

ANNEXATION HANDBOOK FOR CITIES AND TOWNS IN TENNESSEE III

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ACKNOWLEDGMENT

It is typical for the last breath of an acknowledgment to pay tribute to its typist. But the typist in this case is Armintha Loveday. To those who know her, nothing more need be said. For those who do not, simple justice demands that her name appear first. She nursed and pampered and cajoled both *Handbooks...II and III* into existence and sharpened their images; without her, it would still be in the birthing stage.

Gene Puett, longtime MTAS attorney and a true lawyer's lawyer, wrote *Annexation Handbook for Cities and Towns in Tennessee* [1989], MTAS's first true annexation handbook. *Annexation Handbook II* was essentially a continuation of Gene Puett's Handbook, necessitated by Public Acts 1998, Chapter 1101 and subsequent changes to Tennessee's Annexation Law. *Annexation Handbook III* is but a continuation of his work, necessitated by recent seismic changes in Tennessee's annexation law.

Many MTAS consultants reviewed *Annexation Handbook III* and made valuable, and in some cases, critical, suggestions.

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CHAPTER 1

INTRODUCTION TO ANNEXATION HANDBOOK III

Sources of Tennessee's Annexation Law

Current Tennessee annexation law consists of:

- Article XI, § 9 of the Tennessee Constitution ("The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered.")
- Public Acts 1998, Chapter 1101 imposed significant restrictions on municipal annexations and incorporations and required growth plans be adopted by all the counties of the state that generally limited where municipal annexations could occur in those counties. However, it preserved the existing authorized methods of annexation: ordinance and referendum. But Public Acts 2014, Chapter 707 drastically limits both annexation by ordinance and by referendum until May 16, 2015.
- T.C.A., Title 6, Chapter 51, Part One, generally governs annexation by ordinance and referendum in Tennessee. T.C.A., Title 6, Chapter 58 generally governs comprehensive growth plans for Tennessee municipalities and counties, and contains additional requirements for governing annexations. T.C.A., Title 6, Chapter 51, Parts 2, 3 and 4 govern, respectively, municipal boundary contractions, municipal boundary adjustments, and municipal mergers. Public Acts 1998, Chapter 1101, and Public Acts 2014, Chapter 707 are recent significant changes to Tennessee's annexation law and are incorporated into those statutes. Other statutes throughout Tennessee Code Annotated, have a direct and indirect impact on annexation in Tennessee.
- Cases challenging the application of Tennessee's annexation law. Many such cases were the product of angry annexation battles between cities and targets of annexation, between cities and counties, and even between cities and cities over the past 25-30 years or so. Both Public Acts 1998, Chapter 1101 and Public Acts 2014, Chapter 707 are a product of those battles.

Purposes of *Annexation Handbook III*

The *Annexation Handbook III* has three purposes:

- Provide a guide to answer the question of whether a contemplated annexation is even legally possible; Public Acts 2014, Chapter 707, made the answer to that question problematic over the short term, and perhaps over the long term.
- To help municipalities determine whether a contemplated annexation makes sense from political and economic perspectives. Public Acts 1998, Chapter 1101 is responsible for a significant long-term financial obligation of cities to counties when the former annexes property in the latter. But annexation has many financial impacts on both the annexing cities and the annexed territory, including the cost of providing services to the annexed territory.
- To reconcile the “old” and the “new” annexation laws, the latter generally wrought by Public Acts 1998, Chapter 1101, and Public Acts 2014, Chapter 707.

Outline of Annexation Handbook III

Annexation Handbook III is divided into 11 chapters, each of which discusses a discrete subject in the area of annexation. Following those chapters are a number of appendices that contain various annexation forms, including a joint MTAS-CTAS publication on how comprehensive growth plans are amended (as modified by Public Acts 2014, Chapter 707). *Annexation Handbooks I and II* contained a copy of the annexation laws found in Tennessee Code Annotated; *Annexation Handbook III* omits that copy because current copies of the annexation law are generally available from numerous local sources and because Tennessee’s annexation law has changed significantly in recent years, and may change even more in the near future. However Appendix A contains a verbatim copy of Public Acts 2014, Chapter 707 because of its singular importance.

Annexation Handbook II contained a chapter on “The Right Annexation Done Right.” That chapter is omitted in *Annexation Handbook III* because several appendices deal with recent plans of services that reflect annexation studies that are generally superior to older ones typical of annexations. They are a good guide to “The Right Annexation Done Right.”¹

CHAPTER 1, INTRODUCTION TO ANNEXATION HANDBOOK III. As the immediate preceding text indicates, it explains the purpose of *Annexation Handbook III*, briefly details the sources of annexation law in Tennessee, and provides a quick review of what each chapter in *Annexation Handbook III* contains.

CHAPTER 2, RECENT SIGNIFICANT STATUTORY CHANGES IN TENNESSEE ANNEXATION LAW, including Public Acts 2014, Chapter 707, which imposes seismic restrictions on the right of municipalities to annex property, whether by ordinance or by referendum, unless the permission of the property owners of the affected property is

¹ See Appendix A for sample annexation feasibility studies.

obtained. Other changes in the annexation laws alter some county growth plan procedures affecting some municipalities.

CHAPTER 3, TAX AND REVENUE IMPLICATIONS OF ANNEXATION, speaks to the “money” implications of annexation, principally those arising from Public Acts 1998, Chapter 1101, as amended.

CHAPTERS 4 AND 5, ANNEXATION BY REFERENDUM and ANNEXATION BY ORDINANCE, respectively, discuss the legal and practical nuts and bolts of annexation, both by referendum and by ordinance. The legal nuts and bolts are what hold the annexation machine together. Although annexation by ordinance has an uncertain future, the chapter on annexation by ordinance is retained because some activity in that area will be going on until at least May 16, 2015. Those annexation nuts and bolts have been drastically changed by Public Acts 2014, Chapter 707, although some incomplete annexations that predate that act may still be on-going, subject to their completion by a certain date specified in the act. This chapter also deals with the important distinction between *quo warranto* challenges to annexation and challenges to annexations brought under the Declaratory Judgments Act.

CHAPTER 6, PLAN OF SERVICES, discusses the requirement in the annexation laws that annexing municipalities adopt plans of services for the annexed territories, whether the annexations are done by ordinance or by referendum. Public Acts 1998, Chapter 1101 made that law much stricter than it had been. Public Acts 2014, Chapter 707 repealed some provisions of Tennessee’s annexation laws, but preserved the laws governing plans of services, which presently apply to both annexation by ordinance and annexation by referendum.

