

Exhibit 626, LU 23-0002, Provides New Evidence

Applicant seeks to exclude Exhibit 626 for failing to provide new evidence. This is not correct. 626 is a new evidentiary response directed to part of the City's after hearing response of December 22, 2023 to the December 18, 2023 hearing testimony. The City's response that relies on ORS 227.178 (3)(a) argues that, even if the Charter Amendment is a land use regulation, it fails to apply as being enacted after the Annexation application.

626 bundles the unique circumstance here that the Charter Amendment is a significant land use regulation *under case law* and that with the recited date of the election officers certification of signatures of June 23, 2021, the recitation that the signatures totaled almost 25% of the registered voters, and the recited date of City's Resolution certifying the Charter Amendment of July 6, 2021, constituted an application for a land use decision that was well know to the applicant and city officials to probably succeed. As such an application, it preceded the July 8, 2021 application for Annexation.

The fact the measure won by approximately 62% underscores the probability of winning by the evidence of the massive signature gathering. Also, the DRC should and can take judicial notice of these official acts of certifications and the known circumstances of the signature count. Under these unique circumstances, the applicable date by which Charter Amendment should apply is the earlier dates of its certifications; therefore, meeting ORS 277.178(3)(a).

Obviously, ORS 277.178(3)(a) is intended to provide a fair playing field so the goal posts are not moved once an application is filed. This rule of fairness equally applies to an application by the voters for a significant land use decision in the form of a Charter Amendment. The applicant and city officials knowing the Amendment was duly filed and probable to win should not be allowed to subvert the will of the people by relying on an after filed Annexation application conditioned to destroy a portion of the natural area the voters wanted protected.

Additionally, the City's December 22, 2023 response argues the hearing is limited in nature to only certain applicable criteria. Nevertheless, under the new evidentiary response recited above as to the timing of the Charter regulation, 626 provides additional evidence that Charter Amendment supersedes the sewer connection code on its face and how it is being applied.

Applicant's motion to exclude Exhibit 626 should be denied.

Cordially submitted,


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