

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 ELIZABETH A. GRASER-LINDSEY,  
5 *Petitioner,*

6  
7 vs.

8  
9 CITY OF OREGON CITY,  
10 *Respondent,*

11 and

12  
13 OREGON CITY GOLF CLUB,  
14 *Intervenor-Respondent.*

15  
16 LUBA No. 2007-257

17  
18 FINAL OPINION  
19 AND ORDER

20  
21  
22 Appeal from the City of Oregon City.

23  
24 Elizabeth Graser-Lindsey, Beavercreek, filed the petition for review and argued on  
25 her own behalf.

26  
27 Carrie A. Richter, Portland, filed a joint response brief and argued on behalf of  
28 respondent. With her on the brief were Edward J. Sullivan, Garvey Schubert Barer, Kelly S.  
29 Hossaini and Miller Nash LLP.

30  
31 Kelly S. Hossaini, Portland, filed a joint response brief and argued on behalf of  
32 intervenor-respondent. With her on the brief were Miller Nash LLP, Carrie A. Richter,  
33 Edward J. Sullivan and Garvey Schubert Barer.

34  
35 HOLSTUN, Board Member; RYAN, Board Chair; BASSHAM, Board Member,  
36 participated in the decision.

37  
38 DISMISSED

08/21/2008

39  
40 You are entitled to judicial review of this Order. Judicial review is governed by the  
41 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner appeals a city resolution that approves a request for annexation and refers that annexation proposal to a vote by the city electorate.

**FACTS**

This appeal concerns a proposal to annex 114 acres to the City of Oregon City. The decision that is before us in this appeal is Resolution No. 07-29, which was adopted by the city on December 5, 2007. Supplemental Record 2-4. Resolution No. 07-29 adopts findings that address various land use standards and find that those land use standards are satisfied by the annexation proposal. Resolution No. 07-29 also explains that the Oregon City Charter requires that the voters of the city must approve the annexation. Resolution No. 07-29 adopts a ballot measure caption, question and summary and calls for an election on the proposed annexation on March 11, 2008.

Petitioner appealed Resolution No. 07-29 to LUBA. While that appeal was pending, the city voters rejected the proposed annexation at the March 11, 2008 election. LUBA did not learn that the proposed annexation had been rejected by the city voters until petitioner filed her reply brief on June 12, 2008. At oral argument on June 19, 2008, LUBA requested additional briefing from the parties on the possible significance of the March 11, 2008 election. The parties submitted memoranda. For the reasons explained below, we conclude that this appeal is moot.

**JURISDICTION**

Appellate courts dismiss appeals that become moot. *Brumnett v. PSRB*, 315 Or 402, 406, 848 P2d 1194 (1993). An appeal is moot unless “the court’s decision \* \* \* will have some practical effect on the rights of the parties to the controversy.” *Id.* at 405. Because LUBA is an Executive Department administrative review tribunal, and not part of the Judicial Department, it is not constitutionally required to dismiss appeals simply because a

1 decision by LUBA in an appeal would have no practical effect. However, ORS 197.805  
2 dictates that LUBA “decisions be made consistently with sound principles of judicial  
3 review.” Based on that statutory directive, LUBA has long dismissed appeals when it  
4 determines that they have become moot. *Central Klamath County CAT v. Klamath County*,  
5 41 Or LUBA 524, 531 (2002); *Heiller v. Josephine County*, 25 Or LUBA 555, 556 (1993),  
6 *Barr v. City of Portland*, 22 Or LUBA 504, 505 (1991). For the reasons explained below, we  
7 conclude that the city voters’ rejection of the proposed annexation on March 11, 2008 means  
8 a decision by LUBA in this appeal will have no practical effect. It follows that this appeal  
9 should be dismissed as moot.

10 **A. The Dual Nature of Annexation Decisions**

11 Resolution No. 07-29, which was adopted by the city commission on December 5,  
12 2007, and the rejection of the annexation proposal in Resolution No. 07-29 by the city’s  
13 voters on March 11, 2008, are separate decisions. The Oregon Supreme Court has made it  
14 clear that a local government decision maker’s decision that a proposed annexation complies  
15 with applicable land use and other legal requirements is a land use decision and appealable to  
16 LUBA. *Heritage Enterprises v. City of Corvallis*, 300 Or 168, 172, 708 P2d 601 (1985). In  
17 *Heritage* the Supreme Court made it equally clear that the vote of the electorate on whether  
18 such an annexation proposal “*should be* adopted at that time” is not a land use decision that  
19 can be appealed to LUBA. *Id.* On this much we agree with respondent and intervenor-  
20 respondent (respondents).

