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Hostile Takeover

OCVA's ROLE IN THE SUCCESSFUL REFORMATION OF ORS-195: OREGON'S "URBAN SERVICE PROVIDER" ANNEXATION LAW

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INTRODUCTION & BACKGROUND

In the 1993 session, Oregon's Legislature passed Senate Bill 122 which was later (January, 1994) codified in Oregon Revised Statutes, Chapter 195 (ORS-195). One purpose of this law was to provide a new mechanism by which cities could annex some, most or all territory within their urban growth boundaries (UGBs).

At the time, most Oregon annexation law had been written prior to the passage of the state's landmark Senate Bill 100 in 1973. SB 100 set goals for land use and established procedures for land use planning in Oregon. It required the establishment of Urban Growth Boundaries, which would define the geographic limits of a city's future expansion. Cities were required to develop Comprehensive Plans that defined growth management and how urban services such as sewers, water, electric and other services were to be provided.

Most state annexation law granted those targeted for annexation the right to approve or reject annexations, either by direct vote or remonstrance. Cities could not, in most cases, simply go out and start annexing already-urbanized (county) areas within their newly established UGBs at whim. The citizens' right to vote on annexations provided a great deal of fairness in Oregon annexation law. It also fit very well into the scope and intent of Goal 1 (citizen participation) of Oregon's new land use law. Goal 1 – often called "The Cornerstone" of Oregon land use law - provides that the citizens are to be allowed a voice in land use decisions and can participate actively in the decision-making process.

This presented a potential roadblock for cities aggressively seeking jurisdiction over most, or all of the territory within their UGBs. To win voter approval in a targeted area, an annexation had to be viewed as providing enough value in improved or additional urban services to offset the added costs in taxes and assessments. Most of these urbanized but unincorporated areas outside cities were already receiving services from their counties and/or special districts (e.g., water districts, fire districts, etc.). Taxpayers in those areas were usually paying less than the city would charge for the same basic services. Predictably, annexation was a tough sell in these areas. Cities often had little to offer non-city residents that they did not already have.

WHY SB-122 WAS INTRODUCED

SB-122 was introduced largely because state and many local governments felt that cities, rather than counties or special districts, should provide urban services within their UGBs. The bill required governments, special districts and service providers to enter into Urban Service Agreements (USAs). These are planning agreements to define who is to provide what services to whom. SB-122 was aimed at ending the "turf wars" over jurisdiction and at eliminating alleged "inefficient duplication" of services among various public entities.

The bill was intended to promote good planning by improving cooperation among governments and special districts. The result of the coordination of service was supposed to be the orderly utilization of land within the UGB. The culmination of this planning process would be annexation of the unincorporated areas by cities, with the cities eventually providing all urban services within their UGBs. SB-122 sailed through the Legislature virtually unopposed and was signed into law by then - Governor Barbara Roberts. SB-122 officially became ORS-195.

WHO BENEFITED FROM ORS-195?

Cities, for their part, could usually (but not always) reap significantly higher tax revenue through annexation. County governments could benefit as well, retaining their tax base, but transferring the responsibility for providing urban services to a city. Developers and Realtors would also benefit, as both tend to prefer city services for new subdivisions.

But what of the residents in the unincorporated areas within cities' UGBs? As we have already seen, for many of these citizens there would be little or no benefit from annexation. The costs would usually greatly outweigh the benefits. If given the choice, most would therefore be expected to reject annexation under such circumstances.

But Oregon cities soon realized that the new law contained a provision that could be interpreted in such a manner as to nullify voter resistance. This interpretation ignored the fundamental problem of the service cost discrepancy. **It was seen solely as a means to effectively quash opposition to an annexation plan.** As we will later see, it was this provision that caused a public backlash and gave rise to the ORS-195 reform effort.

THE ORS-195 ANNEXATION PROCESS

Portions of ORS-195 were basically sound: Prior to annexation, cities were to first develop a detailed annexation plan, which laid out the timeframe for annexation. All local governments, special districts and urban service providers were to take part in developing the plan.

These entities were then to agree on the final plan. Public hearings, with ample notice, were to be held, allowing interested citizens to attend and have input into the process. In this manner, a firm schedule for annexation and a detailed agreement on urban service provision to the annexed territory would be established. The timeframe for implementing the plan was not limited by law, and could be any period agreed to by the parties involved.

