

Basics of Annexation & Development Agreements



University of Texas School of Law
Land Use Fundamentals
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What is Annexation?

- A legal process allowing a municipality to increase its geographic area.
- Two Types:
 - **Voluntary annexation** = annexation requested by property owners or inhabitants of an area.
 - **Involuntary annexation** = annexation initiated by the municipality without the consent of the owners / inhabitants.

Purposes of Annexation

- **Provide** municipal services to a greater area.
- **Exercise** regulatory authority to better address public health and welfare concerns that affect the municipality.
- **Ensure** that those benefitting from city services share in the tax burden.
- **Prevent** substandard development and nuisances from existing just outside the city.

Involuntary Annexation

- A home-rule municipality must follow the annexation procedures set out in ***state law*** and in its ***charter*** for involuntary annexations.

Short History

- 1912: Home Rule amendment to Const.
 - Statutory authority to Annex.
- 1963: Municipal Annexation Act.
- 1987: Statute prohibiting strip Annexing.
- 1997 & 1999: “Mother of All Anx Battles”
- 2007: Must offer Agreement to Ag.
- 2017: All out **WAR** on Muni Authority.

Texas Piracy!

- “Tyranny of Taxation w/o representation”.
- “Land Grab”.



New Rules: Tier 1 and Tier 2

- 2017 amendments to the annexation statute created 2 categories of counties and 2 categories of cities:
 - Tier 1 Counties <500,000
 - Tier 2 Counties >500,000
 - Tier 1 Cities
 - Tier 2 Cities

New Rules: Tier 1 and Tier 2

- Tier 1 City (Old Rules):
 - but could become a Tier 2 city by petition & vote.
- Tier 2 Annexation powers are limited by the 2017 amendments:
 - Unable to involuntarily annex;
 - vote of area required).
 - Limited power to voluntarily annex.

Land That Can Be Annexed

Municipalities can only annex land in its ETJ.

- Generally, municipalities may only annex land that is contiguous to (touching) its current boundaries.

- Exceptions:

- an area adjacent or contiguous to land subject to a Ag/Wildlife/Timber Development Agreement.
- public right-of-way of a road or highway in a municipality's ETJ that would cause an area to be contiguous if added to the area.
- Land owned by the municipality (*maybe*)

Annual Cap

- A municipality may not annex **> 10%** of the incorporated area of the municipality in one calendar year.
- That 10%, if unused, may be used in subsequent years but not to exceed **30%** of the incorporated area in one calendar year.

Annual Cap – Exclusions

- Land is not included in cap if **Voluntary**:
 - annexed at the request of a majority of qualified voters and owners of at least **50%** of the land in the area;
 - owned by a governmental entity and used for a public purpose;
 - annexed at the request of at least a majority of the qualified voters of the area; or
 - annexed at the request of the owners of the area.

Ag/Wildlife/Timber Agreement

- To allow land used for ag/wildlife to continue being used for that purpose.
- Development agreement offered to landowner:
 - Allows continued ag/ wildlife/ timber use: and
 - Subjects land to other municipal regulations.
- Landowner may reject (and be subject to annexation) or accept the agreement.
- Land Covered = “Contiguous” (adjacent).

Service Plans

- Inventory Required.
- Timing (w/i 10 months of Inventory).
- Services to include: Same as in City Limits.
- Necessary capital improvements.
- Quality.
- Restrictions.



Infrastructure & Utilities

- Include in service plan inventory:
 - Engineer's report on condition of infrastructure and utilities.
 - Summary of expenditures for infrastructure and utilities.
 - Additional information for police, fire, and emergency medical services.
- Make the inventory available for public inspection.

Maps

- A map showing the city boundaries and ETJ must be kept in the office of the city secretary and city engineer, if a city has one.
- When a city expands its ETJ by petition, or annexes territory, the map must be immediately updated.
- Updated map must be submitted to the state comptroller's office.

Surveys

- Not expressly required by law.
- But still necessary to ensure:
 - Accuracy of maps:
 - Compliance with legal requirements: and
 - Annexed area “closes”.



Pre-existing Land Uses

- Generally, annexed land is subject to all municipal ordinances and regulations.
- Exceptions:
 - Legal uses of land predating annexation proceedings; and
 - New uses of land under limited circumstances.
- Exceptions to the exceptions: when the municipality may impose ordinances and rules even if an exception applies.