21 Respondents reason from the separate nature of the two decisions that while the  
22 annexation that was proposed by Resolution No. 07-29 was rejected at the March 11, 2008  
23 election, it could still be approved at a future election and that possibility means this appeal  
24 is not moot. If respondents are correct that the annexation proposed by Resolution No. 07-29  
25 can be resubmitted to the voters for approval without any need for the city to again  
26 demonstrate that the proposed annexation complies with any applicable land use and other

1 legal requirements before it submits that annexation to the voters, this appeal is not moot.  
2 We turn to that question.

3 **B. Case Precedent**

4 In *Heritage*, the Oregon Supreme Court described the voters’ rejection of the  
5 proposed annexation in that case as “the last such decision in the sequence of decisions  
6 culminating in the rejection of the proposed annexation at the polls.” 300 Or at 172. That  
7 language suggests that the proposed annexation came to an end with the voters’ rejection of  
8 the proposed annexation. In *Heritage*, there was no appeal of the city council’s annexation  
9 decision to LUBA. That appeal challenged the voters’ subsequent rejection of that  
10 annexation to LUBA. Therefore the question of whether an appeal of the city council’s  
11 annexation decision to LUBA would be rendered moot by a subsequent voter rejection of  
12 that annexation was simply not before the court in *Heritage*. We have not been able to find  
13 any Oregon appellate court decision that addresses that question.

14 LUBA’s decision in *Mason v. City of Corvallis*, 45 Or LUBA 682 (2003) concerned  
15 an appeal of a city resolution and a city ordinance. The resolution referred a proposed  
16 annexation to the voters for approval, and in that respect was similar to Resolution No. 07-  
17 29. The ordinance separately granted plan amendment and development approvals that were  
18 conditioned on the annexation. Oregon City granted no plan amendment or development  
19 approvals in the annexation that is before us in this appeal. After the appeal in *Mason* was  
20 filed at LUBA to challenge both the resolution and the ordinance, the voters rejected the  
21 annexation, and the city moved to dismiss both appeals as moot. With regard to the  
22 resolution we noted that the petitioner “agrees that the results of the November 5, 2002  
23 election render [the appeal of the resolution] moot.” 45 Or LUBA at 682. Because the  
24 petitioner in *Mason* conceded that the LUBA appeal of the resolution in that case that  
25 corresponded to Resolution No. 07-29 was rendered moot by the voters’ rejection of the

1 annexation at the November 5, 2002 election, *Mason* lends no support to respondents’  
2 multiple election theory.

3 With regard to the separately appealed ordinance in *Mason*, the city took the position  
4 that the election rendered the plan amendment and development approvals “of no legal  
5 effect.” 45 Or LUBA at 683. However, petitioner was concerned that since the plan  
6 amendment and development approval were “contingent upon annexation, not upon any  
7 particular annexation vote,” those approvals “could still become effective if there is a  
8 successful future annexation request.” *Id.* at 682-83. LUBA ultimately concluded that given  
9 the uncertainty about whether the plan amendment and development approvals might take  
10 effect if the property were annexed in the future, the appeal was not moot.

11 “Given our uncertainty on this point, we agree with petitioner that we may not  
12 assume that [the appeal of the ordinance] is moot.” *Id.* at 683.

13 The part of our decision in *Mason* addressing the ordinance that approved plan amendments  
14 and development approvals lends little support, if any, to respondents’ contention that the  
15 annexation resolution in this appeal survived the March 11, 2008 election. However, in  
16 concluding that the city had not shown that the appeal of the ordinance was moot, LUBA  
17 cited *Troy v. City of Grants Pass*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2001-133, Order on  
18 Motion for Extension of Time, October 11, 2001) as indirect support for its decision to  
19 decline to dismiss the appeal as moot. The legal question in *Troy* was much closer to the  
20 legal question presented in this appeal, and we turn to that order.<sup>1</sup>

21 *Troy* concerned a decision that approved an annexation and referred the annexation to  
22 the voters for approval. In that regard, the decision in *Troy* was similar to Resolution No. 07-  
23 29. While the appeal of that decision was pending before LUBA, but before the election, the

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<sup>1</sup> In *Mason*, LUBA suggested that since both the city and petitioner took the position that the plan amendment and development approvals were no longer of any legal effect, the parties were free to submit a stipulated motion for dismissal or remand or the city could simply repeal the plan amendment and development approvals. Shortly after our order in *Mason* was issued, LUBA dismissed the appeal based on the parties’ stipulation.