THE "FLY IN THE OINTMENT"

This would all seem to be appropriate and reasonable planning policy. But all sense of fairness and equity in the ORS-195 process vanished with its final step:

"If after the public hearing required under subsection (3) of this section, the governing body of the city or district decides to proceed with the annexation plan, it shall cause the annexation plan to be submitted to the electors of the city or district and to the electors of the territory proposed to be annexed under the annexation plan. The proposed annexation plan may be voted upon at a general election or at a special election to be held for that purpose. [1993 c.804 s.13]"

Did this mean a "combined" vote where all the ballots are counted together or a "double majority" where the city residents and those in the unincorporated area(s) vote separately, giving either group veto power? **Although the language was unclear, most cities insisted that it was the former interpretation that was correct. If they were to pursue annexation via ORS-195, it would be by a "combined" vote.**

The undemocratic flaw in this provision is obvious: **In most cases, the population of the city will dwarf that in the targeted area(s). THEREFORE, THOSE MOST IMPACTED BY THE PROPOSED ANNEXATION EFFECTIVELY HAVE LITTLE OR NO VOICE IN THE FINAL DECISION.** The plan, if approved, is a shotgun wedding – a Hostile Takeover.

ORS-195 annexations would be relatively easy to sell to city voters. They could be convinced such action would financially benefit their city. However, research and experience have shown that this is often not the case, especially with large annexations. With a majority of city residents voting "yes," county voters would be at a huge disadvantage. Unless the election were extremely close, their votes would not impact the outcome: **Voter approval roadblock solved.**

Cities began to see ORS-195 as a virtually sure way to raise tax revenue, thus de-emphasizing its primary goal of sound planning.

"STEALTH" BILL

SB-122 sneaked in under the radar of the vast majority of Oregon citizens. As the new year dawned in January, 1994, Oregon cities had a powerful new annexation tool that circumvented the historical ability of those most impacted to approve or reject the annexation. But virtually nobody among Oregon's potentially targeted residents knew about it. That was soon to change.

SPRINGFIELD'S NEIGHBORS BECOME THE FIRST TARGETS

In the summer of 1993, The City of Springfield announced plans to widen and resurface North 19th Street, a major connector to areas north of the city within its UGB. Most of these areas were already developed to urban densities. They were receiving coordinated services from Lane County and several special districts. Fire protection was provided by the city under contract.

The North 19th plan drew concern from some residents who felt this was a precursor to an annexation attempt. City staff assured them that there was NO ANNEXATION PLAN. However, in November, 1992, city development staff and the Lane Council of Governments (LCOG) had, in fact, finalized a comprehensive annexation plan for the unincorporated territory within the UGB. It was called the *Springfield Comprehensive Urbanization Study and Annexation Plan* (SCUSA Plan). Virtually no one in the targeted area knew about SCUSA or its potential fiscal impacts

There was a reason SCUSA was virtually unknown at this point in our history. Under the existing law in 1993, the targeted citizens would have veto power over the plan. They were already receiving the services they needed and paying less for them than they would pay if annexed into the city. SCUSA would be DOA and nearly everyone in local government knew it. But they also knew about SB-122 and how it would dramatically change the situation in a few months.

In April, 1994, UGB residents received a letter from Springfield's Mayor inviting them to "join our city." The mayor insisted that there was NO ANNEXATION PLAN. Soon thereafter, the area's electrical service provider transferred its customers to the Springfield Utility Board. Representatives from both utilities pledged that there was NO ANNEXATION PLAN.

But the red flags were up. Almost overnight, well-organized opposition formed. SCUSA still had not officially been made public. That changed in the remaining months of 1994 with several public hearings, which were packed with annexation opponents. By the time it was made public, SCUSA had changed: it was now just a "STUDY," not a "plan." The word "*plan*" had been carefully deleted from all documents and drawings. The targeted residents knew better.

In the course of their research, leaders of the opposition learned about ORS-195. They also learned that the city was strongly considering the new law as an option for annexation. City staff assured residents that they would get to vote on any annexation plan. While this was true, it was also misleading.

