 Comprehensive Plan, p. 81.

15 The plan concludes that most of the area's future develop-  
16 ment will occur in the urban fringe. Comprehensive Plan, p. 4.  
17 The urban fringe is defined as "that portion of the planning  
18 area outside of the existing city limits." Comprehensive  
19 Plan, p. 77. As a policy, the plan dictates that

20 Future urban developments shall be contained  
21 within the geographical limits of the urban growth  
boundary. Comprehensive Plan, p. 50.

22 The Plan does not specify annexation as a method to be used  
23 to control development within the urban fringe.

24 In addition to annexation, Section 84 of the City Charter  
25 provides a means of contracting for the extension of urban  
26 services to areas outside the city limits.<sup>1</sup> Development out-

1 side city limits served by city services is therefore possible.  
2 Read together, the charter and the plan permit development of the  
3 urban fringe through annexation or by extension of services by  
4 contract.

5 STANDING

6 Petitioner asserts that it "has membership of 244 individuals  
7 and businesses involved in the shelter industry in the Corvallis  
8 area. Petition for Review, p. 1. The association depends  
9 upon the availability of buildable lands for survival, and  
10 adoption of Ordinance No. 79-62 is said to have a substantial  
11 and adverse impact upon the availability of buildable land.

12 Ibid. Notwithstanding the fact that there has been no  
13 allegation of specific injury to the association or any one of its  
14 members, Respondent City of Corvallis does not challenge standing.  
15 Petitioner, then, has standing to bring this review proceeding.

16 ASSIGNMENT OF ERROR NO. 1

17 Petitioner alleges that the ordinance violates the due  
18 process clause of the Fourteenth Amendment (to the United  
19 States Constitution) because it implements Section 88 of  
20 the Corvallis Charter requiring a referenda of quasi-judicial  
21 annexation decisions. The problem with submitting annexations  
22 to the voters, petitioner claims, is that Oregon's land use  
23 plan requires the application of "general standards to a  
24 specific situation and to specific individuals" in making land  
25 use decisions such as annexations. That process makes annexa-  
26 tions quasi-judicial acts. (Petition for Review, p. 16). As

1 annexations are quasi-judicial in nature and as there is no "due  
2 process" protection in handing this question to the voters,  
3 the ordinance implementing submission of annexations to the  
4 voters must fall, according to petitioners. In support of this  
5 position, petitioners rely on Fasano v. Board of Commissioners  
6 264 Or 574, 507 P2d 23 (1973), and the dissent of Justice  
7 Stevens in the City of East Lake v. Forest City Enterprises,  
8 426 US 668, 96 S Ct 2358, 49 LEd 2d 132 (1976).

9 Respondent disagrees. The city contends that a decision  
10 of whether or not to annex is legislative. (Respondent's Brief,  
11 p. 7.) The city cites the general rule that the drawing of muni-  
12 cipal boundaries is a legislative activity. 2 McQuillin, Municipal  
13 Corporations § 7.03 (3d ed 1979). In Oregon, the courts have held  
14 that a change in municipal boundaries "is an exercise of legislative  
15 power and amounts to an amendment of the city charter." Schmidt,  
16 et al, v. City of Cornelius, 211 Or 505, 517, 316 P2d 511 (1957).  
17 Annexations are a matter of such importance to the citizens of the  
18 city that courts "treat actions attacking the validity of annexations  
19 as constituting a special type of proceeding, governed by rules  
20 different from those applied in purely private actions."  
21 Griffin v. City of Roseburg, 255 Or 103, 108, 464 P2d 691  
22 (1970). In some states private parties cannot question annexa-  
23 tions, and it is up to the Attorney General or the District  
24 Attorney to challenge the boundary change. Ibid.

25 These cases occurred prior to statutes creating LCDC  
26 and the subsequent imposition of "goal" standards on land

1 use actions. However, the traditionally political nature of  
2 an annexation as a means to change city boundaries has not  
3 been changed. There is nothing in statewide goals or statute  
4 compelling annexation of territory as a means of urbanization.

5 However, the city concedes that part of the annexation  
6 process is quasi-judicial and subject to goal standards. The  
7 evaluation process used by the city to see whether the annexation  
8 application meets the standards set by the plan and the goals is  
9 admittedly quasi-judicial in nature. The city argues, however,  
10 that the vote in the May primary is a legislative act which may  
11 properly be left to the citizens. In support of this view of the  
12 nature of annexations in Corvallis, the city cites Petersen v.  
13 Klamath Falls, 279 Or 249, 566 P2d 1193 (1977) wherein the court  
14 appears to support the city's analysis.

15  
16 Moreover, since the consideration of these  
17 statewide goals and the determination that a  
18 particular annexation proposal does or does  
19 not comply with those goals necessarily involves  
20 the application of general standards to a specific  
21 situation and to specific individuals, we conclude  
22 that such a decision is quasi-judicial in nature.  
23 See Green v. Hayward, 275 Or 693, 552 P2d 815  
24 (1976); Fasano v. Washington County Comm., *supra*;  
25 Auckland v. Board of Comm., 21 Or App 596, 536  
26 P2d 444 (1975). Of course, we recognize that  
the broader issues involved in reaching final  
decisions on whether the land proposed for annexa-  
tion should, in fact, be annexed to the city, and  
at what point that action should be taken, may  
cloak those ultimate decisions with a character  
which is more legislative than judicial. See  
Griffin v. City of Roseburg, 255 Or 103, 464  
P2d 691 (1970); Schmidt et al v. City of Cornelius,  
211 Or 505, 316 P2d 511 (1957); 2 McQuillin, Muni-  
cipal Corporations § 7.10 (3d ed 1966). However,  
we believe that the initial, threshold determination



1 to be made--whether the proposed annexation is  
2 consistent with the statewide planning goals--  
3 is a determination which is quasi-judicial in  
4 nature. Compare Millersburg Development Corp. v.  
Mullen, 14 Or App 614, 514 P2d 367 (1973). . . .  
Petersen v. Klamath Falls, supra, 279 Or at 255-256.

5 The Board is inclined to accept respondent's view of  
6 its annexation procedure. As noted above, no change in state  
7 law occurred to suggest that annexations are now matters of right  
8 subject to enforcement by the courts. The wisdom of any annexation  
9 seems to us to be up to the elected officials of the community or,  
10 as here, up to the voters. The change occasioned by Oregon's land  
11 use laws goes to whether the annexation meets state land use or  
12 local comprehensive plan standards, not whether the annexation  
13 must occur.

14 The ordinance is not clear as to where the break occurs  
15 between what is quasi-judicial in the review and evaluation of  
16 annexation proposals and what is legislative. The "benefit"  
17 standard used by the city to determine what annexation proposals  
18 reach the voters may be objectionable on the basis that this is  
19 a quasi-judicial determination which lacks definite standards.  
20 It is also possible, however, that the "benefit" determination  
21 is itself a legislative determination left to the city council's  
22 political expertise, not requiring definite standards in order to  
23 be valid. We do not reach this issue as it was not placed before  
24 us by the parties.

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1 In summary, it is the Board's view that Ordinance  
2 No. 79-62 does not violate the due process clause of the  
3 Fourteenth Amendment in the way alleged by petitioner's  
4 assignment of error no. 1

5 ASSIGNMENT OF ERROR NO. 2

6 Assignment of error no. 2 alleges a violation of Oregon  
7 Constitution, art I, § 1 "because it implements a Corvallis  
8 charter provision which requires popular referenda of quasi-  
9 judicial annexation decisions." Petition for Review, p. 17.  
10 This argument is based upon the reservation of legislative  
11 power to the people and the limitation on initiative and  
12 referendum powers to the voters of each municipality "as to  
13 all local, special and municipal legislation \* \* \*." Oregon  
14 Constitution, art I, §1(5). Because of our holding as to  
15 part of assignment of error no. 1 above, we do not find as a  
16 matter of law that the ultimate power of setting municipal  
17 boundaries is a quasi-judicial decision and so finding, we  
18 similarly do not find that the charter provision and its  
19 implementing ordinance no. 79-62 violates Article IV of the  
20 Oregon Constitution. A change in city boundaries "amounts  
21 to an amendment of the city charter" (Schmidt, et al v. City  
22 of Cornelius, supra). The Oregon Constitution allows control  
23 of boundaries to rest with the voters.

24 The Legislative Assembly shall not enact,  
25 amend or repeal any charter or act of incorporation  
26 for any municipality, city or town. The legal

1 voters of every city and town are hereby granted  
2 power to enact and amend their municipal charter,  
3 subject to the Constitution and criminal laws of  
4 the State of Oregon . . .  
5 Or Const, art XI, § 2

6 ASSIGNMENT OF ERROR NO. 3

7 The third assignment of error alleges that the ordinance  
8 is invalid because it implements a charter provision which itself  
9 violates LCDC goals 2, 9, 10, 11 and 14. Petitioner's argument is  
10 that submittal of annexation proposals to the voters frustrates the  
11 city's ability to urbanize because of delay and uncertainty as to  
12 voter approval. We consider petitioner's assignment of error in  
13 terms of ordinance 79-62. See "Nature of the Decision to be  
14 Reviewed" above.

15 The comprehensive plan for the city does not make annexa-  
16 tion a prerequisite for urban development. Annexation may  
17 facilitate urbanization, but there is no evidence in the record  
18 that without annexation as a tool, the city will be incapacitated  
19 or frustrated in its efforts to meet its planning responsibilities.  
20 The city has another tool. It can use Section 84 of the city  
21 charter to extend services outside its corporate limits. Also

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1 there is no assurance that all annexations or even the majority  
2 of annexations will be rejected by the voters under the system  
3 included in ordinance no. 79-62. We do not find ordinance 79-62  
4 violates the statewide goals as alleged by petitioner in assign-  
5 ment of error no. 3.<sup>2</sup>

6 ASSIGNMENT OF ERROR NO. 4

7 Assignment of error no. 4 alleges that ordinance 79-62  
8 violates goal 2 because of a lack of coordination with affected  
9 governmental units and the lack of an adequate factual base for  
10 the ordinance. Further, the petitioner alleges that the city  
11 failed to "determine the effect of the ordinance on dwelling  
12 costs, as required by the plan." Petition for Review at 26.  
13 This is basically an argument regarding the history of the  
14 ordinance. There is sufficient evidence in the record to  
15 show that the ordinance was submitted to, among others,  
16 Benton County, LCDC, the Oregon State Housing Division, Oregon  
17 State University and that responses were received by the city.  
18 R 149-191. We view those efforts sufficient under the goal.

19 The factual base used by the city appears to be drawn  
20 from its experience with prior annexations. The city apparently  
21 felt that there were inadequate criteria for evaluating annexa-  
22 tions (R 67), too many annexations (R 8), and inadequate time to  
23 plan for annexations. R 18-21. These findings are reflected  
24 in the "findings" for annexation ordinance 79-62 found at  
25 A4-A7 attached to Petition for Review. On the other hand,  
26 there is testimony in the record that the one year election would

1 result in a confusing and overloaded ballot, and testimony  
2 that the ordinance would increase housing costs. Tr 8, 32,  
3 35, 42, 55, 149, 162, 169. It is our view, however, that the  
4 city was entitled to believe that the ordinance would have  
5 the salutary effects that are stated in the findings. There  
6 is sufficient evidence in the record from which the city could  
7 conclude that the purposes of the ordinance would be successfully  
8 achieved by its passage, and it is not the place of this Board  
9 to second guess the city in that regard. Goal 2 speaks to  
10 the land use planning process and policy "framework" as a basis  
11 for decisions. The ordinance contains findings and conclusions  
12 that suggest the process contained within it will be a "basis"  
13 for annexations that will be of greater benefit than the methods  
14 used before its passage. We do not believe it is our place to  
15 tamper with those findings and conclusions under the allegation  
16 and facts present in this case.

17 ASSIGNMENT OF ERROR NO. 5

18 Assignment of error no. 5 alleges a violation of goal 10  
19 in that the ordinance "discourages" the availability of housing  
20 in numbers and at prices that are affordable. The assignment  
21 alleges that the ordinance adds "unreasonable delay, costs and  
22 uncertainty to the annexation process." The point of the  
23 argument is that goal 10 is violated by the delay occasioned  
24 by once per year annexations. Further the process of select-  
25 ing annexation proposals for voter approval or disapproval can  
26 result in appeals, and those appeals further delay the process.

1 See Petition for Review, pp. 32-34.

2         Petitioner's belief that there would be an unwarranted  
3 delay in housing availability does not appear to be based  
4 upon demonstrated fact in the record. The evidence presented  
5 by opponents of the ordinance was sufficiently conclusory so  
6 that city might be entitled, based on the record alone, to  
7 conclude that housing costs would not be impacted significantly  
8 by the once-per-year annexation proposal. Presumably, part of  
9 their consideration was the fact that 70 to 167 days elapsed  
10 between annexation applications and elections before Ordinance  
11 79-62. R 46. After Ordinance 79-62, there will be a period of  
12 210 days. Petition for Review, p. 8.

13         The Board agrees that uncertainty is part of the annexation  
14 process in the City of Corvallis. That does not, however, con-  
15 stitute a violation of goal 10. As stated above, if the city  
16 can provide through one means or another adequate housing  
17 for the community, there is no violation. There is nothing in  
18 the Corvallis plan or the statewide goals that requires annexation.  
19 The plan speaks to development in the urban fringe. Development  
20 in the urban fringe is not dependent upon annexation of the prop-  
21 erty to the city. Plan, pp. 49-50, 77. Nothing exists according  
22 to the record before us to prevent a developer from building within  
23 the urban growth boundary, providing services can be made available.

24         The Commission has previously acted on similar allegations  
25 of diminished housing availability and increased cost. In State  
26 Housing Council v. City of Lake Oswego and 1000 Friends of Oregon,

1 et al, LCDC 78-030, the Commission found:

2           The ordinance presents a close question but  
3 we conclude that there is no substantial evidence  
4 in the record that the Ordinance impacts the  
5 availability of housing nor makes such housing  
6 unaffordable to persons who would otherwise  
7 be in the market for housing in Lake Oswego.  
8 An ordinance resulting in increased housing  
9 costs does not necessarily, by that fact alone,  
10 violate the interest to be protected [by goal 2  
or by goal 10]. Footnote omitted. An ordinance  
increasing housing costs may significantly effect  
a shift in land use or discourage affordable  
housing and would then constitute a land use  
action and require the addressing of the planning  
goals. There is, however, no such evidence in  
this case. LCDC 78-020, p. 10-11.

11 Because of the speculative nature of the allegations and because  
12 annexation is only one means of urbanization, we find no viola-  
13 tion of goal 10 in this case.

14 ASSIGNMENT OF ERROR NO. 6

15           Assignment of error no. 6 alleges a violation of goal 14  
16 because the ordinance establishes "a procedure for the conversion  
17 of urbanizable land to urban uses which discourages the availability  
18 of sufficient land for various uses to insure choices in the market  
19 place." Petition for Review, p 34. The assertion here is that  
20 the ordinance discourages available choices by a once per year  
21 election process. It is the Board's view that respondent correctly  
22 replies that the ordinance "merely provides a process for the  
23 management of annexation proposals." Respondent's Brief at 23.  
24 Again, the ordinance by itself sets out only a procedure. It  
25 does not itself choose lands for the urbanization process. The  
26 establishment and the size of the urban growth boundary is not

1 subject to voter approval, but is a decision to be made between  
2 the city and the counties. Land within the urban growth  
3 boundary is available for building; whether or not land within  
4 the urban growth boundary is annexed does not control whether  
5 the land may be built upon. As discussed earlier, the city has  
6 a means to provide public facilities and services not dependent  
7 upon annexation. The "conversion of urbanizable land to urban  
8 uses" is not so much a function of annexation but a function of  
9 the urban growth boundary and whether facilities may be made available

10 Ordinance no. 79-62 does not violate goal 14 in the manner  
11 alleged by petitioners.

12 Ordinance No. 79-62 of the City of Corvallis is affirmed.  
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FOOTNOTE

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3 Section 84. [Services to Property Outside Corporate  
4 City Limits.] The city shall furnish no services or enter  
5 into any agreement or contract to furnish such services to  
6 property outside the corporate limits of the city unless the  
7 city council shall have first adopted an ordinance approving  
8 the same. Any such ordinance shall contain a provision that  
9 it shall not become effective until the expiration of 30 days  
10 after its passage and approval by the mayor. The council  
11 shall make provision for and hold public hearing prior to  
12 the adoption of any such ordinance. [Charter amendment  
13 adopted by special election held November 5, 1974.]  
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17 2  
18 We might note that there is no evidence the petitioner has  
19 attempted to use section 84 of the Corvallis City Charter and  
20 been frustrated by it. At oral argument, respondent stated  
21 this particular procedure was used to provide urban services  
22 to Hewlett Packard Corp. prior to an annexation of their  
23 property. Also, petitioner has alleged no specific injury  
24 resulting from any particular act or incident involving the  
25 charter or this ordinance. There is nothing in the record  
26 to show the petitioner has been prevented from building within  
the Corvallis Urban Growth Boundary.