1 county moved for additional time to file its brief, arguing that the election might make the  
2 appeal moot if the voters rejected the proposed annexation. We denied the motion and gave  
3 the following explanation for doing so:

4 “The city has not explained why the failure of the ratification election  
5 necessarily would moot this appeal of the challenged decision, and it is not  
6 clear to us that it would. *See Petersen v. Klamath Falls*, 279 Or 249, 566 P2d  
7 1193 (1977) (city decision concluding that annexation complied with  
8 statewide planning goals is a land use decision, notwithstanding that  
9 annexation must be ratified by voters); *Heritage Enterprises v. City of*  
10 *Corvallis*, 12 Or LUBA 194, 197 (1984), *aff’d* 71 Or App 581, 693 P2d 651,  
11 *aff’d* 300 Or 168, 708 P2d 601 (1985) (city council decision evaluating an  
12 annexation’s conformance with land use goals is the land use decision  
13 reviewable by LUBA, not the subsequent ratification election). *In particular,*  
14 *it is not clear that the approved annexation could not be ratified by the voters*  
15 *in a later election. In the absence of some particularized argument*  
16 *demonstrating why the results of the November 6, 2001 election will have*  
17 *some effect on our review of the challenged decision, we see no reason why*  
18 *the appeal should be delayed over petitioner’s objection. \* \* \*.*” (Emphasis  
19 added.)

20 *Petersen* and *Heritage* simply stand for the now settled principle that annexations may  
21 require both a land use decision and a vote of the electorate. Neither case says anything  
22 about whether a decision by the electorate to reject the annexation would moot a pending  
23 LUBA appeal of the land use decision that initiated the annexation and referred that  
24 annexation to the voters. Although our reasoning in *Troy* was relatively brief, we concluded  
25 that since it was possible that the annexation the city approved in a land use decision could  
26 simply be resubmitted to the city voters for another vote without adopting another land use  
27 decision, the appeal was not moot. More precisely, we said it was “not clear” that such  
28 might be the case. Therefore it was uncertainty about the possibility of multiple elections on  
29 the same annexation decision that led us to determine the appeal was not moot.<sup>2</sup>

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<sup>2</sup> In *Troy*, the disputed annexation was approved by the voters, and LUBA affirmed the annexation decision. *Troy v. City of Grants Pass*, 41 Or LUBA 112 (2001).

1 The rule that we derive from *Troy*, and to a lesser extent from *Mason*, is that if LUBA  
2 cannot tell from Resolution No. 07-29, the procedures that govern city annexations and the  
3 record in this appeal whether Resolution No. 07-29 survived the March 11, 2008 election, so  
4 that the annexation proposed therein can simply be resubmitted to the voters in future  
5 elections without the necessity of another land use decision, this appeal is not moot.

6 **C. Resolution No. 07-29**

7 We turn first to Resolution No. 07-29 itself to see if there is any support for  
8 respondents' position that the annexation proposed in Resolution No. 07-29 can simply be  
9 resubmitted to the city voters for approval, without the necessity of repeating the procedures  
10 and applying the legal standards that were applied before adopting Resolution No. 07-29 on  
11 December 5, 2007. We set out relevant text from Resolution No. 07-29 below:

12 **“WHEREAS**, the City of Oregon City, Oregon, reviewed the proposal and  
13 found that it can comply with all applicable legal requirements, as detailed in  
14 the findings attached hereto and made a part of this Resolution as Exhibit ‘L’;  
15 and

16 **“WHEREAS**, Chapter 1, section 3 of the Oregon City Charter of 1982, as  
17 amended, requires voter approval of annexations such as the one proposed;  
18 \* \* \*

19 “\* \* \* \* \*

20 **“NOW, THEREFORE, BE IT RESOLVED** by the City Commission of  
21 Oregon City as follows:

22 “That the annexation proposal, AN 07-03, should be sent to the voters for  
23 decision and that, should the legal voters of Oregon City approve the measure  
24 submitted to them below, the property described in Exhibit ‘K’ should be  
25 annexed to the City of Oregon City. In so finding, the City Commission,  
26 having considered the record herein, hereby adopts the Findings and  
27 Conclusions attached hereto as Exhibit ‘L’.