Massive opposition, which included an anti-annexation petition with a supermajority of UGB property owners as signatories, prompted the Lane County Commission to vote 4:1 against the "combined vote" process. The Rainbow Water District also opposed the plan. Since all involved governments and service providers have to agree, these actions effectively took ORS-195 off the table. These political developments, combined with an unfavorable economic impact analysis, convinced the city council to shelve SCUSA in May, 1995 over protests from city staff.

LESSONS LEARNED

The Springfield experience provided several important lessons:

1. Oregon cities' interpretation of ORS-195 provided a new way to annex territory that effectively denied those most impacted a voice in the process.

2. The public may be completely unaware of an annexation plan until it is fully drawn up and considered a "done deal."

3. ORS-195 annexation plans could be defeated, provided there is early, persistent citizen intervention and heavy civic firepower.

4. The questionable interpretation of the ORS-195 voting provision disenfranchised voters in unincorporated areas and needed to be corrected.

OCVA IS FORMED

Other Oregon cities were experiencing annexation battles of a different sort. Many of their citizens were concerned about rampant growth that was not paying its way. Some had passed "voter annexation" charter amendments in their communities. These local laws, most often passed by citizen initiative, require city voter approval of all annexations.

In December 1996, leaders of citizens' groups from Corvallis, Sisters, Philomath, Canby and from the Lane County group that successfully fought SCUSA met at the State Capitol and formed Oregon Communities for a Voice in Annexations. The prime directive of the new organization was "To Protect & Preserve the Public Voice in Land Use Decisions." OCVA's immediate focus was to fight off efforts by the Oregon Homebuilders' Assn. to outlaw "voter annexation" city charter amendments. But OCVA's interest soon expanded to include ORS-195 reform.

ORS-195 DEJA VU

In early 1999, Bend sprang an ORS-195 annexation plan on the residents of the unincorporated areas within its UGB. The plan targeted virtually all unincorporated territory within the UGB. These residents, like their counterparts outside of Springfield 5 years previously, were taken off guard. Ironically, like the SCUSA Plan, the Bend annexation plan was engineered by LCOG, which had spread its wings to Deschutes County under contract.

The targeted residents felt blindsided. They were unable to convince their representatives, the Deschutes County Commission, to support a less drastic and more democratic annexation plan. OCVA was not aware of the plan until it was in its final stages. By that time it was too late to stop the plan from going to a vote. The result, as we shall see, was all too predictable.

THE FIRST SHOT AT REFORM: THE 1999 LEGISLATIVE SESSION

Community outrage caught the interest of State Representative Ben Westlund (R, Bend) who introduced House Bill 3154 in the 1999 Legislature. Representative Kurt Schrader (D., Canby), an OCVA ally who had been involved in Canby's "voter annexation" campaign, signed on as a cosponsor. HB 3154 clarified the vague voting provision of ORS-195 as meaning "double majority" instead of "combined vote" and made the change retroactive to 1998.

However, the ORS-195 problem was practically unknown in most of the state. It did not raise a blip on the radar screens of most legislators. Furthermore, the legislation drew strong opposition from The League of Oregon Cities and building interests. These same lobbies had opposed OCVA's "voter annexation" charter amendments. Their testimonies and actions made it clear that these organizations did not want to see citizens gaining greater control over annexation processes. At this point in our story, they wielded considerable clout in Salem… and still do.

Against heavy odds, OCVA had defeated multiple attempts by development and real estate interests in 1997 to outlaw "voter annexation." However, a repeat assault was launched by the same groups on these local laws in 1999. Although OCVA lobbied in support of HB 3154, the organization's full effort had to be directed toward defeating this latest attack against the right to vote on annexations. Despite its 1997 successes, OCVA was still perceived as a fledgling group without much recognition or influence in the Legislature.

As a result of these and other factors, HB 3154 was passed around like a basketball to three different legislative committees. It was left stuck in the House Ways & Means Committee when the session ended. However, OCVA had once again successfully defended local "voter annexation" laws, which were by this time on the books of nearly a dozen Oregon communities.

THE BEND ANNEXATION PLAN VOTE

The "fly in the ointment" became painfully apparent with the vote on Bend's ORS-195 annexation plan in November, 1999: The targeted residents voted the plan down by a 3:1 margin. City residents voted 3:1 in favor, thereby ensuring approval of the plan. Residents in the formerly unincorporated areas subsequently became saddled with increased taxes and costs, and a new slate of rules and regulations under which they now had to live.

