

97th CML Annual Conference

June 18–21, 2019 • Breckenridge, CO

ANNEXATION IN COLORADO
JUNE 19, 2019, 4:15-5:15

GERALD E. DAHL
MURRAY DAHL BEERY & RENAUD, LLP



COLORADO
MUNICIPAL
LEAGUE

Contents of this presentation reflects
the view of the presenter, not of CML.

Sources of Colorado Annexation Law

1. **Municipal Annexation Act of 1965: CRS 31-12-101 et seq.**
 - Basic structure unchanged today: **one-sixth boundary contiguity** must exist between municipality and property to be annexed;
 - Petition or election process to initiate annexation;
 - Findings by the municipal governing body required.
 - "No subject relating to municipal government aroused more interest or emphasis in the Committee's study than the matter of logical municipal growth through annexation. . . . [p]roviding adequate urban services to ever growing unincorporated fringe areas constituted one of most important problems to Colorado municipal government. . . . Annexation is recognized as an important vehicle to achieve logical urban development." Report of the State Wide Committee to the Governor's Local Affairs Study Commission, December 1964.

Sources of Colorado Annexation Law, *cont'd*

2. **Poundstone I (1974): Colo. Const. Art. XX, Sec.1**
 - Applies only to Denver
3. **Poundstone II (1980): Colo. Const. Art. II, Sec. 30**
 - Applies to all Colorado municipalities
 - One of three alternative conditions must apply:
 - Approval of the annexation by vote of landowners and registered electors of the area to be annexed;
 - Petition for annexation signed by more than 50% of the land owners who own more than 50% of the land; or
 - The area is entirely surrounded by or is solely owned by the annexing municipality.

Annexation can Take Place in Three Ways

1. Landowner petition, C.R.S. 31-12-107(1).
2. Annexation election, C.R.S. 31-12-107(2).
3. Unilateral annexation of enclave or municipally owned land: C.R.S. 31-12-106.

"**Landowner**" means the owner in fee of the surface estate, not the owner of the mineral estate if severed. C.R.S. 31-12-103(6). Joint tenant landowners are counted individually.

Establishing Eligibility

- One-sixth boundary contiguity required: C.R.S. 31-12-104(1)(a).
- No division of property held in "identical ownership," without landowner consent.
- No annexation of property for which annexation proceedings have been initiated by another municipality.
- No annexation which will detach property from a school district without written consent of the district
- No annexation which will detach property from a school district.
- Three mile plan required. C.R.S. 31-12-105(1)(e)(I).
- If annexing a portion of a street or alley, must annex the entire width. C.R.S. 31-12-105(1)(f).

Contiguity: Flagpoles and Other Configurations

- "...not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality." C.R.S. 31-12-104(1)(a).
- C.R.S. 31-12-104(1)(a) was amended in 1987 to confirm as legitimate the longstanding practice of annexing one or more parcels in a series, considered simultaneously, in order to annex property which, taken as a whole, does not have the requisite one-sixth contiguity.
- "Within said three mile area, the contiguity required by Section 31-12-104(1)(a) may be achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway." C.R.S. 31-12-105(1)(e).
- In using a street to serve as the "pole" to reach, and thus annex, the desirable "flag" of property, it is required that the municipality also annex the "pole."

Contiguity: Flagpoles and Other Configurations, *cont'd.*

- The shape and size of the parcel ultimately annexed, whether in a “flagpole” configuration or otherwise, is not relevant to its eligibility for annexation.
- In 2001, C.R.S. 31-12-105(1)(e) was amended to grant certain rights to property owners abutting the proposed “pole,” giving them a time-limited opportunity [90 days maximum] to be annexed along with the “flag.”
- Existence of contiguity satisfies the “community of interest” requirement of C.R.S. 31-12-104(1)(b).
- Disconnection and re-annexation to satisfy contiguity requirement is acceptable. BOCC v. Greenwood Village, supra, 30 P.3d 846@849.

Annexation Impact Report and Notice of Hearing

- **Impact Report:** required for annexations over 10 acres, unless waived by board of county commissioners. C.R.S. 31-12-108.5.
- **Notice of Hearing:** required except for enclaves [Notice only; no hearing: C.R.S. § 31-12-106(1)] and municipally owned property. C.R.S. 31-12-108; 109.

Enclave Annexations

- When an unincorporated area has been entirely contained within the boundaries of a municipality for at least three years, the municipality may annex the property by ordinance without regard to the eligibility requirements in Colorado Revised Statute § 31-12-104, the limitations in Colorado Revised Statute § 31-12-105, or the hearing requirements of Colorado Revised Statute § 31-12-109.
- A private owner may force an enclave annexation. Colorado Revised Statute § 31-12-107(5).
- The enclave must be a “true” enclave.
- No enclave may be annexed pursuant to subsection (1) of this section if:
 - (I) Any part of the municipal boundary or territory surrounding such enclave consists *at the time of the annexation of the enclave* of public rights-of-way, including streets and alleys that are not immediately adjacent to the municipality on the side of the right-of-way opposite to the enclave. (emphasis supplied)

**Annexation of
Municipally-Owned Land**

- Can annex by ordinance, without notice and hearing.
- One-sixth contiguity still required.
- The annexing ordinance must state that the area proposed to be annexed is owned by the annexing municipality *and is not solely a public street or right-of-way.*

Zoning of Land while Annexation is Underway

- Municipality may institute zoning or subdivision proceedings for the area proposed to be annexed at any time after a petition for annexation or petition for annexation election has been found to meet the requirements of the statute.
- Most annexations occur simultaneously with zoning and subdivision or planned unit development (PUD) review.
- The area annexed must be brought under the municipality’s zoning ordinance within 90 days from the effective date of the annexation ordinance.

