

LAND USE
BOARD OF APPEALS

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

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WILLIAM H. EHLEN, JR., and)
NORMA L. EHLEN,)
)
Petitioners,)
)
vs.)
)
CITY OF PORTLAND,)
)
Respondent.)

LUBA No. 80-048
FINAL OPINION AND ORDER
(Order of Dismissal)

Appeal from City of Portland.

John W. Shonkwiler
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Portland, OR 97213

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Portland, OR 97204
Attorneys for Respondent

Attorney for Petitioners

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

DISMISSED. 6/2/80

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

1 BAGG, Referee

2 This matter is before the Board on the motion of Respondent
3 City of Portland. Respondent moves the Board for an order of
4 dismissal on the ground that the resolution of the City of
5 Portland (No. 32642) approving the proposed annexation of
6 certain territory to the City of Portland is not a "final"
7 decision as defined in Rule 3(c, d, e) of the Board's rules.

8 Petitioner responds by saying the City appeared to employ
9 the "triple majority" procedure outlined in ORS ch 222 in
10 adopting resolution 32642. Petitioner says that the City has
11 employed "one of the procedures specifically authorized for
12 commencing annexations before the boundary commission." ORS
13 199.490(1) (a); 199.490(2) (a). Memorandum in opposition to
14 motion to dismiss page 3. Petitioner concludes by saying that
15 if the Board were to adopt the city's position, the two public
16 hearings held by the city to effect this "triple majority"
17 annexation would be "empty formalities of absolutely no legal
18 consequence."

19 A local government boundary commission established under the
20 provisions of ORS ch 199 has the power to annex territory to its
21 member jurisdictions. Changes to a local government boundary
22 may be initiated by any of the procedures enumerated in ORS
23 199.490. Additionally, the city has a very limited option of
24 annexing certain territory itself under ORS 199.487. It is
25 clear from the resolution complained of that the City of
26 Portland was operating under ORS 199.490 and not under ORS

1 199.487 as the City "resolved" to have the boundary commission
2 "approve" the annexation under ORS 199.490(1) (a). Though
3 initiated by the city, the act of annexing the property was the
4 responsibility of the boundary commission.

5 Review of local government boundary commission actions is
6 governed by ORS 199.461. In pertinent part, that statute
7 provides:

8 "Any person interested in a boundary change may appeal
9 the order in accordance with the provisions of ORS
10 183.480 to 183.500 governing judicial review of agency
11 orders or, if the decision of the boundary commission
12 involves application of state-wide planning goals, in
13 accordance for the provisions of sections 4 to 6,
14 chapter 772, OR 1979." ORS 199.461(3)

15 The statute does not provide for a direct review of a city
16 "resolution" initiating boundary commission action.

17 Respondent City of Portland is correct. There is no
18 reviewable land use action before this Board at this time.
19 There has been no annexation of the subject property by the
20 city or by the boundary commission, only the mere beginnings of
21 a possible annexation.¹ This matter is dismissed.
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FOOTNOTES

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Similar circumstances existed in Polk Co. v. City of Salem,
LCDC No. 77-020 (1977). LCDC dismissed that case "because it
had been brought prematurely by being filed against a city
resolution which had not yet been considered by the Boundary
Commission."