City officials sold the plan to city voters by claiming that UGB residents were not paying their fair share for the services they were receiving. They charged that city residents were therefore subsidizing their unincorporated neighbors. **Every other city or service district which subsequently tried to use ORS-195 and most opponents of the ORS-195 reform effort would mount the same argument repeatedly in the following years. None ever produced facts and data as proof when challenged.**

The "subsidization" argument would resurface practically every time an annexation battle erupted in the state. Partly in an attempt to quantify alleged subsidization, a "Tax Incidence Study" was conducted in Washington County in 2004 - 2005. However, the study found no evidence that urban unincorporated residents (those nearest to the city limits) were being subsidized by their nearby cities. To the contrary, the study concluded that these residents were subsidizing the "rural unincorporated" county properties.

Facts, data and truth are often the first casualties of a political debate. The "subsidization" argument rings powerfully with city voters. It has been this, more than any other sales pitch, that has produced overwhelmingly favorable majorities among city voters in ORS-195 elections.

SECOND VERSE, SAME AS THE FIRST

With the success of Bend's "hostile takeover," it was only a matter of time before other cities would start looking more closely at this new annexation method. OCVA made it a high legislative priority to mount another attempt at ORS-195 reform.

In December, 2000, OCVA sent a letter to Rep. Westlund, asking him to re-introduce a "double majority" bill. He and Rep. Tim Knopp (R., Deschutes Co.) obliged and sponsored HB 3331 in the 2001 Legislature. Bend's ORS-195 victims were still bitter over the forced annexation. The two representatives' support played well among their ranks.

But on the heels of HB 3331 came HB 3767, introduced by Rep. Jan Lee (R., Clackamas) at the request of Happy Valley Mayor Eugene Grant. Grant had been a vehement and outspoken opponent of OCVA's "voter annexation" campaigns. HB 3767 was an attempt to remove voters altogether from certain annexation decisions. It was also designed to speed up the ORS-195 "hostile takeover" process by forcing a timetable on larger cities.

By that time, OCVA had chapters in nearly two dozen communities around the state and had established a widespread communication network. Experienced lobbyists and politicians wanting to front a controversial measure such as HB 3767 sometimes ask an unsuspecting freshman legislator to sponsor such bills. This can provide opportunities for the new legislator to network with experienced and influential people who might be of help in the next campaign.

But the new legislator is then the one who has to incur the wrath of the opponents, and Rep. Lee was hammered. Even the League of Oregon Cities opposed HB 3767 because of the timetable provision. The bill never got a hearing. Apparently disillusioned with the Republican Party, Rep. Lee later changed her political registration to Independent. We do not know what role, if any, the fight over HB 3767 played in her decision. Lee did not return for another term.

OCVA had made defeating HB 3767 its top priority in the 2001 session. In addition, OCVA had taken the lead in a campaign to end "strategic lawsuits against public participation" (SLAPPs). Developers in some communities had been using SLAPPs to silence opposition to their projects. OCVA cosponsored HB 2460 in 2001 as an anti-SLAPP bill. After a lot of work and against strong opposition from development interests, HB 2460 made it through the 2001 Legislature and was signed into law by Governor John Kitzhaber in July 2001.

OCVA lobbied in support of HB 3331, but it was assigned to an inappropriate committee for its purpose (House Water & Environment Committee) from which it never emerged. Oddly, the sponsors, Westlund and Knopp, did not appear all that interested in their own bill. In the next two legislative sessions, evidence came out which suggested that this conclusion had merit.

IF AT FIRST (OR SECOND) YOU DON'T SUCCEED……

By late 2001 - early 2002, other Oregon cities, including La Grande, Redmond and Klamath Falls were considering annexation of part, or all of their surrounding unincorporated territory. OCVA's Board of Directors reaffirmed its commitment to ORS-195 reform. They again contacted Reps Westlund and Knopp and asked for another try in 2003. The two representatives again obliged by introducing HB 3211 in the 2003 Legislature.

FINALLY – SOME PROGRESS!

OCVA did not face an assault on its voter annexation charter amendments in 2003. This was a welcome reprieve. It provided the opportunity to focus more closely on ORS-195 reform. Once again, OCVA soon had a fight on its hands.