CHAPTER 7, “POPULATION BRACKETS” CONTAINED IN THE ANNEXATION LAW, *Annexation Handbook II* contained a mind-bending analysis of the statutes in the annexation law that exempt from, or include within, certain municipalities based on population (and sometimes other) “brackets.” Many of those brackets were eliminated by Public Acts 2014, Chapter 707, and others probably have limited application after the passage of Public Acts 1998, Chapter 1101. In addition, many remaining ones may still be constitutionally suspect. But they remain part of Tennessee’s annexation law, and any municipality considering annexation should determine whether any of them are a potential annexation impediment.

CHAPTER 8, ANNEXATION AND PLAN OF SERVICES PUBLIC NOTICE AND HEARING ISSUES, considers the statutory hearing requirements that apply to both those instruments. Under Tennessee annexation case law it appears clear that defects in hearing requirements must be challenged in a *quo warranto* proceedings and that

persons making such challenges have only a narrow time frame to make a complaint on those grounds. However, most hearing defects can be avoided by the use of a calendar and common sense by the annexing municipality.

CHAPTER 9, “PROBLEM” ANNEXATIONS, as its title implies, discusses categories of annexations that stand out as particularly troublesome in Tennessee. Those categories include corridor annexations, and annexation by acquiescence. It also points to donut hole annexations as a potential problem. This chapter will also reiterate the important distinction between *quo warranto* challenges to annexations and those brought under the Declaratory Judgments Act, and the extremely limited application of the latter procedure to most annexation cases.

CHAPTER 10, EFFECT OF ANNEXATION ON OTHER GOVERNMENTS, outlines the statutes and cases governing the rights of annexing municipalities to provide service in the annexed territory, and the limitations under federal and state law limiting that right, particularly with respect to certain utility services.

CHAPTER 11, “DEANNEXATION” AND OTHER BOUNDARY ADJUSTMENTS, deals with the laws governing how municipalities “deannex” territory and make boundary adjustments by contract. It also discusses municipal mergers.

Footnotes and Case and Statutory References

Footnotes are used sparingly in this publication, and *infra* and *supra* and other esoteric references to cases and statutes not at all. This publication is designed to put statutory and case citations at the fingertips of the reader without him or her being required to travel forward and backward through it.

CHAPTER 2

RECENT SIGNIFICANT STATUTORY CHANGES IN TENNESSEE'S ANNEXATION LAW

Countywide Comprehensive Growth Plan

Public Acts 1998, Chapter 1101, codified in T.C.A. § 6-58-101 et seq., as amended, provides for a comprehensive growth policy plan in each county that is, in theory, supposed to guide and direct new development in the county during the next 20 years. But it is probably accurate to say that in most counties the critical issue in the formation of the comprehensive growth plan was where municipalities could—and could not—annex territory during that period.

In each county a coordinating committee whose members included representatives from the county, cities, utilities, schools, chambers of commerce, soil conservation districts, and other entities formulated the initial draft of the growth plan. The county and the cities in the county proposed boundaries for inclusion in the plan. After the growth plan was developed, the committee conducted public hearings and submitted the plan to the county and city governments for ratification. The committee could revise the plan upon objection from any one of these local governments. If the governmental entities could not agree on a plan, any one of them could petition the Tennessee secretary of state to appoint a dispute resolution panel of administrative law judges to settle the conflict. Once adopted by the July 1, 2001, deadline, a plan could not be amended for three years except in extraordinary circumstances. All counties have adopted a growth plan as required by Chapter 1101.

The countywide growth plan identifies three distinct areas in the county:

- Urban Growth Boundaries (UGB)—areas that contain the corporate limits of a municipality and the adjoining territory where growth is expected;
- Planned Growth Areas—areas outside incorporated municipalities where growth is expected and where new incorporations may occur; and
- Rural Areas—territory not within one of the other two categories that is to be preserved for agriculture, recreation, forest, wildlife, and uses other than high-density commercial or residential development. T.C.A. § 6-58-101.

The three-year period during which growth plans could not be amended except in extraordinary circumstances has passed, and growth plan amendment activity has occurred in some counties and will likely occur in others. The amendment of comprehensive growth plans is accomplished in the same way the original comprehensive growth plans were adopted. A detailed explanation of that process is found in *Amending Comprehensive Growth Plans, 2005* (see Appendix B), a joint CTAS-MTAS publication by David Connor and Dennis Huffer.

In addition, it is said in *City of Harriman v. Roane County Election Commission*, 384 S.W.3d 685 (Tenn. 2011), that, “When amending a growth plan, the coordinating committee must follow the same procedures used to establish the original growth plan” (citing T.C.A. § 6-58-104(d)). [At 697.] In that case, the Tennessee Court of Appeals had held that in order to annex territory outside its urban growth boundary a municipality need only “propose” – but not obtain – an amendment to the growth plan adopted by the county (citing T.C.A. § 6-58-111(a)). The Tennessee Supreme Court overturned the Court of Appeals, applying the rules of statutory construction to reason that it was the intention of the General Assembly that changes in the urban growth boundary require the approval of a reconvened coordinating committee as prescribed by the Growth Plan Law. “[O]nly after the amendment procedure may a municipality annex the subject territory by ordinance.” (alternatively, at that time, by referendum). [At 690-691.]

Other Restrictions on Annexation

Chapter 1101 also imposed some serious restrictions on annexation. Sections 19 and 21 increased plans of service requirements on the part of cities annexing territory. Under § 24, certain tax revenues generated in annexed territories may go to the county for long periods. Section 13 of that act also restricts the incorporation of new cities to territory designated in the county growth plan as planned growth areas and requires the approval of the county governing body before an incorporation election can be held. It also imposes certain tax consequences and other limitations on such incorporations that in some cases will be a deterrent to new incorporations on the fringes of existing cities.

Amendments to Comprehensive Growth Plan Law

The General Assembly has amended the Comprehensive Growth Plan Law contained in T.C.A., Title 6, Chapter 8 several times. An amendment to it by Public Acts 2014, Chapter 707, § 6, provides that “A municipality may expand its urban growth boundary to annex a tract of ***land without reconvening the coordinating committee or approval from the county or any other municipality***, if:

- (1) The tract is contiguous to a tract of land that has the same owner and has already been annexed by the municipality;
- (2) The tract is being provided water and sewer services; and
- (3) The owner of the tract, by notarized petition, consents to being included within the urban growth boundaries of the municipality.

Other Restrictions on Annexation By Public Acts 2014, Chapter 707¹

The same act severely restricted the methods of annexation, at least in the short term. Under § 1, the following restrictions on annexation by ordinance and by referendum apply:

- From April 15, 2013 through the effective date of the act (April 14, 2014), (a period that has passed) no municipalities can annex land used primarily for

¹ See Appendix C, which is a copy of Public Acts 2014, Chapter 707.

residential or agricultural purposes on its own initiative. But if the ordinance does not take effect by April 14, 2014 and if the municipality would “suffer substantial and demonstrable financial injury” if the ordinance does not become operable before that date, the county legislative body, upon a petition filed by the municipality by that date, may by a majority vote of its membership, waive the restrictions imposed on the ordinance by subdivision(a)(1)(A). [Subsection (a)(1)(A) and (B).]

