

North Plains urban growth boundary battle plays out in court

- Nick LaMora Hillsboro News/Times, Aug 16, 2024



Attorney Chris Crean (left) who represents North Plains in the North Plains expansion case delivers his argument Aug. 12 in Hillsboro.

The arguments have been laid out, and now it's up to a Washington County Circuit Court judge to rule on what growth could ultimately look like in North Plains — and what say voters get in expansion decisions across the state.

A yearlong battle over plans to double the size of the small town culminated in a court hearing Monday, Aug. 12, as local leaders look to invalidate a referendum challenging the city's proposed urban growth boundary. Meanwhile, opponents aim to uphold the election results and resist legislative efforts to limit citizen review of urban growth boundary changes.

*At the heart of the issue is whether the city's proposed urban growth boundary is considered **administrative or legislative**, a distinction that could determine if the city is bound by the results of the May election, where [over 71% of voters rejected the expansion plans](#).*

Zoning in on the law

In the Washington County Courthouse in downtown Hillsboro, **North Plains City Attorney Chris Crean argued that land use decisions are governed by state law, making them administrative and not subject to a citizen vote.**

“The city doesn't have independent discretion to not have an urban growth boundary — to move it wherever it wants, whenever it wants. Urban growth boundaries are heavily, heavily regulated by the state, and the city has to make a decision. The decision ultimately has to comply with all of those laws.”

The North Plains City Council decided to introduce 855 acres to the town last September, citing a population growth study from Portland State University projecting that the town's population would double in the next 20 years.

While city officials previously argued that state law requires cities to maintain a 20-year supply of land, a representative from the Land Conservation and Development Commission [clarified earlier this year that this only applies to cities with populations over 10,000](#) — not to North Plains, which has just over 3,600 residents.

Despite the clarification, Crean maintained that it would have been irresponsible not to prepare for the anticipated growth.

“The court may be aware we have an affordable housing crisis, and trying to figure out where to put doubling of the city's population is an obvious inherent problem. So the statute allows the city to elect to undertake a housing needs analysis, which is what the city did.”

Once the city made its initial decision, Crean argued, every subsequent action was constrained by state law.

Ken Dobson, one of the attorneys representing the opponents, countered that since state law exempts cities under 10,000 people from specific land use planning requirements, the policy was optional and subject to referendum.

“They're not required to do it. They may do it if they want, but it's not required. So when the city said ‘we are going to expand the urban growth boundary,’ there was nothing compelling the city; that was a completely legislative decision in the first instance to expand UGB, because it was not compelled by any exception,” Dobson said. “Under the statutory scheme that the city has talked so much about, cities under 10,000 are not bound by any procedure.”

Too much voter involvement?

Standing before Washington County Circuit Court Judge Andrew Erwin, Crean argued that allowing the referendum would undermine the process of expanding urban growth boundaries across the state, effectively replacing the LCDC's role with that of the voters.

“By allowing these to be referred, you are taking LCDC out of the picture, out of the equation, and that's not what the legislature intended. That's why they created LCDC, to adopt these planning goals, and then to make sure that local decisions implement the statutes and the administrative goals. The city has to comply with those laws, but voters do not. That's why this decision can't be referred to the ballot,” Crean stated.

During the short legislative session in March, [Oregon lawmakers updated House Bill 4026](#) to limit the review of urban growth boundary expansions, retroactive to 2023 — a [move the plaintiffs in the case argue is unconstitutional](#).

Erwin raised concerns about the broader implications of allowing urban growth boundary decisions to be subject to referenda, questioning if such a process could lead to chaos statewide.

“Wouldn't that be a nightmare statewide?” Erwin asked.

Erwin also questioned the logic behind the city's actions, asking why the issue was referred to the ballot in the first place if the ordinance passed by North Plains was truly an administrative process.

“We made the wrong call,” Crean said. “It's a city of 3,000 people; those decisions have to be made very quickly. We got it wrong, and so now we have to look at that decision, even though we got it wrong and it doesn't qualify for the ballot under the Constitution. Mistakes shouldn't be permanent.”

To note, the opponents' first attempt to place a referendum on the ballot was rejected by the city due to including the names of nonresidents of North Plains, including Aaron Nichols, one of the plaintiff's in the case and an organizer with the opposition coalition Friends of North Plains Smart Growth.

A continuing battle

Erwin stated he would return a judgment as quickly as possible, though the timeline remains unclear.

Regardless of the verdict, one thing is clear: this battle is far from over.

“We all know this is going up to the Court of Appeals; they’re going to weigh in on it no matter what decision is made here,” Erwin said.

After the election results were certified, North Plains city leaders began [exploring a “relook” process](#), aiming to increase communication and community involvement in reevaluating what an urban growth boundary expansion would look like.

While the city plans to approve the modified plan Sept. 3, Crean hinted that leaders are prepared to continue the fight if the judge rules against them.

“We’ll just readopt the same position and this time when they gather signatures, we won’t allow it to be referred to the ballot,” Crean said. “And we’ll be right back here in the same place, making the same arguments, based on the same law. How does that serve anyone?”