In response to HB 3211, Rep. Greg Smith (R, Heppner) introduced HB 3530. This was the "evil twin" to HB 3211. While the former clarified the voting provision of ORS-195 as "double majority," the latter cast in stone the "combined vote" interpretation. HB 3530 was supported by the League of Oregon Cities, city officials from around the state and development interests.

Legislative Counsel's clearance of both bills testified to the validity of OCVA's long-standing argument that the ORS-195 voting provision could be interpreted either way. It was HB 3530 that produced the first shots in the battle.

In April, 2003, a public hearing was held on the bill in Rep. Jerry Krummel's (R., Wilsonville) General Government Committee. OCVA testified against the bill, again stressing the fundamentally undemocratic nature of the "combined vote" interpretation. The League and its allies testified in favor. Several committee members asked thoughtful questions for which OCVA lacked immediate answers. However, OCVA Secretary Jerry Ritter found those answers and responded by fax to all the committee members that same day.

The General Government Committee took no action on HB 3530, and the bill died in that committee. **The first hurdle had been cleared!** Rep. Krummel, who became aware of the issue during this process, would later become a key player in the reform effort.

HB 3211 GETS A HEARING

Several weeks later, a public hearing was held on HB 3211 in Rep. Bill Garrard's (R., Klamath Falls) Environment and Land Use Committee. OCVA members and officers testified in favor. The League, Mayor Grant, other public officials and development interests testified in opposition. But the latter testimony was not convincing, especially after OCVA produced proof that some of it was inaccurate. A couple of the committee members took obvious offense at opponents' claim that if cities couldn't annex at will, this would lead to "blight."

HB 3211 came out of the hearing with a 5:1 "do pass" recommendation and headed to the House Floor. **The second battle had been won.** But the war was still raging, and the opposition – some of the state's most powerful lobbies – brought out their heavy artillery.

OCVA has never gotten a clear explanation of what happened next, but the support of the sponsors appeared to vanish. Legislative allies said that Westlund and Knopp did not even support their own bill on the House floor. Neither responded to inquiries despite repeated contacts. Had they been sponsoring these bills just to win political favor among disenfranchised Bend residents, knowing they were long shots with little chance of passage? That was OCVA's conclusion. Subsequent developments would add credence to that conclusion, among them being that Tim Knopp later became Executive Vice President of the Central Oregon Builders' Association. The Homebuilders' lobby strongly opposed HB 3211.

3211 DIES – BUT NOT IN VAIN

It appeared to OCVA that the sponsors, in reality, did not want to see ORS-195 reform enacted. When it looked as though the reform effort finally had some momentum, they backed off. HB 3211 was remanded to Rep. Garrard's committee with no explanation. House Speaker Karen Minnis (R., Woods Village) refused to allow any further action on the bill, and it died in committee. Rep. Garrard also learned about the issue during these proceedings. He too would become a key player later on. Garrard pledged to OCVA that he would re-introduce the bill in 2005 "with my name on it." He would later make good on that promise.

OCVA and its allies felt betrayed and devastated. But it was in the 2003 session that the critical foundation for the future success of the reform effort was laid. Arguably the most important outcomes were the acknowledgement that the ORS-195 voting provision was vaguely worded, and the defeat of HB 3530. It is much easier to amend or clarify an unclear statute than to overturn a clearly worded law. Had 3530 passed, OCVA would have been faced with the latter. In addition, two veteran legislators who learned about the ORS-195 issue during the 2003 session became allies. Many other legislators were at least exposed to the debate in the process.

THE STAGE IS SET, AND THE STARS ALIGN

By late 2003, OCVA had chapters in nearly 30 communities around the state. The opponents of voter annexation laws had backed down, at least for the time being. And, of critical importance, OCVA now had the ability to reach great numbers of people very quickly via the Internet.

Thanks to its Treasurer, Brian Beinlich, OCVA had established a website. On it was posted the ORS-195 story to date with guidelines on how citizens could fight these annexation attempts. OCVA was recognized among the media and had established its credentials in the Legislature.

Meanwhile, The Klamath County Commission had decreed that "double majority" was the only way it would allow the City of Klamath Falls to annex new territory. But all Hell was about to break loose over ORS-195 in Washington and again in Deschutes Counties. Soon, the stars would align. This would enable the seeds planted in 1999 to finally bear fruit.

The "alignment of the stars" came in the form of multiple ORS-195 annexation plans launched around the state. The majority of these were stealth actions sprung on an unsuspecting public, just as had happened in Lane County 10 years earlier.

ANNEXATION BECOMES HEADLINE NEWS

In early 2004, an ORS-195 annexation plan was made public by the Tualatin Hills Park & Recreation District (THPRD), targeting large areas in Washington Co. Soon thereafter, the City of Tigard announced plans to annex the Washington County area known as Bull Mountain using ORS-195. The City of Redmond had previously unveiled its own ORS-195 plan and was targeting November 2004 for the combined vote. OCVA had members outside the Redmond city limits. Because of their affiliation and proximity to Bend, they had known about ORS-195 for some time and had been trying to stop the city's plan. However, like their Bend counterparts, they were unable to get enough support from their county commissioners.

In the heavily populated metropolitan areas of Washington County, the ORS-195 plans took their normal course and were sprung on a mostly unsuspecting citizenry. In THPRD's case, the district had been trying to snag land for some time. However, its aggressive annexation plans had been effectively countered, largely through the leadership of Kathy Sayles, who would later join OCVA's Board of Directors. In response, the park district was now pulling out the "big gun."

Tigard had long set its sights on Bull Mountain. But the "Bull Mountaineers" had made no bones about their overwhelming opposition to becoming part of the city. An active citizens' organization, the **"Friends of Bull Mountain"** took up political arms when they learned the details of Tigard's plan. Under the leadership of directors Lisa Hamilton-Treick, Keshmira McVey, Richard Franzke and Julie Russell, this group was a major supporter of the reform effort.

Hits to OCVA's website surged. Via our website and the Internet, large numbers of people soon learned exactly what they were dealing with. A veritable firestorm erupted. Even more fuel for the fire came from an aggressive annexation binge by the City of Beaverton through the intentional creation of "islands" via street annexations. "Islands" can be – and were – annexed with no vote.

The metropolitan media picked up on these stories, making some of them headline news. This further spread the word and fanned the flames. OCVA officers fielded a river of emails from the organization's website contact link. The lack of widespread knowledge about this onerous law was soon a thing of the past.

As the 2005 Legislature convened in January, the timing could not have been more perfect for Rep. Garrard to honor his 2003 commitment to re-introduce a "double majority" bill.

THE BATTLE RESUMES

Not only did Rep. Garrard make good on his promise, an impressive bipartisan list of co-sponsors signed on in support. Among them was Rep. Krummel, who, as if by a stroke of luck, just happened to represent the Bull Mountain area. OCVA's long-time friend and ally, Kurt Schrader (now Senator Schrader) again came to our side in support, along with a list of legislators that ranged from liberal to conservative. **Thus was born House Bill 2484.** The fight was on again!

BOTH METRO-AREA ORS-195 PLANS FAIL; REDMOND'S SUCCEEDS

Surprisingly, the park district's plan drew opposition from some members of the Beaverton City Council, especially from Councilor Fred Ruby. The council was already mired in annexation controversy as previously noted. As if this weren't troubling enough, city officials had wakened a "sleeping giant" by targeting the campus of the Nike Corporation for annexation. This alone launched a legal battle that continues at this writing. They did not relish another major fight. Since all participating governments have to sign on to an ORS-195 plan, this presented a roadblock. However, that soon became a moot point: a bomb was about to be dropped.

Larry Derr, an alert attorney, with whom OCVA, Friends of Bull Mountain and Ms. Sayles had been corresponding, found an obscure provision in ORS-268. Section 354(d)(3) of that statute requires Metro area cities (Portland and surrounding cities) to rely solely on ORS-222 as an annexation tool. It requires districts such as THPRD to use ORS-198 to annex territory. Metro city officials and city attorneys were caught off guard to the same degree as those targeted by the ORS-195 plans, and they were not happy!

ORS 195 was off the table. Despite the completely predictable outcome, Tigard proceeded with its Bull Mountain annexation plan using an ORS-222 double majority vote. City residents voted nearly 2:1 in favor, but the Bull Mountain voters turned it down, defeating the plan by a 9:1 margin. The ORS-268 provision also effectively torpedoed the Tualatin Hills Park District's plan, which was already in trouble with the Beaverton City Council as noted earlier.

