

Municipal Annexation: Growing City Borders

South Carolina Community
Development Association
May 17, 2018

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MASC Municipal Association
of South Carolina™

Municipal Annexation: Growing City Borders

- Annexation – legal process to enlarge municipal land area
- Controversial issue – property rights
- Legislature – rural orientation
- Special interest groups
 - Electric utilities
 - Special purpose districts
 - Conservation/environmental groups
- Counties – perception of diminished political power

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Benefits to Property Owner

- Expanded/improved (urban) services
- Higher (urban) level of law enforcement and fire protection
- Lower property insurance premiums
- Planning, zoning and land use regulation
- Participation/voice in municipal government

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Benefits to Municipality

- More residents with a stake and voice in municipal government
- Economies of scale for service delivery
- Increased revenue sharing and enlarged revenue base
- Unified planning for urbanized area

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Public Relations

- Communicate effectively
- Identify friends and foes
- Provide complete and accurate information
- Provide opportunity for public input

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Annexation

S.C. Code of Laws
Title 5, Chapter 3

General Requirements

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**Authorized Annexation
Methods
Title 5, Chapter 3**

- Three approved methods for annexation of private property
 - 100% petition
 - 75% petition
 - Petition/election
- General requirements apply to all methods



**Freeholder Definition
Section 5-3-240**

- Term freeholder applies to 100% and 75% methods
- Freeholder defined as any person at least 18 years of age or a corporation with title to a minimum 1/10 possessory interest in single tract of property



**Freeholder Definition
Section 5-3-240**

- Name appears on county tax records as owner
- Ownership must exist on date of petition
- A person owning multiple parcels equals one freeholder regardless of number of parcels owned



Contiguous

Section 5-3-305

- Property to be annexed and property in the municipality must physically touch at a point
- Contiguity not destroyed by one of the following intervening connectors
 - Road
 - Waterway
 - Right of way
 - Easement
 - Railroad track
 - Marshland or
 - Utility line

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Contiguous

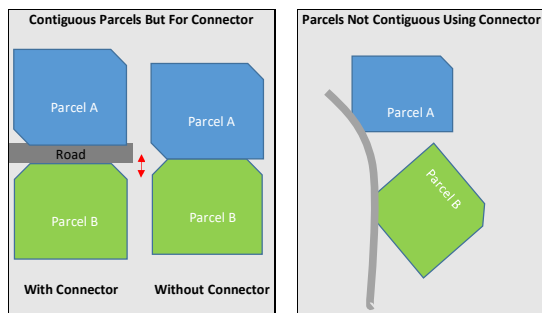
Section 5-3-305

- An intervening connector can connect two properties, if but for the intervening connector, the properties would share a border
- Intervening connector cannot link two otherwise non-contiguous properties after applying the “but for rule”

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Contiguity

Section 5-3-305



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**Challenge Period
Section 5-3-270**

- Challenge period
 - 60 days - written notice to contest annexation filed with municipal clerk and clerk of court
 - 90 days - summons and complaint filed in circuit court
- Other legal restrictions
 - A mayor/council member owning property or stock may not vote



Legal Standing

- Standing is the legal right to contest an action
- Standing varies by annexation method
- Limited standing = lower chance of a successful legal challenge
- Standing can be an important factor when selecting the preferred annexation method or strategy



Filing Notice of Annexation

- A notice of annexation must be given to:
 - Secretary of State
 - Department of Transportation
 - Department of Public Safety
 - Office of Revenue and Fiscal Affairs



Filing Notice of Annexation

- Recommended notice to other interested parties
 - Municipal departments
 - County government
 - Sherriff
 - 911 and emergency service providers
 - County board of voter registration
 - Utility franchisees



100% Ordinance Method



100% Ordinance Method Section 5-3-150(3)

- Fastest, least controversial and safest annexation method
- Petition must be in writing and
 - Reference state code section 5-3-150(3)
 - Have signatures of 100% of property owners (freeholders) in annexation area



**100% Ordinance Method
Section 5-3-150(3)**

- Public hearing not required
- Council accepts petition/adopts ordinance
- Two readings of ordinance a minimum six complete days apart
- Very limited legal standing



**75% Petition/Ordinance
Method**



**75% Petition/Ordinance Method
Section 5-3-150**

- Detailed review and notice process required
- Petition requirement- 75% freeholders - owning 75% assessed valuation
- Freeholder = property owner with minimum 1/10 interest
- Legal standing very broad



**75% Petition/Ordinance Method
Section 5-3-150(1)**

- Council presented with petition
- Accepts or rejects concept of moving forward with annexation
- Annexation review begins
- Requires a detailed feasibility study meeting defined standards
- Mandatory public notice and hearing



Council Approval

- After presenting feasibility report and conducting the mandatory public hearing, the municipal council
 - Accepts or rejects petition for annexation
 - If petition accepted, adopts ordinance approving annexation
 - If petition rejected, annexation process terminates



**25% Petition and Election
Method**



25% Petition and Election Method

Section 5-3-300

- Annexation initiated by a petition signed by 25% of the "qualified electors" who must be residents within the area to be annexed
- Petition certified by county election commission and municipal council



County Election Commission Must Conduct Election

- Provide at least 30 days public notice
- Voting limited to registered/qualified electors residing in the area to be annexed
- Election results certified by CEC to the municipal council



