

Law & Accounting

Municipality annexation case will shape future growth

A recent local land-use decision has left some property owners and developers a bit confused. The town of Parker annexed property into the town in response to a petition from several landowners in unincorporated Douglas County. One landowner was included in the petition unwillingly. At the same hearing, the town proceeded to zone the newly annexed property to a zone district that did not allow for a waste transfer station. The unwilling landowner claimed that the annexation and subsequent zoning of the property was done to stop his development of a waste transfer station, a use that was approved in the county and was in the process of going through the county's site-planning process. A lawsuit followed as to both the annexation and zoning determinations and is currently pending in the Douglas County District Court.

The purpose of this article is not to opine as to the ultimate matter being litigated, but rather to highlight the role annexation continues to play in shaping the future growth patterns of municipalities.

The power of municipalities to annex is a legislative act. The Colorado Municipal Annexation Act of 1965 is found at CRS § 31-12-101 et seq., as amended. While the act has numerous nuances



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that can make annexation a more complex proceeding than this article can address, the annexation act sets forth two basic processes for landowner petitions. Under the first process, where a landowner or a group of landowners petition the municipality with a petition alleging more than 50 percent of the land area and more than 50 percent of the landowners seeking annexation, the municipality can proceed under the act to determine the question of annexing without ordering an election. Under the second process, where a group of landowners petition the municipality to annex multiple parcels of property including less than 50 percent of the land area or less than 50 percent of the landowners, but more than 10 percent of registered electors seeking annexation, then upon a finding by the municipality that the petition is in substantial compliance with the required provisions of the act, an election is set for the area proposed for annexation. In either process, a nonwilling

landowner could find himself in the middle of an annexation proceeding. One process provides the opportunity to vote on the question and the other one does not. Depending on the type of petition submitted, an unwilling owner may be in one jurisdiction one day and find himself part of another the next.

Annexation historically has been used to promote a number of municipal goals: encourage a well-ordered development pattern, extend municipal services and facilities to eligible areas that form a part of the whole community, and simplify governmental structure in urban areas, among others. It can be a tool for securing future development paths and growth areas for a municipality and can help a municipality plan for the future and protect important natural features. Annexation has been used to control property around transportation hubs, interchanges and future employment centers so that when development happens, it does so within municipal boundaries. The need and desire to plan for the future of a municipality may suggest annexation can be used to protect municipalities from development scenarios on its borders that would tend to undermine the long-range plans of the municipality. A finding of a "community of interest" in the


annexing properties is central to a municipal decision to annex property. Contiguity between the landowners seeking annexation and the boundary of the municipality is a basis for finding that a community of interest exists.

The Colorado Legislature has stepped in from time to time to address the more egregious examples of municipal overreaching of the annexation power, such as limiting the area that can be annexed in any given year by a municipality and prohibiting annexations that create physically disconnected parts of a municipality ("satellite annexations") not connected by land or right of way. Generally, however, both the Legislature and the courts have left the reasons why a municipality may choose to annex or not annex largely within the discretion of the municipality. The act prescribes the contents of a petition, the limitations of a petition, the requirements of a petition and the creation of an annexation map. It sets forth the process the municipality must follow depending on the type of petition submitted, and details the findings it must make should the council or board vote to annex. There is no right to be annexed, and a municipality can choose to annex or not annex for any

reason at all.

Landowners may seek annexation because of a perceived ability to obtain more favorable urban-type zoning, better services (including water and sewer), and the ability to use the annexation process to negotiate for certain incentives for annexing a sales tax generating use. However, with the increased use of special districts in the state and the sophisticated zoning codes now in place in many counties, the need to annex in order to achieve urban level development may be lessening and some landowners may desire to stay in the county.

In the Parker case, a group of landowners used the annexation process as a tool to protect their property from a use that they feared would affect property values. Presumably the town found the community of interest along with the other requirements of the act to support its decision to annex the property. Once the property was under the jurisdiction of the town, the council moved to zone the property to a category that did not permit a waste transfer station, a use that presumably was inconsistent with Parker's long-term plans. Regardless of the outcome of the litigation, the facts reinforce the potential power of annexation in shaping the future of urban development in Colorado.▲



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