- From April 15, 2014 through May 15, 2015, municipalities are *entirely prohibited from extending their corporate limits by annexation by ordinance and by referendum*, except if:
 - o The owner or owners of the property give written consent for the annexation; or
 - o The municipal legislative body shows it “suffers substantial and demonstrable financial injury” if the ordinance or resolution does not become effective on that date and the county legislative body waives the restrictions prescribed above; or
 - o The annexation meets the requirements of § 6 of the act, which are contained above. [Subsection (a)(2)(A) and (B).]
- Section 2(a) of the act, amends T.C.A., § 6-51-102 (annexation by ordinance), by deleting subsections (a), (c), and (d). Subsection (2)(b) declares that “Subsection (a) of this section prohibits any annexation by ordinance that is not both operative and effective prior to May 15, 2015. Subsection (b), which was not repealed, governs the requirement and outline of a plan of services for both annexation by ordinance and annexation by referendum.
- Section 4 added language to T.C.A., § 6-51-104(a) (annexation by referendum) which prohibits annexation by referendum of property being used primarily for agricultural purposes, and provides that such property “shall be annexed only with the written consent of the property owner or owners [and] shall not require a referendum.”
- Section 5 of the act amended T.C.A. Title 6, Chapter 51, Part 1, by providing that “any county with a metropolitan form of government may expand its urban services district” by any method authorized by its charter, including any method, identified by charter reference to the general annexation law, that was applicable at the time the charter amendment was approved by referendum under Article XI, § 9, of the Tennessee Constitution and T.C.A., § 7-2-106(c) or § 7-2-108(a) (20).

CHAPTER 3

TAX AND REVENUE IMPLICATIONS OF ANNEXATION AS OF 2014

COUNTY ENTITLEMENT TO ANNEXATION DATE REVENUE

Entitlement Lasts 15 Years

When a city annexes territory, the county is “held harmless” for 15 years for the loss of certain tax revenues that the county was receiving from the territory on the date of its annexation:

- Local option sales taxes authorized by T.C.A. § 67-6-702;
- Wholesale beer taxes authorized by T.C.A. § 57-3-103; and
- Income tax on dividends authorized by T.C.A. § 67-2-102 (Hall income tax). [T.C.A. § 6-51-115.]

“Annexation date revenue” continues to go to the county for 15 years after the date of the annexation. The annexing municipality retains any increases in these revenues generated in the annexed area. (Note that this does not affect the distribution of the first half of the local option sales tax, which continues to go to education funding.) If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county. T.C.A. § 6-51-115.

Calculating “Annexation Date Revenues”

Any business annexed into a city that produced either local option sales tax revenue or wholesale beer tax revenue is subject to the hold harmless provision for counties. Generally, the county is guaranteed the amount of taxes received in the 12 most recent months prior to the effective date of the annexation, which is termed the “annexation date revenue.” The method of calculation varies, depending on how long the business has been paying these taxes.

- If the business paid taxes for the full 12 months preceding the annexation date, then the hold harmless figure is the 12-month total.
- If the business was operating for at least one month but less than 12 months preceding the annexation date, the county is due 12 times the average monthly revenue for the months the business operated.
- If the business operated for less than one month before, or started operations within three months after the annexation date, the county is due 12 times the average of the first three full months that the business operated.
- With both wholesale beer taxes and local option sales taxes, the county is entitled to this annual amount for 15 years following an annexation. This

means that for the first 15 years, the city will receive only the tax receipts from the annexed businesses that exceed the county's hold harmless payment, the "annexation date revenue."

When the amount of the local option sales tax cannot be determined from the sales tax returns filed by the businesses in the annexed area, the Tennessee Department of Revenue may determine the amount to be distributed for the term of 15 years based on the best information available, including information from business tax returns or additional information from the businesses involved. T.C.A. § 6-51-115(b)(3).

To facilitate the proper distribution of the local option sales tax, the city is required to notify the state Department of Revenue in advance of the effective date of any annexation. T.C.A. § 6-51-115(a)(2).

The county is responsible for reporting a list of taxpaying businesses in the annexed area to the Department of Revenue. T.C.A. § 6-51-115(d)(1).

The city is responsible for collecting and distributing the wholesale beer tax from businesses in the annexed area, which is collected directly by the city from beer distributors. The city is required to remit the proper amount to the county annually.

Effective July 1 on distribution of situs based taxes, T.C.A. § 6-51-115(a), provides:

Notwithstanding any provision of law to the contrary, *except* whenever a municipality extends its boundaries by annexation, the county or counties in which the municipality is located shall continue to receive the revenue from all state and local taxes distributed on the bases of situs of collection, generated within the annexed area, until July 1 following the annexation unless the annexation takes effect on July 1.

T.C.A. § 6-51-115(a)(1) provides that if the annexation takes effect on July 1, the municipality shall begin receiving revenues from such taxes generated in the annexed area for the period beginning July 1.

January 1 Tax Date Impact On Annexation Timing

The timing of annexation is important. An annexation ordinance becomes operational 30 days after its final passage in the absence of a lawsuit challenging the annexation. An annexation by referendum becomes effective 30 days after certification of the election results.

Two dates should be kept in mind in planning the effective date of an annexation ordinance or referendum, taking into account the 30-day waiting period:

1. January 1 is the assessment date for property to be placed on the tax rolls, and June 30 is the deadline for qualifying for state shared taxes in the ensuing fiscal year.
2. The deadline for certifying a special census is June 30. Time must be allowed for taking, holding, and certifying that census. Failure to meet this deadline will result in the loss of state shared taxes for the added residents for an entire year.

A city can influence the property tax impact on an annexation by scheduling it before or after the assessment date of January 1. Before that date, property taxes for that year will be payable by property owners in the annexed areas; after that date, property owners will not be liable for the property tax until the following year. If a lawsuit against an annexation occurs or is expected, the timing of the effective date of the annexation may be less significant. Such lawsuits are often characterized by many delays, which make that date unpredictable. But in some cases, the city's agreement to a delay in the effective date of the annexation with its corresponding delay in when property taxes become due in the annexed property might be helpful in settling the lawsuit in the city's favor.

With respect to annexation by ordinance, cities apparently have the authority to fix the "operative" or effective date of an annexation in the ordinance. In *Bastnagel v. Memphis*, 457 S.W.2d 532 (1970), on October 28, 1968, the City of Memphis adopted an annexation ordinance on final reading. The ordinance fixed the day the annexation would actually take place as December 31, 1969. On December 15, 1969, the plaintiff filed a suit challenging the reasonableness of the annexation. He argued that the "operative" date of the annexation under T.C.A. § 6-309-310 [now T.C.A. § 6-51-102-103] was December 31, 1969, and that he had 30 days before the operative date to challenge the ordinance. The city argued that the "operative" date of the annexation under those statutes was 30 days after the final passage of the ordinance on October 28, 1968. The court agreed with the city, holding that the challenge to the annexation had not been made within 30 days following October 28, 1968.

SPECIAL CENSUS AND STATE SHARED TAXES

Special Census After Annexation

In the event any area is annexed to any municipality, the municipality may have a special census and in any county having a population of not less than 276,000 nor more than 277,000 according to the 1970 or any subsequent federal census, the municipality shall have such special census within the annexed area taken by the Federal Bureau of the Census or in a manner directed by and satisfactory to the Tennessee Department of Economic and Community Development, in which case the population of such municipality shall be changed and revised so as to include the population of the annexed area as shown by the supplemental census. The population of the municipality as so changed and revised shall be its population for the purpose of computing the

municipality's share of all funds and monies distributed by the state of Tennessee among the municipalities of the state on a population basis. The population of the municipality as so revised shall be used to compute the aggregate population of all municipalities of the state, effective on the first day of the next July following the certification of the supplemental census results to the commissioner of finance and administration. T.C.A. § 6-51-114.

State Shared Taxes

The deadline of June 30 to certify a special census of an annexed area in order to secure state shared taxes during the ensuing fiscal year (July 1 to June 30) has already been mentioned. After an annexation is finally effective, a city should make certain that certification is made on time. If time is short, the census could be taken before the final effective date so that the results will be available for certification immediately thereafter.

Two agencies can certify a special census: the Federal Bureau of the Census and the Tennessee Department of Economic and Community Development. The former will assume full responsibility for supervising and conducting the census, but the request usually must be submitted well in advance of the desired completion date. Full information and an estimate of costs must be obtained from the Director of the Census, Department of Commerce, Washington, DC 20333. Upon completion, the city should make certain that a copy of the results is sent to the Tennessee Department of Economic and Community Development. The census done by the Tennessee Department of Economic and Community Development is required to be done in a "manner directed by and satisfactory to" that department.

Instructions and an estimate of costs may be obtained from the Tennessee Department of Economic and Community Development, 312 Eighth Avenue North, 10th Floor, Nashville, Tennessee 37243.

CHAPTER 4

ANNEXATION BY REFERENDUM¹

ANNEXATION BY REFERENDUM BY CITY WITHIN ITS UGB

Generally

Cities are entitled to annex by referendum under T.C.A. §§ 6-51-104 and 105.

The referendum process begins when a petition of interested persons is presented to the city council, or when the council on its own initiative decides to proceed without a petition. A resolution is prepared and adopted by the city governing body that defines the area to be annexed and calls for a referendum.

NOTICE AND PUBLIC HEARING ON ANNEXATION AND PLAN OF SERVICES REQUIRED

T.C.A. § 6-51-104(a) and (b) contain stringent public notice requirements on both the annexation and the plan of services:

- A copy of the annexation resolution describing the territory proposed for annexation “shall be promptly sent by the municipality to the last known address listed in the office of the property assessor for each property owner of record within the territory proposed for annexation.”
- Resolution to be sent by first class mail and be mailed no later than 14 days prior to the scheduled date of the hearing on the proposed annexation.
- A person or persons with personal knowledge of the mailing of resolutions to each property owner of record “may” submit a notarized affidavit to the presiding officer of the municipality that such resolutions were mailed. The failure of a property owner to receive the mailed notice shall not be grounds to invalidate the annexation.
- Resolution shall be published by posting copies of it in at least 3 public places in the territory to be annexed and in a like number of public places in the annexing municipality.
- Resolution shall include a plan of services that “shall” address the same services and timing of services as required by T.C.A., § 6-51-102, as follows:

¹For sample resolutions or ordinances for a call for a referendum on annexation, and resolutions adopting plans of services, see Appendix D.

- o Shall include but not be limited to police protection, water service, electrical service, sanitary sewer service, solid waste collection, road and street construction and repair, recreational facilities and programs, street lighting, and zoning services, and if the annexing municipality owns a separate school system, the plan shall include schools and provisions specifically addressing the impacts, if any, of annexation on school attendance zones.
- o Reasonable implementation schedule for the delivery of comparable services with respect to the services delivered to all citizens of the municipality.
- Notice of the time, place and purpose of the public hearing on the plan of services shall be published in a newspaper of general circulation in the municipality not less than 15 days before the hearing.
- Notice of the public hearing on plan of services must include the location of a minimum of 3 copies of the plan of services, which the municipality shall provide for public inspection during all business hours from the date of the notice until the public hearing.

The adopted resolution then must be posted in at least three public places in the proposed annexed area and in three places in the existing city, and it must “at about the same time” be published in the local newspaper of general circulation (if there is one) in both the territory proposed for annexation and in the city.

Between 30 and 60 days after the resolution’s posting and publication, a referendum of the voters who live in the area proposed for annexation is held by the county election commission. At its own option, the city may also have the referendum include all voters within the existing city.

If the referendum receives a majority vote of the residents of the proposed area or, if submitted to the city’s voters a majority of those votes as well, the annexation is approved and takes effect 30 days after the election commission certifies the results.

Under Public Acts 2014, Chapter 707, §1(a)(2)(A) a municipality cannot annex territory by either referendum or by ordinance between April 15, 2014 through April 15, 2015.

ANNEXED TERRITORY MUST BE CONTIGUOUS TO EXISTING CITY

Tennessee’s annexation law does not mention the word “contiguous.” Tennessee Code Annotated, § 6-51-102, speaking of annexation by ordinance, says: “A municipality...may extend its corporate limits by annexation of such territory *adjoining its existing boundaries....*” Tennessee Code Annotated, § 6-51-104, speaking of

annexation by referendum, says, “A municipality...may propose extension of its corporate limits by annexation of territory *adjoining to its existing boundaries*.” But *Town of Bartlett v. City of Memphis*, 482 S.W.2d 782, and *State ex rel. Maury County Farmers Co-Op Corp. v. City of Columbia*, 362 S.W.2d 210 (1962), declare that the annexed territory must be “contiguous,” which points to the proposition that contiguity is achieved only if the annexed territory adjoins the existing municipality.

How strictly the Tennessee courts interpret the requirement that annexed territory “adjoin” the existing city is seen in *Southwest Tennessee Electrical Membership Corporation v. City of Jackson*, 359 S.W.3d 590 (Tenn. Ct. App. 2010), and unreported *Garrett v. City of Norris*, 2014 WL 4260848 (Tenn. Ct. App.) In the former, it was held that of pieces of property that were contiguous to each other and annexed at the same time, only those pieces of property that were contiguous to the existing city at the time of the annexation were validly annexed. In the latter, the court held that where two pieces of property were contiguous to each other, but the city annexed one piece of property that was contiguous to the city, and several hours later annexed the second piece, the first piece of property was not contiguous to the city at the time it annexed the second piece, the first annexation ordinance not having become “operative.”

With one exception, Tennessee annexation case law takes up the question of whether an annexation is contiguous only in cases of annexation by ordinance. The exception is *Smith v. Town of Church Hill*, 828 S.W.2d 385 (Tenn. Ct. App. 1991). There the court observed that:

The Smiths do not challenge the constitutionality of T.C.A. § 6-51-104 or § 6-51-105 (which govern annexation by referendum) under which their property was annexed, nor do they contend that the Town did not properly follow the statutes in the annexation proceedings. Their sole contention relates to a small area where the portion of the Smith farm which was annexed in 1986 borders on the west bank of the Holston River. Even though the 126 acres of the Smith farm which was taken into the Town in 1986 border on and are contiguous with the subdivision together with the remaining portion of the Smith Farm, the Smiths contend this creates a corridor annexation.

But the court determined that:

A map of the annexed territory shows it begins at the corporate limits along the north end of the subdivision near the western bank of the Holston River; thence in an easterly direction crossing the Holston River to its east bank; thence with the meanderings of the east bank of the river in a

southeasterly and a northwesterly direction some 16,600 feet; thence crossing the river to the Town corporate limits; encompassing some 1,096 acres all of which has as its inner boundary line the corporate boundary line of the Town and as its outer boundary line the east bank of the Holston River. All of the property is within one mile of the Town hall. [At 386.]

The court concluded that the annexed territory was contiguous to the city, made so by the connection of the subdivision and the farm by the river bed.

ANNEXATION BY ORDINANCE AND BY REFERENDUM RESTRAINED WITHOUT CONSENT OF PROPERTY OWNERS

Public Acts 2014, Chapter 707 put at least temporary hard brakes on annexation by ordinance and annexation by referendum in Tennessee. Section 1, subsection (a)(2)(A) of that act says:

From the effective date of § 1 of this act (April 15, 2014) through May 15, 2015, no municipality shall extend its corporate limits by means of annexation by ordinance pursuant to § 6-51-102, or by resolution [referendum], pursuant to § 6-51-104 and 6-51-105; and no annexation shall become operative during such period, unless otherwise permitted pursuant to subsection (a)(1)(B), (a)(2)(B), or § 6, *or unless the owner or owners of the property give written consent for the annexation.*

That subsection provides two additional narrow methods for annexation by ordinance and referendum:

- Subsection (a)(2)(B) provides a narrow loophole for annexations by ordinance and by referendum begun prior to the period May 15, 2014 through May 15, 2015, as follows:
 - o If prior to the effective date of § 1 of this act (April 15, 2014), a municipality formally acted upon an annexation ordinance or resolution [referendum] restricted by subdivision (a)(2)(A); and if the municipality would suffer substantial and demonstrable financial injury if such ordinance or resolution does not become operative prior to May 15, 2015; then, upon petition by the municipality submitted prior to May 15, 2015, the county legislative body may, by a majority vote of its membership waive the restrictions imposed on such ordinance or resolution by subsection (a)(2)(A).

- o Section 6 is probably an even narrower loophole for annexations by ordinance or by referendum. It amends T.C.A., Title 6, Chapter 58 (the Comprehensive Growth Plan Law), which was a product of Public Acts 1998, Chapter 1101, as amended, by adding this new section:

A municipality may extend its urban growth boundaries to annex a tract of land *without reconvening the coordinating committee or approval from the county or any other municipality* if:

- (1) The tract is contiguous to a tract of land that has the same owner and has already been annexed by the municipality;
- (2) The tract is being provided water and sewer services; and
- (3) The owner of the tract, by notarized petition consents to being included within the urban growth boundaries of the municipality.

Section 6 appears to apply only to the expansion of the urban growth boundary of a municipality. The purpose of the notarized petition signed by the owner of the tract is that he or she “consents to being included within the urban growth boundaries of the municipality.” Consenting to coming within the urban growth boundary of a municipality is not the same as being annexed into the municipality. But that section clearly contemplates an annexation of the qualifying tract of land after the expansion of the urban growth boundary will legally accommodate it. It may be wise for a property owner desiring to be annexed to also give his written consent to the annexation.

Section 4 provides that:

No such resolution [for annexation by referendum] shall propose annexation of any property being used primarily for agricultural purposes...[Such property shall be annexed only with the written consent of the property owner or owners.] A resolution to effectuate annexation of any property, with written consent of the property owner or owners, shall not require a referendum.

Annexation by ordinance and by referendum appear to be restrained, at least through May 15, 2015, by Public Acts 2014, Chapter 707, section 1(a)(2)(A), which provides that:

...no municipality shall extend its corporate limits by means of annexation by ordinance, pursuant to § 6-51-102, or by referendum, pursuant to §§ 6-51-104 and 6-51-105; and no annexation shall become operative during such period unless otherwise permitted pursuant to subsection (a)(1)(B), (a)(2)(B), or § 6, or unless *the owner or owners of property have given written consent to the annexation*. However, no such resolution shall propose annexation of any property being used primarily for agricultural purposes...property being used [for that purpose] shall be annexed only with the written consent of the property owner or owners.” A resolution to effectuate annexation of **any** property with the written consent of the property owners, shall not require a referendum.”

The last clause of § 4 may have shifted gears from only agricultural property to all property that could otherwise be annexed by referendum.

NOTICE REQUIREMENTS

Public Notice Before Annexation

Notice of the annexation, which describes the property to be annexed, must be given in the case of annexation by ordinance and by referendum. T.C.A. § 6-51-101, provides that:

“Notice” means publication in a newspaper of general circulation in the municipality at least seven (7) days in advance of hearing. The notice, whether by ordinance as stipulated in § 6-51-102(a)(1) and (b) or by referendum as stipulated in § 6-51-104(b), shall be satisfied by inclusion of a map which includes a general delineation of the area or areas to be annexed by use of official road names and/or numbers, names of lakes and waterways, or other identifiable landmarks, as appropriate.

The detailed form of the notice of the resolution for annexation by referendum is prescribed by T.C.A. § 6-51-104(a) which is outlined by this Chapter, Notice and Public Hearing Required, above.

The same statute also provides that the resolution [calling for an annexation referendum] that describes the territory proposed to be annexed shall be published in:

- Three public places in the territory proposed for annexation;
- Three public places in the city proposing the annexation; and

- A newspaper of general circulation (if there is one) in the territory proposed for annexation and in the city proposing the annexation.

It also provides that the notice must include a plan of services, which “shall address the same services and timing of services as required in T.C.A. § 6-51-101, subsection (b)” [which contains the requirements for the content of the plan of services in annexations by ordinance]. [See Chapter 6, Plan of Services.]

Notice to County Mayor of Annexation Resolution

T.C.A. § 6-51-104 requires that the resolution calling for an annexation referendum [which includes the plan of services] be forwarded to the county mayor in whose county the territory being annexed is located. The county mayor is required to notify the appropriate county department of the information the resolution contains.

Notice to County Mayor of Annexation Certification

T.C.A. § 6-51-105(d) [annexation by referendum] requires the municipality, upon receiving the certification from the election commission, to forward a copy of the certification to the county mayor in whose county the territory being annexed is located.

Notice to Emergency Communications Districts

T.C.A. § 6-51-119(a) requires that the legislative body of the annexing municipality, upon the final passage of an annexation *ordinance*, provide to any affected emergency communications district a copy of the portion of the plan of services dealing with emergency services and a detailed map designating the annexed area, which must contain certain information. In the case of a contested annexation ordinance where the city plans to begin providing emergency services in the annexed territory immediately, the municipality must notify the emergency communications district when the annexation becomes final.

Arguably, this notice provision does not apply to annexation by referendum. However, it would be a legally and practically wise policy for any municipality annexing territory by referendum to comply with this notice provision.

Effect of Failure to Notify Emergency Communications Districts

T.C.A. § 6-51-119 provides that compliance or noncompliance with this provision is not admissible against the municipality in any case brought under T.C.A., Title 6 [presumably Chapter 51, which governs annexation and challenges to annexation], Title 29, Chapter 14 [the Declaratory Judgments Act, under which challenges against annexations upon grounds other than the reasonableness of the annexation would be brought], or against the municipality or any affected emergency communications district under T.C.A., Title 29, Chapter 20 [the Tennessee Tort Liability Act].

Notice to County Election Commission/s

T.C.A. § 2-2-107 requires that in order to timely correct voter registration records, municipalities that have annexed territory shall send to the county election commission or commissions affected by an annexation:

- Maps depicting the area annexed;
- Copy of the annexation ordinance (or resolution), denoting, if applicable, which wards or districts the annexed area will be a part of; and
- A copy of the census taken for the annexation, if available, with names and addresses within the annexed area.

NOTICE TO SCHOOL SYSTEMS

If the municipality does not maintain a separate school system, the municipality must provide written notice of the annexation to all affected school systems as soon as practicable, but in no event, not less than 30 days prior to the public hearing which must be the same as the public hearing on the annexation.

PLAN OF SERVICE REQUIRED

T.C.A. § 6-51-102(b)(1), requires that the governing body of the annexing municipality to adopt a plan of services for the territory to be annexed by referendum. [See detailed notice and public hearing, as well as contents of plan of service requirements, in Notice and Public Hearing Requirements above.]

T.C.A. § 6-51-104 requires the annexation resolution [which must include the plan of services] to be sent to the county mayor before the annexation. [See Chapter 6, Plan of Services.]

CHALLENGING ANNEXATIONS BY REFERENDUM

Annexations by ordinance were subject to challenge by *quo warranto*, and in rare cases by declaratory judgment. However, Tennessee's annexation law makes no provision for court review of an annexation accomplished by referendum. It is said in *Vicars v. Kingsport*, 659 S.W.2d 367 (Tenn. Ct. App. 1983), that *absent some claim of constitutional infirmities in the annexation*, it is not subject to judicial review and that no equal protection or due process argument can be made when the statute is properly followed. The court also said that adjusting the boundaries of the territory proposed for annexation to help the annexation receive a favorable vote in the referendum was not a constitutional infirmity.

However, the Tennessee Supreme Court in *Committee To Oppose Annexation v. City of Alcoa*, 881 S.W.2d 269 (Tenn. 1994), limited the extent to which a city could adjust the boundaries of the territory to help ensure a favorable vote in the annexation referendum.

Under T.C.A. § 6-51-104(a) the “qualified voters who reside in the territory proposed for annexation” are entitled to vote in the referendum. The court held that “residency” within the meaning of that statute was not restricted to those whose dwelling houses were

located on the property proposed for annexation but to those whose curtilage extended into that property. The difference was an undetermined, but undoubtedly significant, number of voters qualified to vote in the referendum. The court did not mention what constitutional entitlements might be involved in the denial of the property owners who resided in the proposed annexation area to vote on the annexation. But the court concluded they were “disenfranchised” under the state’s electoral laws.

But challenges to annexations by referendum that do not comply with the law governing such annexations may be subject to challenge under the Declaratory Judgments Act for being *ultra vires* under the reasoning of *Highwoods Properties, Inc. v. City of Memphis*, 297 S.W.3d 695 (Tenn. 2009). That case analyzed annexation by ordinance and cleared up the question of when they could be challenged under the Declaratory Judgment Act as opposed to *quo warranto* actions. But language in that case may be broad enough to encompass annexations by referendum that do not follow the state law governing such annexations. [See Chapter 10, Problem Annexations.]

Note that in *Smith v. Town of Church Hill*, 828 S.W.2d 385 (Tenn. Ct. App. 1991) the court observed that the plaintiffs did not allege any constitutional or state law violations in the annexation at issue. [See this chapter, Annexed Territory must be Contiguous to Existing City.]

ANNEXATION BY REFERENDUM OUTSIDE THE CITY’S UGB

Generally Prohibited

Before January 1, 2006, a city could annex territory outside its UGB in either of two ways:

- By obtaining approval of an amendment to its UGB in the same way that the original growth plan was established; or
- By referendum under T.C.A. §§ 6-51-104 and 105. T.C.A. § 6-51-111(d).

T.C.A. § 6-58-111(c)(2) gives municipalities the exclusive authority to annex territory within their UGBs, but provides that “a municipality may annex within a county’s planned growth area or rural area, but the annexation must be by referendum only and not by ordinance.”

CHAPTER 5

ANNEXATION BY ORDINANCE¹

THE TWILIGHT OF ANNEXATION BY ORDINANCE

One Tennessee court recently observed that, “Annexation by ordinance is in its twilight.” Unreported *Garrett v. City of Norris*, 2014 WL 4260848 (Tenn. Ct. App). [At 5.] That is likely a correct observation. If that is so, much, if not most, of this chapter, and other provisions in Annexation Handbook III dealing with annexation by ordinance, may soon be obsolete. However, because some annexation by ordinance activity is still ongoing and because there may be challenges to any annexation ordinances resulting from that activity, some of these provisions may still be temporarily useful. In all events, much of the law that formerly applied only to annexations by ordinance also applies to annexation by referendum.

ANNEXED TERRITORY MUST BE CONTIGUOUS TO EXISTING CITY

Tennessee’s annexation law does not mention the word “contiguous.” Tennessee Code Annotated, § 6-51-102, speaking of annexation by ordinance, says: “A municipality...may extend its corporate limits by annexation of such territory *adjoining its existing boundaries....*” Tennessee Code Annotated, § 6-51-104, speaking of annexation by referendum, says, “A municipality...may propose extension of its corporate limits by annexation of territory *adjoining to its existing boundaries.*” But *Town of Bartlett v. City of Memphis*, 482 S.W.2d 782 (1972), and *State ex rel. Maury County Farmers Co-Op Corp. v. City of Columbia*, 362 S.W.2d 210 (1962), declare that the annexed territory must be “contiguous,” which points to the proposition that contiguity is achieved only if the annexed territory adjoins the existing municipality.

How strictly the Tennessee courts interpret the requirement that annexed territory “adjoin” the existing city is seen in *Southwest Tennessee Electrical Membership Corporation v. City of Jackson*, 359 S.W.3d 590 (Tenn. Ct. App. 2010), and unreported *Garrett v. City of Norris*, 2014 WL 4260848 (Tenn. Ct. App.) In the former, it was held that of pieces of property that were contiguous to each other and annexed at the same time, only those pieces of property that were contiguous to the existing city at the time of the annexation were validly annexed. In the latter, the court held that where two pieces of property were contiguous to each other, but the city annexed one piece of property that was contiguous to the city, and several hours later annexed the second piece, the first piece of property was not contiguous to the city at the time it annexed the second piece, the first annexation ordinance not having become “operative.”

¹For sample annexation ordinances and plans of services, see Appendix E.

NOTICE REQUIREMENTS

Pre-Annexation Public Notice

Notice of the annexation, which describes the property to be annexed, must be given in the case of annexation by ordinance [and by referendum]. T.C.A. § 6-51-101, provides that:

“Notice” means publication in a newspaper of general circulation in the municipality at least seven (7) days in advance of hearing. The notice, whether by ordinance as stipulated in § 6-51-102(a)(1) and (b) or by referendum as stipulated in § 6-51-104(b), shall be satisfied by inclusion of a map which includes a general delineation of the area or areas to be annexed by use of official road names and/or numbers, names of lakes and waterways, or other identifiable landmarks, as appropriate.

Notice to County Mayor of Annexation

T.C.A. § 6-51-102(a)(1) provides that during the 30-day period following final passage of the annexation ordinance during which the ordinance is not operative, the municipality must notify the county mayor in whose county the territory being annexed is located of the annexation. The notification must include a copy of the annexation ordinance and a map of the area being annexed.

Notice to Emergency Communications Districts

T.C.A. § 6-51-119(a) requires that upon the final passage of an annexation ordinance the legislative body of the annexing municipality must provide to any affected emergency communications district a copy of the portion of the plan of services dealing with emergency services and a detailed map designating the annexed area. The map must identify all public and private streets, including street names and direction indicators, in the annexed area. The map must also include or have appended a list of address ranges for each street in the annexed area. For contested annexation ordinances, in cases in which the municipality plans to begin providing emergency services in the annexed territory immediately, the municipality must notify the emergency communications district when the annexation becomes final.

However, T.C.A. § 6-51-119, provides that compliance or noncompliance with this provision is not admissible against the municipality in any case brought under T.C.A. Title 6 [presumably Chapter 51, which governs annexation and challenges to annexation], Title 29, Chapter 14 [the Declaratory Judgments Act, under which challenges against annexations upon grounds other than the reasonableness of the annexation would be brought], or against the municipality or any affected emergency communications district under T.C.A., Title 29, Chapter 20 [the Tennessee Tort Liability Act].

Notice to County Election Commission/s

T.C.A. § 2-2-107 requires that in order to timely correct voter registration records, municipalities that have annexed territory shall send to the county election commission or commissions affected by an annexation:

- Maps depicting the area annexed;
- Copy of the annexation ordinance, denoting, if applicable, which wards or districts the annexed area will be a part of; and
- A copy of the census taken for the annexation, if available, with names and addresses within the annexed area.

Notice to County Mayor of Lawsuits and Final Judgments

T.C.A. § 6-51-103 requires the municipality to notify the county mayor of:

- The municipality's appeal of a decision in a *quo warranto* suit; and
- The outcome of litigation in a *quo warranto* suit contesting a proposed annexation.

Note that this statute does not require notice to the county mayor of appeals and outcomes of *non-quo warranto* annexation suits.

Similar notice provisions apply to the plan of services. [See Chapter 6, Plan of Services.]

RIGHTS OF CITIZENS IN ANNEXED TERRITORY

Residents of an annexed area must be accorded all the:

Rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as though such annexed territory had always been a part of the annexing municipality. It is the duty of the governing body to put into effect with respect to the annexed area any charter provisions relating to representation on the governing body. T.C.A. § 6-51-108(a).

In *City of Knoxville v. Graves*, 341 S.W.2d 718 (1960), an annexation ordinance was attacked because it did not contain any provision for implementing this requirement. The court could find nothing in the statute to warrant a construction "that the ordinance must contain, as a condition precedent to its validity, a provision setting up such rights," and concluded that "it is enough if the rights of the citizens of that area are provided for by ordinance, as may be done, when the annexation becomes effective. Certainly we cannot declare the ordinance void on the assumption that the City Council will not do their duty. The presumption is that they will do it." [At 720.] The court reiterated its

view on this point in *Hardison v. City of Columbia*, 360 S.W.2d 39 (1962), and *Maury County Farmers Co-op Corp. v. City of Columbia*, 362 S.W.2d 219 (1962). In *Cope v. Mayor of Morristown*, 404 S.W.2d 798 (1966), the court refused to invalidate an annexation ordinance based on the ground that the city's governing body would be powerless to change wards established by private act of the General Assembly for election of its members.

ANNEXATION BY ORDINANCE WITHIN THE UGB

Generally

Cities in Tennessee may, upon their own initiative or when petitioned by a majority of the residents and property owners in an area, annex territory by ordinance within their UGBs. Passage of an annexation ordinance must be preceded by a seven-day advance notice of a public hearing. The actual schedule for final passage will depend on the requirements for preparation and consideration of a plan of services for the annexed territory that are outlined in Chapter 6, Plan of Services. The ordinance does not take effect until 30 days after its final passage. T.C.A. § 6-51-102.

Annexation by a City in More Than One County (T.C.A. § 6-58-108(e))

A city may annex by ordinance upon its own initiative only territory within the county in which the city hall is located. There are three main exceptions:

- A municipality located in two or more counties as of November 25, 1997, may annex in all such counties unless the percentage of the city population residing in the county or counties other than the one in which the city hall is located is less than 7 percent of the total population of the municipality; or
- A municipality may annex in the second county if the legislative body of the county in which the territory proposed for annexation is located approves the annexation by resolution; or
- The city may annex in any county in which, on January 1, 1998, it provided sanitary sewer service to 100 or more residential and/or commercial customers.