Opt-out Procedures for 25% Method

- Certain owners must be notified by certified mail of proposed annexation
 - Single property owner(s) owning 25% of the assessed value and/or
 - Owner(s) of "agricultural real property"
- To opt out, owner must file written notice with clerk at least 10 days prior to election



Definition - Agricultural Real Property

- Timber tract 10 acres or more, or tracts which are part of a management system which are more than 10 acres
- Tracts other than timberland if the property owner reported at least \$1,000 of gross farm income for three of the last five years on his federal income tax return
- Municipality may request verification of agricultural use and income



Opt-out Procedures for 25% Method

- Tracts qualifying for opt-out need to be identified early in annexation process
- Annexation strategy or design needs to prevent properties eligible for opt-outs from destroying contiguity
- Consequence – invalid or partial annexation



Vote in Favor of Annexation

- If vote passes, the municipal council must (by written resolution) publish the results including:
 - Description of area to be annexed, adjusted for any opt outs
 - Section authorizing the annexation (5-3-300)
 - Statement that the qualified electors of the area voted to be annexed



Challenge by City Electors

- Council can annex by ordinance, unless a petition calling for a city election is:
 - Signed by 5% or more of qualified electors of the city and,
 - Received by council within 30 days of the date of publication of the annexation election results



Challenge by City Electors

- If challenge petition received: Municipal election commission certifies petition and conducts city wide election
 - If majority votes in favor, council may give final reading to annexation ordinance.
 - If majority opposes, council must table the proposed ordinance for at least 24 months



Annexing Property in Special Purpose District (5-3-310)

- Requirements apply to all annexations of SPD territory
- Municipality may elect (as its sole option) to provide service and give SPD notice
- Special Purpose District
 - Continues serving until notice given
 - Retains option to maintain ownership of property unless entire district annexed



The Plan

- Municipal and district develop plan for transfer of assets (5-3-300)
- Formulated by agreement of the district and municipality
- If no agreement after 90 days, form a committee of three members
 - one appointed by municipality
 - one appointed by district
 - one appointed by both



The Plan

- Committee selects chairman within 10 days
- Within 60 days of selecting chairman, develop a plan
- If either municipality or district objects to plan, they have 30 days to appeal to court of common pleas



Special Annexations

- City/County Property (5-3-100) – Council
- Department of Transportation (5-3-110) – Director
- Corporation (5-3-120) – Stockholders
- School District (5-3-130) – Trustees
- Federal or State Government (5-3-140) – State Fiscal Accountability Authority
- Cemetery (5-3-250) – Cannot tax
- Church (5-3-260) – Board



Annexation Strategy

- Importance data to analyze
 - Contiguity issues
 - Number of owners (definition of Freeholder)
 - Assessed values
 - Property uses
 - Size of properties
 - Number of eligible electors



Annexation Strategy

- Understand approved annexation methods, case law and tools
- Examine the feasibility of each method for each annexation
- Identify pros and cons of each method
- Focus on the method(s) with highest potential for successful



Annexation Strategy

- Consider the following non-statutory issues:
 - Leverage provided by existing annexation covenants, if any
 - Contiguity chain and affects of possible breaks
 - Legal standing and potential for challenges



Annexation Covenants

- An annexation covenant is a legal agreement to petition for annexation in exchange for receiving utility services
- By signing the covenant, an unincorporated property owner agrees to annex if or when
 - The property becomes contiguous to city, and
 - The municipal council determines annexation is in best interest of city

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Annexation Covenants

- Binding covenants require
 - Properly constructed covenant document
 - Covenant signed by property owner(s) and properly notarized/witnessed
 - Covenant recorded and made part of the chain of title for the property
- S.C. courts have upheld use of properly constructed and recorded annexation covenants and ordered specific performance for individuals who signed a covenant but refused to petition for annexation after becoming contiguous

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Contiguity Breakdowns

- Chains of properties with single points of contiguity can be source of problems
- Errors calculating ownership, value and opt outs can destroy contiguity
- Dual points of contiguity effective back stop

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Legal Standing

- Case law on standing
 - 100% Petition Method
 - Municipality
 - Petitioning property owner(s) – owners proprietary interests
 - State of SC - compelling public interest

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Legal Standing

- 75% Petition Method
 - Municipality
 - Property owner or resident of municipality
 - Property owner or resident in annexed area
 - State of SC - compelling public interest
 - Broad standing

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Creative Strategies

- Use election method in annexation areas with mixed residential, business and industrial uses – voters, not owners, make decision
- Use combination of methods to reduce challenges
- Consider strip or shoestring annexations - using a narrow strip of a consenting owner's property, as opposed to the entire tract, to establish contiguity

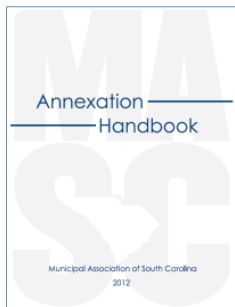
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Creative Strategies

- Consider the number of freeholders
 - Dividing or adding to ownership interests to change the number of freeholders
- Understand the impact of the assessed value of agricultural property
- Charleston - Daniel Island example

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Resources



Municipal Association
of South Carolina
www.masc.sc
Keyword: annexation

S.C. Code of Laws
Title 5, Chapter 3

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