The residents outside Redmond were not as fortunate. Despite a gallant opposition effort led by OCVA board member Bill Bodden, the lopsided population difference with the city sealed their fate.

MEANWHILE, BACK AT THE CAPITOL…

Rep. Krummel stepped into the role of commanding general in the battle to pass HB 2484. Everyone could sense that things were different this time: THIS TIME THE FIREPOWER NEEDED WAS THERE IN THE FORM OF PUBLIC OUTRAGE! And it was Washington County citizens and citizens' groups, led by "Friends of Bull Mountain," who provided most of the added firepower.

It has been said that those with weak stomachs should never watch sausage – or legislation – being made. There was enough political intrigue to put a spy novel to shame. There was dealmaking. There were many anxious moments.

There were dirty tricks, the worst being the almost successful effort by the League of Oregon Cities to substitute another bill (Senate Bill 887) in place of HB 2484. There were hours and days of intense lobbying and last minute rescue efforts, notably one late in the game by Rep. Krummel's Chief of Staff, Dawn Phillips. The full blow-by-blow account of the passage of HB 2484 through the Legislature would be mind-boggling to all but veterans of the "sausage making" that takes place at 900 Court St. in Salem in odd-numbered years. The opposition, led by the League, never stopped trying to kill HB 2484.

To add to the suspense, the Portland Metropolitan Area Government (Metro) placed repeal of the ORS-268 requirements noted previously on its legislative agenda. This is the provision that limits Metro cities and districts to using ORS-222 or ORS-198 to annex territory. Metro wanted the right to use ORS-195. That made it all the more critical for HB 2484 to succeed.

In the end, the 2005 Legislature could not ignore the public outcry and demand for a change in a very onerous and undemocratic statute. HB 2484 sailed through both the House and Senate, unamended, which is very rare. There were only 3 "NO" votes in the Senate. Ben Westlund's – now Senator Westlund – was one of them. Reviewing the events of 2003, it was now beyond much doubt that OCVA and its allies had indeed been betrayed by the sponsors of HB 3211.

GOVERNOR KULONGOSKI MAKES IT OFFICIAL

It was now time to convince the Governor to sign the bill. After another intense lobbying campaign, HB 2484 was signed into law on June 30, 2005 by Governor Ted Kulongoski. In retrospect, it was fortuitous that legislative success had to wait until 2005. Given his record on annexation legislation, Kulongoski's predecessor, Gov. John Kitzhaber, would almost certainly have vetoed the bill. Kitzhaber was a vehement foe of "voter annexation" and had actively supported Oregon's building and real estate lobbies in previous sessions during their unsuccessful campaigns to outlaw it.

ONE BATTLE WON – OPPONENTS OPEN A NEW FRONT

The citizens of Oregon had finally won "the good fight" to bring fairness to the ORS-195 "service provider" annexation process. Needless to say, there was much jubilation within the ranks of OCVA and the many other people throughout the state who had joined together to finish the job.

The supporters of HB 2484 hoped that city governments had learned a couple lessons from the events of the past year. First, if they deny large numbers of citizens a voice in annexation decisions, there will be a public backlash. Successful "voter annexation" campaigns in 30 Oregon communities leave no doubt that citizens demand and deserve a meaningful voice in these decisions.

Second, the Legislature does not like to have to deal with public backlashes. It tends to support the public in such circumstances. As Rep. Garrard later commented, *"the more we studied the issue, the less sympathetic I became toward the cities."* However, some city governments and other public entities funded with public money have continually been trying to keep the public out of the public process. They had just lost a forced annexation tool that was growing in popularity among their ranks. They were not about to throw in the towel.

THE NEW FRONT – "ISLAND ANNEXATION"

No sooner had the ink dried on HB 2484 then OCVA began receiving increased reports of intentional "islanding" from around the state, notably from its Eugene UGB chapter. With ORS-195 no longer an option as a forced annexation tool, the only way left for cities to annex large, already-urbanized tracts within their UGBs without voter approval is by turning them into "islands." This typically involves annexing streets to surround an area, thus creating an "island" of unincorporated territory surrounded by city territory (the annexed streets). Under ORS-222.750, "islands" can be annexed without a public vote.

Recognizing the need to address this problem, Rep. Garrard in the summer of 2006 authorized Rep. Bob Ackerman (D., Eugene) to draft reform legislation for introduction in the 2007 Legislature. Rep. Ackerman subsequently invited OCVA to assist in drafting the language. Ackerman completed his work in the fall of 2006. The draft bill, LC 1245, was accepted by the House Interim Land Use Committee by a 5:1 vote in October, 2006.

The effort to reform island annexation is a critical part of OCVA's ongoing campaign to make all of Oregon's annexation statutes fair and democratic, where those most impacted have a meaningful voice in these decisions. It is likely be a long shot, just as ORS-195 reform was a long shot in 1999. Nevertheless, the process has to start somewhere.

ADDRESSING THE FUNDAMENTAL CAUSES OF ANNEXATION BATTLES

The League of Oregon Cities makes the valid point that Oregon land use law and Oregon annexation statutes are sometimes at odds with each other. Most of the fighting has been over annexation. Public opposition to annexation is often seen by cities as an impediment to progress. Aggressive city annexation policies are viewed by citizens as trampling on their right to a voice in the process and as picking their pockets. Rather than continue this ongoing battle, OCVA has proposed that both sides in the fight try to address its root causes.

OCVA believes The root causes of annexation wars in Oregon's communities are **A)** the (usually) higher cost of living in a city vs. living in the unincorporated area outside the city, and **B)** shutting the public out of community development decisions. Most Oregon citizens clearly want a voice in annexation decisions. They want to make the best use of public funds. They want to create safe, attractive communities and they care about the communities they will leave to future generations.

As readers of this report have learned, OCVA has taken significant steps to address the latter issue. However, if we ever hope to resolve these battles, ways must be found to make annexation more of a "win-win" proposition both for cities and for those being annexed. At the very least, we need to increase the benefit-to-cost ratio for potential annexees. Currently, in Oregon, "win-win" annexations, from a financial standpoint, are rare.

There are methods available under Oregon law to help mitigate and spread out the tax hit that typically accompanies annexation. However, these do not apply to all types of annexation. That can be changed. For example, LC 1245 contains a provision for spreading the tax increase out over 10 years.

Many local comprehensive plans require sewers and other expensive infrastructure extensions with annexation. That can also be changed if new infrastructure is not immediately needed. LC 1245 addresses this issue as well.

Cities also need to consider whether an annexation will carry its own weight financially, and whether it will be a good social, economic and environmental fit for the community. The fact that these mitigations are not always considered is borne out by the 30 Oregon communities that have passed "voter annexation" laws. OCVA strongly believes that city voters should always have a "voice in the process" without trampling their unincorporated neighbors. There are ways to ensure that under ORS-222 and under the newly revised ORS-195.

Senator Charlie Ringo (D., Beaverton) asserted during the 2005 session that *"cities have not made their case"* for their oft-stated mantra that unincorporated residents are being subsidized by city dwellers. As noted earlier in this report, hard evidence to support the subsidization claim is sorely lacking. Nonetheless, most would agree that if residents are receiving a service which they need and value, regardless of where they live, they need to pay a fair price for that service.

It is human nature to want "the best deal." In many cases, counties and special districts provide urban services at a lower cost than cities do. Are the city services superior? Are they worth the added cost? These are questions at the heart of nearly all annexation proposals for already-urbanized UGB territory.

These are just some of the issues that can be further examined in order to address the root causes of annexation battles. OCVA had hoped the Annexation Work Group authorized by Senate Bill 887 in the 2005 Legislature for this very purpose would venture more boldly down these paths. Although there were some good suggestions from this group, it completed its discussions in August 2006 without assertive recommendations addressing these fundamentals. However, it was due largely to OCVA Chairman Richard Reid's participation in this work group that the issue of island annexation made it onto the agenda. This helped give birth to LC 1245. The SB 887 Work Group's report provides some idea of the complexity of annexation issues. The report can be accessed on line at *www.orcities.org*

OCVA is hopeful that we can engage our opponents in meaningful discussions and exchange ideas on how to address the root causes of annexation battles in Oregon. This will be easier said than done because both sides have their lines in the sand. But we believe the potential benefits of such discussions to both sides of the debate outweigh the potential drawbacks.

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