Negotiation of Development Agreements

Municipal Perspective

Land Planning by Negotiation

- Tex. Loc. Gov't Code § 212.172
- Comprehensive Planning in the ETJ
- Opportunity for a Win / Win
- Give & Take



Scope of Agreements

- Annexation
- Uses & Development of Land
- Enforcement of Municipal Regulations
- Infrastructure
- Environmental Regs
- Other Terms



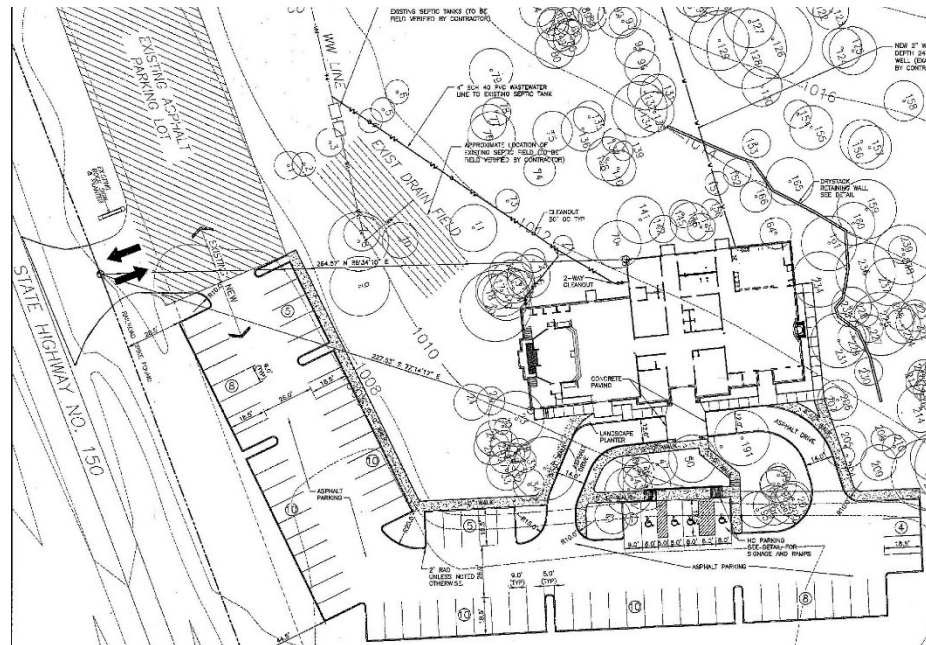
Requirements for Agreements

- Written
- Legal Description of the Land
- Approved by City Council
- Approved by Owner
- Recorded with County



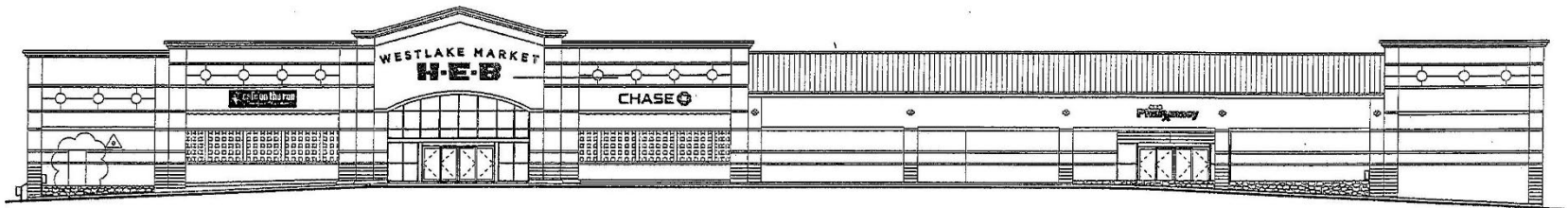
Aspects of Agreements

- Total Duration: 45 years
- Binding on Parties Successors & Assigns
- Agreement is a “Permit” under LGC 245



Motivation- Developer's

- Predictability
- Utilities
- Variances
- Eco D
- Annexation
- Flexibility



Motivation- City's

- Increased Regs
- Annexation
- Growth
- Goods / Services
- Utilities
- Infrastructure
- Eco D



Motivating Mutual Interests

- Avoiding Litigation (settling dispute)
- But For:

*“but for this agreement,
the development would either not occur at
all, or would occur with a different form.”*

- Wilson / Dougherty

Players

- Is Developer the Owner? Buyer? Builder? Operator? Do they have authority to negotiate?
- Is this staff-driven?
- Will there be a committee to shepherd?
- When will the elected get involved?
- Neighbors
- Other agencies, utilities

Conclusion:

