

Annexation: Growing Pains and Growth spurts

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Today's Learning Objectives

| | |
|-------------|---|
| Learn | Learn Georgia annexation and relevant zoning laws |
| Summarize | Summarize the annexation arbitration process |
| Assess | Assess factors for decision making |
| Acknowledge | Acknowledge potential implications of annexation |
| Identify | Identify available resources |

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Today's Agenda

| | |
|-----------|--|
| 2:00 p.m. | Welcome, Introductions, Overview |
| 2:10 p.m. | General Annexation and Zoning Law & Overview of Annexation Arbitration |
| 3:30 p.m. | Break |
| 3:45 p.m. | Decision Making: Implications and Analysis |
| 4:45 p.m. | Wrap Up, Closing |

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General Annexation and Zoning Law

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There are 5 methods of Municipal Annexation authorized by Georgia law.

1. The 100% method
2. The 60% method (really the 60% and 60% (method)
3. Annexation by Resolution and Referendum
4. Annexation of Unincorporated Islands
5. Annexation by Act of the General Assembly



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Local Act – General Assembly

- The statute states that the arbitration process does not apply. See O.C.G.A. § 36-36-110. But even if it didn't . . .
- “The legislature's power to annex property is limited only by the federal and state constitutions.” *Ft. Oglethorpe v. Boger*, 267 Ga. 485 (1997).
- This is the only method of annexation not covered by the dispute resolution process.



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Annexation of Unincorporated Islands

- Essentially these are unincorporated areas that have been completely surrounded by one or more municipalities since January 1, 1991.
- Islands can be annexed by the city that abuts the greatest percentage of the external boundary.
- Cities may annex by passage of an ordinance within 30 days of notice to the property owners.

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Annexation of Unincorporated Islands *(continued)*

- County objections to this type of annexation are possible but not likely to be very common.
- Unincorporated islands aren't that common.
- Because annexation of unincorporated islands potentially aids counties in service delivery (counties would potentially not have to drive through a city to deliver certain services), objections are likely to be rare.

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Resolution/Referendum Method

- This method allows cities to call for a referendum in adjacent areas that meet certain criteria defining them as developed for urban purposes.
- After passing a resolution identifying the area under consideration and setting the time and place for a public hearing, a plan for extending municipal services must be prepared.
- The plan for extending services must be approved by the city, made publicly available in advance of the hearing, and must be presented at the hearing.

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Resolution/Referendum Method (*continued*)

- After the hearing, the city may call for an election to be held within the area under consideration. A majority of the ballots cast will determine whether the area is annexed.
- County objections to this type of annexation are possible but not likely to be very common.
- This method is rarely utilized by cities.
- Where the county is providing, water, sewer, police, or fire protection, the county must consent to the annexation. Thus, in areas where there is potential service delivery competition, the county will likely have already prevented an annexation they don't like from proceeding under this method.

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60% and 60% Petition Method

- Written petition signed by at least 60% of the owners of the land area (by acreage) and at least 60% of the resident electors in the area proposed for annexation.
- After reviewing the petition for validity, the city must set a time and place for a public hearing, and a plan for extending municipal services must be prepared.
- A plan for extending services must be approved by the city, made publicly available in advance of the hearing, and must be presented at the hearing.
- After the hearing, the city may choose to annex the territory identified in the petition.

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60% and 60% Petition Method (*continued*)

- County objections to this type of annexation are possible.
- These petitions are less common than the 100% method as obtaining the signatures of electors can be difficult.
- This method cannot be used to annex territory in counties where the city does not already have a territorial presence.

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100% Petition Method

- Written petition signed by 100% of the owners of all the land in the area proposed for annexation (consent of the owners of public street, road, highway, or right of way is not required).
- Cities may choose to annex the territory through passage of an ordinance.
- Counties in which the city is not already located must consent to the first annexations into their county under this method.
- This is the most commonly used method of annexation and therefore the most likely the one to be seen in the dispute resolution process.


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Contiguity

- Each “home rule” method of annexation requires that the area to be annexed to the city be contiguous, that is adjacent, to the city.
- The definitions of contiguity differ slightly for each method.
- Under the 100% method, the area must abut the city by 1/8 of its aggregate external boundary or 50 feet, whichever is less.
- Under the 60% and Resolution Referendum methods, the area must abut the city by at least 1/8 of its aggregate external boundary.
- Under the unincorporated islands method, the entire aggregate external boundary must abut one or more cities.

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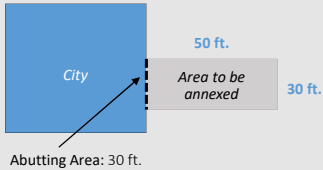
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100% Petition Method

Example:



Abutting Area: 30 ft.

Total boundary=160'


$1/8 \text{ of } 160=20'$

Abutting Area=30'


More than $1/8$ ($30>20$) of the total boundary abuts the municipal boundary, so the parcel can be annexed.

Source: Growing Cities, Growing Georgia, GMA Legal Report. January 2014.

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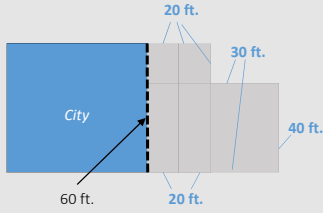
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60% and 60% Petition Method (continued)

Example:



60 ft.

Total boundary=260'


Contiguous Boundary=60'

$1/8 \text{ of } 260=32.5'$


More than $1/8$ of the total boundary is contiguous to the municipal limits ($60>32.5$).

Source: Growing Cities, Growing Georgia, GMA Legal Report. January 2014.

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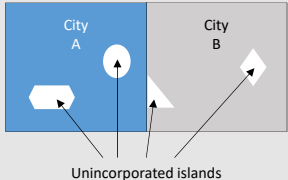
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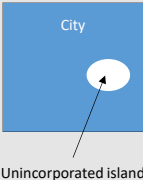
Annexation of Unincorporated Islands (*continued*)

Example 1:



Unincorporated islands


Example 2:




Unincorporated island

Source: Growing Cities, Growing Georgia, GMA Legal Report. January 2014.

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Unincorporated Islands

- Each “home rule” method of annexation prohibits the creation of new unincorporated islands.
- However, cities can “nibble” away at an island; they don’t have to “eat” the entire thing. See Calloway v. City of Fayetteville, 296 Ga. App. 200 (2009).

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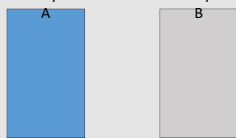
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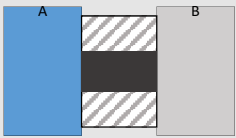
Unincorporated Islands

Example 1:



Original municipal limits


Example 2:




Formation of island by annexation

Source: *Growing Cities, Growing Georgia*, GMA Legal Report, January 2014.

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Contiguity (*continued*)

In defining contiguity, the law exempts:

- land owned by a local government or the state.
- the definite width of any street or street right-of-way, any creek or river, railroad or other public service corporation.

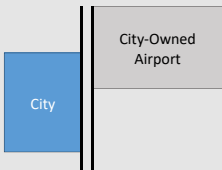
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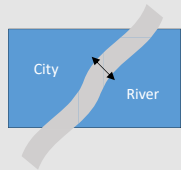
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Contiguity – Exemptions (*continued*)

Example 1:



Example 2:



Source: *Growing Cities, Growing Georgia*, GMA Legal Report, January 2014.

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Notice to Counties of Proposed Annexations

- Each method of annexation, except for the annexation of unincorporated islands, provides that the city send notice of the proposed annexation to the county in which the territory under consideration is located.
- Within five days of such notice, the county must notify the city of the presence of any county owned public facilities within the area proposed for annexation.

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County Property in Area Proposed for Annexation

Control and ownership of county owned property is not changed by municipal annexation, unless and until:

- It is no longer usable for service to the unincorporated area of the county as a result of the annexation.
- It is funded by revenues obtained from the unincorporated area of the county.
- It is used to provide services solely to the unincorporated areas of the county.
- The county adopts a resolution declaring that the facility is no longer usable for service to the unincorporated area as a result of annexation.



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County Property in Area Proposed for Annexation

- In the event that county property is rendered no longer usable due to annexation, the county must be compensated the fair market value by the city and the city takes ownership.
- When the city takes in land on both sides of a county road right of way, it assumes ownership and control, care, and maintenance.
- The city and county can come to an agreement that alters these defaults and if they can not agree on the fair market value, it can be submitted to a special master for determination.

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Submittal of Annexation Information to DCA

Within 30 days of the last day of the quarter in which an annexation becomes effective, the annexing city must submit a report to the Department of Community Affairs that identifies:

- the area annexed,
- the details concerning the legal authority used to accomplish the annexation, and
- a list of roadways, bridges, and rights of way on state routes that were annexed.

The annexing city must also submit a letter indicating the city's intention to inform the U.S. Census Bureau of the boundary change.

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Deannexation

- Cities are also authorized to grant written petitions signed by 100% of the land owners of an area within the city to remove the territory from the city limits.
- No such petition that would result in the creation of an unincorporated island could be granted, however.

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Zoning and Land Use

“Zoning” means the power of local governments to provide within their respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established.”
Fairfax M.K., Inc. v. City of Clarkston, 274 Ga. 520 (2001).

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Zoning Procedures Law (ZPL)



O.C.G.A. § 36-66-1, et. seq.

"Zoning decision" means final legislative action by a local government which results in:

- A. The adoption of a zoning ordinance;
- B. The adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance;
- C. The adoption of an amendment to a zoning ordinance which rezones property from one zoning classification to another;
- D. The adoption of an amendment to a zoning ordinance by a municipal local government which zones property to be annexed into the municipality; or
- E. The grant of a permit relating to a special use of property.

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Zoning Procedures Law (*continued*)

"Zoning ordinance" means an ordinance or resolution of a local government establishing procedures and zones or districts within its respective territorial boundaries which regulate the uses and development standards of property within such zones or districts. The term also includes the zoning map adopted in conjunction with a zoning ordinance which shows the zones and districts and zoning classifications of property therein.

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Zoning Procedures Law (*continued*)

A local government taking action resulting in a zoning decision shall provide for a hearing on the proposed action. At least 15 but not more than 45 days prior to the date of the hearing, the local government shall cause to be published within a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.

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ZPL Procedures

If the zoning is for property to be annexed into a municipality, then:

1. Such municipal local government shall complete the procedures required by this chapter for such zoning, except for the final vote of the municipal governing authority, prior to adoption of the annexation ordinance or resolution or the effective date of any local Act but no sooner than the date the notice of the proposed annexation is provided to the governing authority of the county as required under Code Section 36-36-6;

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ZPL Procedures *(continued)*

2. The hearing required by subsection (a) of this Code section shall be conducted prior to the annexation of the subject property into the municipality;
3. In addition to the other notice requirements of this Code section, the municipality shall cause to be published within a newspaper of general circulation within the territorial boundaries of the county wherein the property to be annexed is located a notice of the hearing as required under the provisions of subsection (a) or (b), as applicable, of this Code section and shall place a sign on the property when required by subsection (b) of this Code section; and

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ZPL Procedures *(continued)*

4. The zoning classification approved by the municipality following the hearing required by this Code section shall become effective on the later of:
 - A. The date the zoning is approved by the municipality;
 - B. The date that the annexation becomes effective pursuant to Code Section 36-36-2; or
 - C. Where a county has interposed an objection pursuant to Code Section 36-36-11, the date provided for in paragraph (8) of subsection (c) of said Code section.



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ZPL Procedures

“A qualified municipality into which property has been annexed may provide, by the adoption of a zoning ordinance, that all annexed property shall be zoned by the municipality, without further action, for the same use for which that property was zoned immediately prior to such annexation. A municipality shall be a qualified municipality only if the municipality and the county in which is located the property annexed into such municipality have a common zoning ordinance with respect to zoning classifications.”

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Annexation Objection Process

What is the context and background to this system?

- A legislative compromise between ACCG and GMA.
- Jointly published handbook addresses many questions posed in reaction to the law.
- Arbitration is something that is often used to settle contract disputes, usually parties agree to arbitrate in a signed agreement.

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Annexation Objection Process

Process Steps

1. Notice of potential annexation from city to county.
2. Objection from county.
3. Panel is formed.
4. Meetings/schedule a hearing/trial of the matter.
5. Panel determines if there is a valid objection.
6. Panel reaches a decision, reduces it to writing.
7. Post decision details.

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1. Notice of Potential Annexation from City to County

Notice of annexation contained in O.C.G.A. § 36-36-111 states that cities must give notice to county upon “receipt of a petition of annexation.”

- Notice of annexation contained in O.C.G.A. § 36-36-111 states that cities must give notice to county upon “receipt of a petition of annexation.”
- This would only include the 100% and 60% methods.
- However, O.C.G.A. § 36-36-6 requires notice from the city to the county upon adopting a resolution calling for an annexation referendum.



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1. Notice of Potential Annexation from City to County *(continued)*

- The statutes seem to neglect a notice requirement for the annexation of unincorporated islands, but it is probably best practice for cities to notice counties of this intent- perhaps upon first reading of an ordinance.
- The notice must be sent by certified mail or statutory overnight delivery.
- If a petition, it must include a copy of the annexation petition which includes the proposed zoning and land use for the area.

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2. County Objections

To object or not object, that is the county's question.

If the county does not object:

- The city may not change the zoning or land use of the annexed property to a more intense use from that stated in the notice for one year after the effective date of the annexation, unless there is a change in the service delivery agreement or the comprehensive plan that is agreed upon by the city, county, and all required parties.

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2. County Objections

To object or not object, that is the county's question.

If the county objects:

- The county has 30 days after receipt of the notice to deliver an objection to the city by certified mail or statutory overnight delivery.
- The objection can only be made upon a majority vote of the county governing authority.

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2. County Objections

The county governing authority may by majority vote object to the annexation because of a material increase in burden upon the county directly related to any one or more of the following:

- The proposed change in zoning or land use.
- Proposed increase in density.
- Infrastructure demands related to the proposed change in zoning or land use.



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2. County Objections

- Delivery of services may not be a basis for a valid objection but may be used in support of a valid objection if directly related to one or more of the subjects enumerated in paragraphs (1), (2), and (3).
- The objection shall document the nature of the objection specifically providing evidence of any financial impact forming the basis of the objection.

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2. County Objections

In order for an objection pursuant to this Code section to be valid, the proposed change in zoning or land use must:

1. Result in:
 - A. A substantial change in the intensity of the allowable use of the property or a change to a significantly different allowable use; or
 - B. A use which significantly increases the net cost of infrastructure or significantly diminishes the value or useful life of a capital outlay project, as such term is defined in Code Section 48-8-110, which is furnished by the county to the area to be annexed; and

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2. County Objections *(continued)*

In order for an objection pursuant to this Code section to be valid, the proposed change in zoning or land use must:

2. Differ substantially from the existing uses suggested for the property by the county's comprehensive land use plan or permitted for the property pursuant to the county's zoning ordinance or its land use ordinances.



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2. County Objections

“Capital outlay project” means major, permanent, or long-lived improvements or betterments, such as land and structures, such as would be properly chargeable to a capital asset account and as distinguished from current expenditures and ordinary maintenance expenses. Such term shall include, but not be limited to, roads, streets, bridges, police cars, fire trucks, ambulances, garbage trucks, and other major equipment.



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3. Panel Formation

- No later than the 15th day after the city receives the county objection, an arbitration panel shall be appointed.
- DCA maintains the pools of arbitrators and upon receiving notice of a disputed annexation, provides names from each pool.

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3. Panel Formation

DCA maintains three pools of arbitrators that have been trained by CVIOG:

- One pool contains persons currently or within the last six years that have been municipal elected officials.
- One pool contains persons currently or within the last six years that have been county elected officials.
- One pool contains persons that have a master's degree or higher in public administration or planning and are currently employed by an institution of higher education in GA (but not CVIOG).

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3. Panel Formation

Upon receiving notice, DCA will select names from the pools of people that do not live in the county where the annexation is taking place or in the city that is considering the annexation:

- four names picked randomly from the city official pool. (The county will strike two of these.)
- four names picked randomly from the county official pool. (The city will strike two of these.)
- three names picked randomly from the academic pool. (The city and county each strike one.)
- Thus, the final panel selected will consist of five arbitrators.



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4. Meetings

- Panel must meet immediately after appointment.
- Panel must render a decision within 60 days of appointment.

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4. Meetings

Meetings subject to the Open Meetings Act
Where evidence is submitted or arguments made . . .

Significance of Open Meetings Act?

- Open to the public.
- Visual and sound recording permitted.
- Written or oral notice to the legal organ at least 24 hours in advance.
- Post an agenda at the meeting site prior to the meeting (as early as possible).
- Take minutes.

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5. Decision Making, Determining Objection Validity

- The statute declares that “the panel shall first determine the validity of the grounds for objection as specified in the objection.”
- The objection shall document the nature of the objection specifically providing evidence of any financial impact forming the basis of the objection.

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The Arbitration Process

| Objection Basis | Mandatory Elements | Optional Elements | Evidence Must Show | Evidence Must Show |
|--|---|--|---|---|
| Material Increase in Burden related to: | | | Proposed change in zoning or land use must result in: | Proposed change in zoning or land use must: |
| Proposed Change in Zoning or Land Use. | Shall document the nature of the objection, specifically providing evidence of any financial impact forming the basis of the objection. | Delivery of services may be used in support of an objection if directly related. | Substantial change in intensity of allowable use or change to a significantly different use. | Differ substantially from the existing uses suggested for the property by the county's comprehensive land use plan or permitted for the property pursuant to the county's zoning or land use. |
| OR | | | OR | |
| Proposed Increase in Density. | | | A use which significantly increases the net cost of infrastructure or significantly diminishes the value of a capital outlay project. | |
| OR | | | | |
| Infrastructure Demands related to proposed zoning/land use change. | | | | |

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5. Decision Making, Determining Objection Validity

The panel shall receive evidence from the:

- City.
- County.
- Annexation applicant or property owner.

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5. Decision Making, Determining Objection Validity

In arriving at its decision, the panel shall consider:

- “The existing comprehensive land use plans of both the county and city;”
- “The existing land use patterns in the area of the subject property;”
- “The existing zoning patterns in the area of the subject property;”
- “Each jurisdiction's provision of infrastructure to the area of the subject property;”

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5. Decision Making, Determining Objection Validity
(continued)

In arriving at its decision, the panel shall consider:

- “Whether the county has approved similar changes in intensity or allowable uses on similar developments in other unincorporated areas of the county;”
- “Whether the county has approved similar developments in other unincorporated areas of the county which have a similar impact on infrastructure as complained of by the county in its objection; and”

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5. Decision Making, Determining Objection Validity
(continued)

In arriving at its decision, the panel shall consider:

“Whether the infrastructure or capital outlay project which is claimed adversely impacted by the county in its objection was funded by a county-wide tax.”



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5. Decision Making, Determining Objection Validity

The county shall provide supporting evidence that its objection is consistent with its land use plan and the pattern of existing land uses and zonings in the area of the subject property.



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6. The Panel's Decision

- Based on the evidence and arguments presented, and in light of the standards discussed above, the panel should vote to determine if the objection is valid.
- This will be in the form of a motion, and should state the reasons for that determination. The decision should be reduced to writing, with authorship assigned to one panel member, to be approved at a later meeting.



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6. The Panel's Decision

"As to any objection which the panel has determined to be valid, the panel, in its findings, may establish reasonable zoning, land use, or density conditions applicable to the annexation and propose any reasonable mitigating measures as to an objection pertaining to infrastructure demands."



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6. The Panel's Decision

"If an objection involves the financial impact on the county as a result of a change in zoning or land use or the provision of maintenance of infrastructure, *the panel shall quantify such impact in terms of cost.*"



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6. The Panel's Decision

- Decision (findings and recommendations) shall be mailed to the parties by certified mail or statutory overnight delivery.
- Remember that the decision must be rendered within 60 days of the appointment of the panel.



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6. The Panel's Decision

- The county shall bear at least 75% of the cost of the arbitration.
- The panel shall apportion the remaining 25% of the cost of the arbitration equitably between the city and the county as the facts of the appeal warrant.
- If the panel determines that any party has advanced a position that is substantially frivolous, the costs shall be borne by the party that has advanced such position.



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6. The Panel's Decision

The reasonable costs of participation in the arbitration process of the property owner or owners whose property is at issue shall be borne by the county and the city in the same proportion as costs are apportioned between the city and county.



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7. Post Decision

If the decision of the panel contains zoning, land use, or density conditions, the findings and recommendations of the panel shall be recorded in the deed records of the county with a caption describing the name of the current owner of the property, recording reference of the current owner's acquisition deed and a general description of the property, and plainly showing the expiration date of any restrictions or conditions.



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7. Post Decision

- The members of the arbitration panel shall receive the same per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.
- The panel stands dissolved on the 10th day after it renders its findings, unless it is reconvened as part of an appeal.

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7. Post Decision

Appeal

- Within ten days of receipt of the panel's decision, any party may appeal the decision to the superior court.
- The grounds must be error of fact or law, bias or misconduct of an arbitrator, or the panel's abuse of discretion.
- The Court has an expedited appeal *reviewing the record before the panel*. The Court may send it back to the panel.

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7. Post Decision

- City or property owner may decide they are no longer interested in the annexation. If the annexation is abandoned, the county may not change the zoning, land use, or density for a period of one year unless the a change, adopted by all parties is made in the comprehensive plan or service delivery strategy.
- May result in and intergovernmental agreement before panel reaches a decision.

This shows that a key purpose of this process and venue is to give cities and counties a moment to stop and discuss and try to reach a compromise.

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7. Post Decision

Parties may accept the decision.

- If objection deemed valid, city may annex subject to the recommendations of the panel, or abandon the annexation.
- The conditions remain binding for one year.

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7. Post Decision

Agreements

Good faith negotiations are required between the parties, and if they reach an agreement after panel formation and before dissolution, that is to be made the order of the panel unless the matter is on appeal. If on appeal, then it is to be made a part of the court's order. These agreements are to be recorded in the deed records.

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Break



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Reasons Cities Consider Annexation

- Generate Revenue.
- Extend Services.
- Reduce the “free-rider” effect of nearby residents and businesses that benefit from the city but don’t pay city taxes.
- Increase population to gain clout in local negotiations (LOST, SPLOST, and SDS).
- Be responsive to those seeking city services.
- Others?

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Reasons Contiguous Property Owners and Residents Seek Annexation

- Benefit from the receipt of city services (i.e. faster response times from police and fire).
- Benefit from development rules inside the city limits.
- Benefit from regulatory differences in the city limits (i.e. alcoholic beverage sales).
- Take advantage of an independent school system.
- Others?



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How Annexation Critics Characterize Annexation

- “Money Grab.”
- “Land Grab.”
- “Cherry picking.”
- “Forum shopping” for developers.
- “Stealing” from the County.
- “Empire Building.”
- Others?

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Implications of Annexation

- Annexed area now receives city services.
- Annexed residents are now potential city voters (if the city has council districts or wards, the area must be added to them and potentially trigger a reapportionment of all city districts).
- Annexed area is now potentially liable for city taxes.

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How make informed decisions about annexation?



- If a large annexation, consider an annexation study that examines the cost of extending services and calculates the likely revenue to be generated.
- Is the proposed use or the existing use compatible with the city's comprehensive plan for that area?
- If a small area, can it be served with existing service capacity?

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Additional Resources:

- *Growing Cities, Growing Georgia: A Guide to Georgia's Annexation Law*, 6th ed., GMA (2014).
- *The Arbitration Handbook for Annexation Land Use Disputes*, GMA (2008).
- GMA website: www.gmanet.com
- CVIOG website: www.cviog.uga.edu
- DCA website: <https://www.dca.ga.gov/>

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