Zoning of Land while Annexation is Underway, *cont'd.*

- The municipality has no land use or police power authority over the property until it is finally annexed and becomes part of the municipality.
- The governing body may agree to “consider” a certain zoning density in the event annexation is taken to completion if the annexation agreement states that zoning is not guaranteed and that the municipality retains its full discretion to zone the property following the public hearing.
- Often, the petitioning landowner reserves the right to withdraw the petition and prevent the recording of the annexation plat if the desired zoning is not granted.
- Most annexation agreements provide that the annexation ordinance and map may not be filed with the clerk and recorder under Colorado Revised Statute § 31-12-113 (and thus the annexation never becomes effective) unless the agreed zoning is granted.

**Jurisdiction for Zoning Purposes:
Resolving the 60 Day Problem**

- C.R.S. 31-12-115: "The annexing municipality may institute the procedure [outlined in state statutes or municipal charter to make land subject to zoning] nor [outlined in its subdivision regulations to subdivide land in the area proposed to be annexed] at any time after a petition for annexation or a petition for an annexation election has been **found to be valid** in accordance with the provisions of Section 31-12-107."
- A petition is "found to be valid" likely by a finding of "substantial compliance," as referenced in 31-12-107(1)(g) [petition for annexation] or 31-12-107(2)(e) [petition for annexation election], and C.R.S. 31-12-107(i)(f).

**Jurisdiction for Zoning Purposes:
Resolving the 60 Day Problem, cont'd.**

What to do? At latest count, there are four alternatives:

1. Set the annexation hearing, then simply keep continuing it under C.R.S. 31-12-108(3) [after taking 1 hour of testimony] until the land use applications catch up. This is the most common approach.
2. Act by ordinance to permit the Council to table an annexation petition for up to ___ days/months after receiving it.
3. Act by ordinance to grant the governing body such additional time as it wishes.
4. Adopt the resolution of substantial compliance under C.R.S. 31-12-108, set the hearing within the 60 day maximum, conduct the hearing and adopt the second resolution declaring the property eligible for annexation, but delay action until the land use applications have been brought to final form.

For statutory municipalities, options 2 and 3 are not available.

Effective Date of Annexation-Required Filings

- Colorado Revised Statute § 31-12-113 establishes detailed filing requirements which must be followed before an annexation is effective:
 1. One copy of the annexation map and the original annexation ordinance are filed with the municipal clerk.
 2. Three certified copies of the map and ordinance are filed with the county clerk and recorder.
- The Colorado Court of Appeals has held that substantial compliance with this filing requirement is sufficient to satisfy the two statutes.
- Importantly, the effective date of the annexation ordinance is distinct from (and precedes) the effective date of the annexation which is the date the ordinance and map are actually filed with the county.

Annexation Agreements

- "Additional terms and conditions" upon the annexation will require an election to be held. CRS 31-12-101(1)(g). No election is required if 100% of landowners petition and have agreed to the conditions.
- An annexation agreement is a contract.
- Example developer/annexor obligations: dedicate and improve roads, install water and sewer lines, pay fees for water transmission.
- Example municipal obligations: provide water and sanitary sewer service.

Challenge and Enforcement

- C.R.S. 31-12-116 provides the only means for challenging a municipal annexation:
 - Any landowner or qualified elector in the area annexed;
 - the board of county commissioners; or
 - any municipality within one mile of the area annexed.
- Annexation is a legislative act; rezoning is quasi-judicial. This difference leads to interesting problems when (as is commonly the case) an annexation petition is accompanied by a request for rezoning.

**Conflicting Annexation Claims of Two or More
Municipalities**

C.R.S. 31-12-114 governs the procedure for resolving these claims. Subsection (1) provides:

At any time during a period of notice [of the annexation hearing] given by a municipality pursuant to section 31-12-108, any other municipality may adopt a resolution of intent pursuant to section 31-12-106 or receive a petition for annexation or a petition for an annexation election pursuant to section 31-12-107 with the area partly or wholly overlapping the area proposed for annexation by the first municipality. If this occurs, the respective rights of the several municipalities shall be determined in accordance with an election as provided in this section.

Required Mediation of Certain Annexations

- Colorado Revised Statute § 24-32-3209, entitled “comprehensive planning disputes-development plan disputes-mediation-list.
- The statute requires mandatory mediation of certain planning disputes, including disputes over the proposed annexation of land.
- Requirement applies when the proposed annexation includes territory within the boundaries of a “development plan” (defined at Colorado Revised Statute § 24-32-3209(1)(c.5) to include plans approved by intergovernmental agreements) to which the annexing municipality is not a party, but notice of and copy of which has been received by that municipality.

Disconnection

1. Disconnection of territory because of failure to serve: CRS § 31-12-119.
2. Disconnection by ordinance-statutory cities and towns: CRS §§ 31-12-501 to 503.
3. Disconnection by court decree - statutory cities: CRS §§ 31-12-601 to 605.
4. Disconnection by court decree-statutory towns: CRS §§ 31-12-701 to 707.