28 “An election is called in and for the City of Oregon City, *to be held on March*  
29 *11, 2008*, in the manner designated by the Clackamas County Clerk, who shall  
30 conduct the election. *At that election*, the following question shall be  
31 submitted to the electors:

1                   “Shall 114 acres east of Beaver Creek Road and north of Old  
2                   Acres Lane be annexed into to the Oregon City city limits?”

3                   “The City Commission adopts the following ballot title to describe the  
4                   measure to *be placed before the voters at the Tuesday, March 11, 2008*  
5                   *election*:

6                   “[there follows a caption, question and summary]

7                   “The Notice of Ballot Title, as set forth in Exhibit ‘M’ is hereby approved and  
8                   the City Recorder is hereby authorized and directed to take all measures  
9                   necessary for the holding of *the election* on the measure described in this  
10                  resolution.” Supplemental Record 2-3 (emphases added).

11                  While the emphasized language above is certainly not conclusive, the March 11, 2008  
12                  election seems to be the only election contemplated by Resolution No. 07-29. There is  
13                  nothing in Resolution No. 07-29 that suggests that if the proposed annexation is not approved  
14                  at the March 11, 2008 election that annexation proposal may simply be resubmitted to the  
15                  voters at future elections. Since only the March 11, 2008 election is mentioned in Resolution  
16                  No. 07-29, at a minimum, the city would be required to adopt a new resolution to call another  
17                  election.<sup>3</sup> If the city is free to adopt such a resolution without repeating the procedures and  
18                  readdressing the applicable legal standards that were considered in adopting Resolution No.  
19                  07-29, there is nothing in Resolution No. 07-29 itself that suggests such a shortened  
20                  procedure is permissible.

21                  Although Resolution No. 07-29 does not appear to contemplate any election other  
22                  than the March 11, 2008 election that Resolution No. 07-29 calls for, we turn to Oregon City  
23                  Municipal Code, which sets out the procedures the city follows to annex property, to see if it  
24                  anticipates that annexation resolutions that are rejected by the voters may be resubmitted to  
25                  the voters for approval without repeating the annexation procedures that apply to annexation  
26                  applications.

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<sup>3</sup> Petitioner advises LUBA that the city is in the process of adopting such a resolution.



1           **D.     Oregon City Municipal Code Chapter 14.04**

2           Oregon City Municipal Code (OCMC) Chapter 14.04 sets out the city’s procedures  
3 and standards for city annexations. We discuss several sections of OCMC Chapter 14.04 in  
4 some detail below.

5                   **1.     Purpose OCMC 14.04.010**

6           OCMC 14.04.010 set out the purpose OCMC Chapter 14.04

7                   “It is the purpose and general intent of the ordinance codified in this chapter  
8 to delineate the appropriate procedures to be followed to annex territory to the  
9 city and to undertake other major and minor boundary changes. \* \* \*”

10          There is no text in OCMC 14.04.010 that bears directly on the issue we must resolve in this  
11 appeal. The balance of the OCMC 14.04.010 purpose statement explains that the procedures  
12 and standards in OCMC Chapter 14.04 are to allow time for public and staff review, citizen  
13 involvement, and consider the impacts of a proposed annexation.

14                   **2.     Annexation Procedures OCMC 14.04.050**

15          OCMC 14.04.050 has several subsections. OCMC 14.04.050(A) sets out application  
16 filing deadlines:

17                   “Application Filing Deadlines. Annexation elections shall be scheduled for  
18 March, May, September and November of each year. Each application shall  
19 first be approved by the city commission, which shall provide a valid ballot  
20 title in sufficient time for the matter to be submitted to the voters as provided  
21 by the election laws of the state of Oregon.”

22          OCMC 14.04.050(A) lists the months where annexation elections may be called and calls for  
23 a process that seems to have a beginning (city commission approval) and an end (a vote).  
24 We see nothing in OCMC 14.04.050(A) that supports respondents’ multiple election theory.

25          The only other subsection of OCMC 14.04.050 that has any bearing on the relevant  
26 question is OCMC 14.04.050(E). OCMC 14.04.050(E) is a lengthy subsection that sets out  
27 the required contents of an annexation application. OCMC 14.04.050(E)(8) concerns fees  
28 and requires that the application include the following:

1           “The application fee for annexations established by resolution of the city  
2           commission and any fees required by metro. In addition to the application  
3           fees, the city manager shall require a deposit, *which is adequate to cover any*  
4           *and all costs related to the election.” (Italics and underlining added.)*

5           OCMC 14.04.050(E)(8) clearly seems to envision only one election, indeed if an indefinite  
6           number of elections were possible, it would not be possible to determine at the time the  
7           application was filed how large a deposit would be required to cover all election costs.

8                           **3.       Action by the City Commission OCMC 14.04.080**

9           OCMC 14.04.080 governs city commission action on an annexation proposal and is  
10          set out below:

11           “Upon receipt of the planning commission’s recommendation, the city  
12           commission shall hold a public hearing in the manner provided by OCMC  
13           Section 17.50.170(C). The city commission shall endeavor to review all  
14           proposals prior to the city application deadline for submitting ballot measures  
15           to the voters. The city commission shall only set for *an election* annexations  
16           consistent with a positive balance of the factors set forth in Section 14.04.060  
17           of this chapter. The city commission shall make findings in support of its  
18           decision to schedule an annexation for *an election.*” (Emphases added.)

19          The emphasized language in OCMC 14.04.080 seems to anticipate a single election  
20          following city commission action on an annexation proposal. Nothing in the language of  
21          OCMC 14.04.080 authorizes multiple elections following city commission action to refer a  
22          proposed annexation to the voters for approval.

23                           **4.       Legal Advertisement of Pending Election OCMC 14.04.090**

24          OCMC 14.04.090 requires that annexation elections be advertised, and relevant text  
25          of OCMC 14.04.090 is set out below:

26           “After city commission review and approval, the city manager shall cause a  
27           legal advertisement describing the proposed annexation and pending election  
28           to be published in at least one newspaper of general circulation in the city in  
29           the manner provided by state election law. The advertisement shall be placed  
30           at least fourteen days prior to *the election.* \* \* \*” (Emphasis added.)

31          Once again, the OCMC Chapter 14.04 language seems to anticipate a single election and  
32          there is a complete absence of any language the supports respondents’ position that multiple

1 elections may follow city commission action to refer an annexation proposal to the voters for  
2 approval.

3 **5. Election Procedures OCMC 14.04.100**

4 OCMC 14.04.100 sets out election procedures. OCMC 14.04.100(C) authorizes a  
5 vote on two or more annexation proposals at a single election:

6 “Pursuant to ORS 222.111(7), two or more proposals for annexation of  
7 territory may be voted upon simultaneously; however, each proposal shall be  
8 stated separately on the ballot and voted on separately.”

9 Expressly allowing more than one annexation proposal to be voted on at a single election  
10 without expressly allowing a single annexation proposal to be voted on at multiple elections  
11 is some indication that multiple elections are not authorized, without beginning again and  
12 repeating the OCMC Chapter 14.04 procedures.

13 **6. Proclamation of Annexation OCMC 14.04.110**

14 OCMC 14.04.110 is entitled “Setting of boundaries and proclamation of annexation.”

15 The text of OCMC 14.04.110 is set out below:

16 “Upon approval by the voters of the proposed annexation, the city  
17 commission, by ordinance, shall set the boundaries of the area to be annexed  
18 by a legal description, adopt findings, and proclaim the results of the  
19 election.”

20 Neither OCMC 14.04.110 nor any other part of OCMC Chapter 14.04 expressly recognizes  
21 the possibility that the voters could reject the annexation proposal. OCMC Chapter 14.04  
22 therefore does not expressly direct the city to do anything following an election in which the  
23 voters reject an annexation proposal. Given the detailed direction that is set out in OCMC  
24 Chapter 14.04 regarding how proposals for annexation are to be submitted, reviewed,  
25 approved by the city commission and placed before the voters, we think the city would have  
26 expressly set out additional guidance in OCMC Chapter 14.04 about how to go about  
27 pursuing additional elections following voter rejection of the proposed annexation, if the city  
28 intended to authorize multiple elections.

1           **E.      Conclusion**

2           As a practical matter, there could be good reasons why the city and applicant might  
3 want to allow an annexation proposal that is rejected by the voters to be resubmitted to the  
4 voters at the next available election, without requiring that the applicant submit a new  
5 annexation application, especially if there is some reason to believe the annexation was  
6 rejected based on a misunderstanding of some kind. We are aware of nothing that would  
7 prevent the city from amending its code to provide such a short cut in appropriate  
8 circumstances. But the difficulty with respondents’ position is that there would be nothing  
9 under their theory that would preclude a determined applicant and city administration for  
10 resubmitting the annexation to the voters an indefinite number of times that could extend  
11 many years after the city commission approved the annexation and referred it to the voters.  
12 The legal standards that govern annexation, and the relevant facts, could easily change over  
13 time such that an annexation proposal that met all the legal standards when it was approved  
14 no longer meets those standards due to changed circumstances. Under respondents’ theory  
15 the applicant would not be required to address those changed legal standards and facts.

16           In their memorandum, respondents contend that under OCMC 17.50.200 following a  
17 city commission resolution referring an annexation to the voters and the expiration of any  
18 appeals of such resolutions, the annexation would generally have to be approved by the  
19 voters within a year.<sup>4</sup> OCMC 17.50.200 provides for expiration of quasi-judicial permits.

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<sup>4</sup> OCMC 17.50.200 provides in part:

- “A.      When approvals become void: All quasi-judicial permit approvals, except for zoning map or comprehensive plan map amendments, automatically become void if any of the following events occur:
  - “1.      If, within one year of the date of the final decision, a building permit has not been issued; or
  - “2.      If, within one year of the date of the final decision, the activity approved in the permit has not commenced or, in situations involving only the creation

1 Even if we assume that the disputed annexation is quasi-judicial, respondents offer no  
2 explanation for why they believe a city commission resolution referring an annexation to the  
3 voters qualifies as a “permit,” as OCMC 17.50.020 defines that term.<sup>5</sup> As defined by OCMC  
4 17.50.020, a permit is “quasi-judicial approval pertaining to the use of land rendered by the  
5 city under city code *Titles 16 or 17.*” (Emphasis added.)City commission resolutions  
6 regarding the annexation of land are adopted pursuant to OCMC Title 14. We do not see that  
7 OCMC 17.50.200 would preclude resubmitting a defeated annexation proposal to the voters  
8 years after it was rejected the first time.

9           Whatever the practical problems with respondents’ multiple election theory, the fatal  
10 problem is that there is simply no support at all in the text of OCMC Chapter 14.04 for that  
11 legal theory. To the contrary, as we explain above, in a number of places the text of OCMC  
12 Chapter 14.04 seems to clearly anticipate a single election. Stated differently, Chapter 14.04  
13 anticipates that an annexation proposal will begin with an application, proceed through a  
14 review process and be approved by the city commission and terminate with an election. If  
15 the voters approve the annexation at the election, the annexation is proclaimed. If the voters  
16 reject the annexation at the election, the annexation proposal is denied. In either case, the  
17 decision about whether the annexation “should” be approved is rendered at the election.

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of lots, the land division has not been approved by the planning manager  
and not recorded.

“\* \* \* \* \*

“C.    Deferral of the expiration period due to appeals: If a permit decision is appealed  
beyond the jurisdiction of the city, the expiration period shall not begin until review  
before the land use board of appeals and the appellate courts has been completed,  
including any remand proceedings before the city. The expiration period provided  
for in this section will begin to run on the date of final disposition of the case (the  
date when an appeal may no longer be filed).

<sup>5</sup> OCMC 17.50.020 provides the following definition:

“‘Permit’ means any form of quasi-judicial approval pertaining to the use of land rendered by  
the city under city code Titles 16 or 17, including subdivisions, partitions, lot line adjustments  
and abandonments, zone changes and plan amendments, land use, limited land use and  
expedited land divisions.”

1 That annexation proposal may be reinitiated by filing a new application in accordance with  
2 OCMC 14.04.050. But there is simply nothing in the text of OCMC Chapter 14.04 that  
3 supports respondents' multiple election theory.

4 Finally, as we have already pointed out, Resolution No. 07-29 itself only anticipated a  
5 single election on March 11, 2008. If the disputed annexation is to be submitted to city  
6 voters again, a new resolution will be required. We see no reason why the city could not  
7 adopt such a resolution if it does so in accordance with OCMC 14.04, following a new  
8 application for annexation. But there is simply no suggestion in Resolution No. 07-29 or  
9 OCMC Chapter 14.04 that the city may do so by simply calling a new election for the same  
10 annexation proposal that was referred to the voters by Resolution No. 07-29 and rejected by  
11 the voters on March 11, 2008, without first repeating the requirements of OCMC Chapter  
12 14.04. Any resubmittal of that annexation proposal would have to stand on its own and be  
13 reviewed and approved under OCMC Chapter 14.04. Because any such effort to resubmit  
14 that application proposal to the voters at a November 2008 election would require a new land  
15 use decision and would not be able to simply rely on Resolution No. 07-29 as the land use  
16 decision that authorized the annexation, a decision by LUBA resolving petitioner's appeal of  
17 Resolution No. 07-29 would serve no practical effect. We therefore dismiss this appeal as  
18 moot.

19 This appeal is dismissed.