

## Oregon Update

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# News from the State

Jon Chandler

As you're no doubt aware, the legislative session is underway so most of our attention is focused on activities in the state capitol. Here's a few reminders about how you can follow along on legislative activity if you're so inclined:

- As per usual during legislative sessions, we will be issuing a weekly report on legislative doings. It will be sent directly to the OHBA Board and to our local association EO's, but if you'd like to be added to the direct email list, please let Ginger Harville ([gharville@oregonhba.com](mailto:gharville@oregonhba.com)) know and she'll add you to the distribution list. The weekly reports will also be added to our website – more on that next.
  - To access our weekly reports and the bill tracking info, go to [www.oregonhba.com](http://www.oregonhba.com) and click on Government Affairs. Then click the Read More link in the 2017 Legislative Session section. This takes you to a Members Only section of the web site. To view it, you need to enter the email address we have on file for you. If you don't remember what address you gave us or if you need assistance, email Ginger Harville at [gharville@oregonhba.com](mailto:gharville@oregonhba.com).
  - For the most part, we will know what company policy is, but occasionally a bill will come in on a topic that we haven't talked about. When that happens, we may be emailing members for input, but when we do, please respond quickly. The legislature can move very quickly, and we often only have a couple days' notice that a bill is being heard, so fast responses are very helpful...slow ones not so much.
  - And speaking of communicating, if you have questions on legislation, please feel free to email us: [jchandler@oregonhba.com](mailto:jchandler@oregonhba.com) or [scott@barriehughes.com](mailto:scott@barriehughes.com). Phone calls are not recommended, as we often aren't in a place where we can answer. We'll try to respond to emails at least somewhat promptly.
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All that said, there were a couple important non-legislative developments in March.

**Annexation:** Last session, we were finally able to get legislation passed that prohibited cities from requiring city-wide votes on annexations. Only 35 or so cities had annexation voting in their city charters, but those were some of the most significant cities from a growth and building perspective: North Plains, Sherwood, Sisters, Salem, Corvallis, West Linn, to name just a few.

April 2017

After the law was signed by the Governor, the Cities of Corvallis and Philomath sued the state, alleging that the law violated the state's constitution and the home rule rights of cities, and was otherwise illegal, immoral and fattening.

The Circuit Court Judge in Benton County disagreed, and in a thorough and thoughtful opinion, told the cities to go fish. Specifically, the Court held:

- Cities have no constitutional right to annex property but rather derive their annexation powers from the state legislature, which means that the legislature can set the processes under which annexation is to occur – which the legislature did by saying that a city-wide vote could not be held;
- Since the bill only applied to land outside the city limits but within the urban growth boundary, there is no constitutional violation of home rule authority since the city has already determined that the property inside the UGB is available for urban use. The Court basically held that the legislation simply set the terms and conditions for urbanization, which they held is constitutional; and
- There is no constitutional right for citizens of a city to vote on annexations.

Since the cities' challenge was based on the Oregon Constitution, there wasn't a lot of discussion in the opinion about the impact of annexation voting on the land use system, but there was enough to validate our fundamental point in getting the legislation through in the first place: voting on annexations is inconsistent with statewide land use planning. A very satisfying outcome, in other words.

**Goal 10 (Housing):** In another important case which also included our friends in Corvallis, we and 1000 Friends of Oregon joined with a residential developer GPA1, LLC, in an LCDC enforcement order petition against the City of Corvallis for violating statewide land use planning Goal 10 (Housing) and ORS 197.307 (the statute codifying parts of Goal 10).

A very special thank you to GPA1 and their attorney, Bill Kloos, for letting us tag along – they did all the work on this case and brought it to a successful conclusion.

In a nutshell, the case involved 223 acres inside the city limits on which the City insisted on processing under vague and subjective approval criteria – a practice that is prohibited under state law for "needed housing" – and the claim in the enforcement petition was that the City had to provide an approval path that was under clear and objective standards.

The City basically claimed that the land in question was not on their Buildable Lands Inventory and therefore wasn't subject to the clear and objective requirement – and the LCDC appointed hearings officer didn't think much of that argument.

Without getting too deep into the land use arcana that underscored the decision, this case is critically important for two key reasons:

- It stands for the proposition that cities cannot arbitrarily pick and choose which land is on their BLI for purposes of clear v vague approval criteria, and
- City adoption of a Planned Unit Development overlay zone is not enough to take land out of the BLI or otherwise subject it to subjective decision making. The hearings officer found that application of a PUD doesn't mean that the property is not entitled to processing under clear and objective standards.

All in all, a good week for affordable housing, if a fairly crummy week for Corvallis. Given the way the legislative session is unfolding, we can use all of those we can get.

## Green Building

Howard Asch

### Super Green Oregon Project

Net zero and LEED programs have been around awhile and provide standards for green building. But there's another program called the Living Building Challenge (LBC) that goes beyond green and net zero. Oregon has a home built to the LBC and it is interesting to look at some of its unique features which could someday become more mainstream.

The house, owned by Tom Elliott and Barbara Scott, is located in Bend. It is a 5,500 square foot project which includes a house, an accessory dwelling unit and two garages (one of which contains a studio). It includes a rain water collection system as well as an underground system to process water from dishwashers and showers so it can be reused to provide all the water needed. Solar panels provide enough power to run an average house.

The house had to be built without the use of many common building materials deemed as environmentally unfriendly such as PVC used in piping and vinyl often used in windows. There is a strict limitation on where materials must come from—a third of materials can come from no farther than 300 miles away, most of the rest from within 1,500 miles.

In addition to energy efficiency standards, water conservation and limitations on materials, the project also had to meet strict LBC standards for the building site, health, and appearance.

One of the biggest obstacles to the project was getting approval of the unique conservation systems incorporated into the project. It was necessary to demonstrate ideas would work that have not yet found their way into the codes. Being the first always comes with extra costs associated with training workers to use products

and materials they have never used before.

It is interesting to see the new technologies and methods used in these extreme projects. They may give us a glimpse of the future and suggest ideas we can offer our green-minded customers who want to be on the cutting edge.

You can find more information on this project at:

[www.opb.org/artsandlife/article/green-home-bend-living-building/](http://www.opb.org/artsandlife/article/green-home-bend-living-building/)

## Codes Update

Howard Asch

### Retaining Walls

The building code lists several kinds of structures and work exempt from permits and inspection. One of the items on the list may sometimes be exempted and sometimes not. Retaining walls may or may not need a permit. Whether a retaining wall is exempt depends of several things. Building Codes Division has issued an interpretation to try to clear up any confusion. Here is a summary of that interpretation.

Some retaining walls must always have a permit and undergo plan review and inspection and are never exempt. Retaining walls which would impact buildings, parking and exiting required by the code are not exempt. Here are some examples of non-exempt retaining walls. A retaining wall which supports material that supports a building must be inspected to be sure it provides adequate support for that building. A wall close to a building which holds back earth that would fall against the building should the wall collapse requires a permit. A wall supporting a required parking area for the building is not exempt. Walls which support or could fall on a required path of travel are not exempt, such as the walkway from the entrance of a house to the street.

Retaining walls which do not require permits are walls which do not impact a building regulated by the building code. Examples would include walls that only used for landscaping; walls on a property line that would not impact the building on that property if they were to collapse; retaining walls that protect a private road; and walls that protect a non-required walkway in the yard. None of the exempt walls would cause damage to the building or create a hazard for people leaving the building should they collapse.

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