These restrictions do not apply to annexation by referendum. Any annexation must also conform to the provisions of the growth plans in both counties.

Annexation of "Substantial" Industrial Property

T.C.A. § 6-51-103(f), provides that:

Should the territory hereafter sought to be annexed be the site of substantial industrial plant development, a fact to be ascertained by the court, the municipality shall have the burden of proving that the annexation of the site...is not unreasonable in consideration of the factors above

mentioned, including the necessity for or use of municipal services by the industrial plant or plants, and the present ability and intent of the municipality to benefit the industrial plant development by rendering municipal services thereto when and as needed. The policy and purpose of this provision is to prevent the annexation of industrial plants for the sole purpose of increasing municipal revenue, without the ability and intent to benefit the areas annexed by rendering municipal services, when and as needed, and when such services are not used or required by the industrial plants.

City of Kingsport v. State ex rel. Crown Enterprises, Inc., 562 S.W.2d 808 (Tenn. 1978), declared that T.C.A. § 6-51-103(e) applied only when an industrial site was being annexed by a city; it did not apply to an 85-acre industrial site that was part of the annexation of 806 acres.

Annexation of State Park Land

T.C.A. Title 6, Chapter 51, Part 1, requires the following as a precedent to municipal annexation of any state park land:

- The territory proposed for annexation must be located within the municipality's urban growth boundaries;
- The municipality must provide detailed notice to the commissioner of environment and conservation;
- Notification must include a detailed description of the territory proposed for annexation, reasons for the annexation, plan for municipal services and timeline for delivery;
- The department must study the likely impact on the wildlife, scenery, ambiance, traffic, roads, visitors and mission of the proposed territory to be annexed. Municipality must pay the costs of this study;
- The department must conduct one or more public hearings;
- Prior to the public hearing, the department must seek the county commission's input regarding the municipality's proposed annexation;
- The department must report its finding and may prescribe binding prerequisites for the proposed annexation as are necessary and desirable to protect and preserve the park or natural area for the benefit of all current and future Tennesseans.

TRIAL AND BURDEN OF PROOF

Challenges based on "reasonableness" of the annexation ordinance

The following rules govern *quo warranto* challenges to the reasonableness of annexations by ordinance within the UGB, under T.C.A. § 6-51-103:

- Jury trial generally: Chancellor or circuit court judge without a jury tries cases.
- Burden of proof generally: Burden is on the plaintiff to prove:
 - o That the annexation is “...unreasonable for the overall well-being of the communities involved,” or
 - o That “the health, safety, and welfare of the citizens and property owners of the municipality and [the annexed] territory will not be materially retarded in the absence of such annexation.” T.C.A. § 6-58-111.

Presumably, T.C.A. § 6-58-111, by implication, repeals the provisions of T.C.A. §§ 6-51-103(a)(1)(A), 6-51-103(c) and 6-51-103(e), which put the burden of proving an annexation ordinance reasonable on the city.

The question whether the burdens of proof contained in T.C.A. § 6-58-111 are alternative ones was addressed in *State ex rel. Tipton v. City of Knoxville*, 205 S.W.3d 456 (Tenn. Ct. App. 2006), appeal by Tenn. Supreme Ct. denied (Oct. 2, 2006). There the city attempted to annex a single piece of commercial property that was already surrounded by the city (a hole in the donut). The annexation would have taken in the hole.

The Tennessee Court of Appeals upheld the city's annexation of the territory in question, concluding that the plaintiff had not carried the burden of proof that the “health, safety, and welfare of the citizens and property owners of the municipality and territory will not be materially retarded in the absence of such annexation.” It reasoned that:

1. The “or” in the alternative burden of proof set forth in T.C.A. § 6-58-111 was not ambiguous, that it was intended by the General Assembly to actually reflect alternative burdens of proof, and that a person contesting an annexation could win the contest by carrying only one of the alternative burdens of proof.
2. Whether annexation is materially beneficial to the *affected territory* depends not only upon what services the municipality will provide after annexation but also upon the services the municipality already provides to the affected territory. *The fact that an affected territory already receives municipal services demonstrates that the affected territory benefits from those services and that the welfare of the property owners in the affected territory is enhanced by those services.* [Emphasis is mine.] *Bowevil Express, LLC v. City of Henderson*, No. W1999-02137-COA-R3-CV, 2001 WL 204211, at 5 (Tenn. Ct. App.); see also *Cox v. City of Jackson*, No. 01A01-9701-CH-00001, 1997 WL 777078, at 6 (Tenn. Ct. App.) [At 7.]
3. The *territory* will receive improved services after the annexation.
4. “After annexation, the city would be able to guarantee harmonious land uses throughout the area surrounding the Territory. In addition, the city will be

able to better respond to emergencies in that area. Based on these facts, the preponderance of the evidence establishes that the city would materially benefit from the annexation.”

In summary, said the court:

...the preponderance of the evidence shows that (1) the *Territory* currently, materially benefits from services provided by the City, (2) the *Territory* would materially benefit from the additional post-annexation services which the City would provide, and (3) the *City* will materially benefit from the annexation. *If the Territory and the City will materially benefit from the annexation, then it follows that the failure to annex the Territory would materially retard the health, safety, and welfare of the citizens and property owners of the City and Territory. See State ex rel. Wood v. City of Memphis, 510 S.W.2d 889, 893 (Tenn. 1974); Mulrooney v. Town of Collierville, No. W1999-04474-COA-Re-CV, 2000 WL 34411151, at 3 (Tenn. Ct. App.) [At 9-10.]*

The facts in *State v. Tipton* are peculiar, involving a large Tennessee city entirely surrounding a small piece of property on a busy highway running through it. But a positive side of this case is that it stands for the general proposition that where a municipality already provides a wide range of services to territory proposed for annexation, the plaintiff will not be able to successfully argue that the health, safety and welfare of the territory will not be retarded if it is not annexed because it does not need municipal services. It also points to the proposition that annexations that clearly materially benefit both the city and the territory proposed for annexation would strengthen a city’s hand in an annexation contest.

Challenges to the Ordinance Based on Constitutional Grounds

Under *State ex rel. Earhart v. City of Bristol*, 970 S.W.2d 948 (Tenn. 1998), it appears that suits alleging an annexation is unconstitutional or *ultra vires* can be brought under the Declaratory Judgment Act found in T.C.A. § 29-14-101 et seq., in narrow circumstances. (See *Highwood Properties, Inc., v. City of Memphis*, 297 S.W.2d 1095 (Tenn. 2009) and Chapter 10 Problem Annexations.)

It is said in *Bristol v. Earhart*, above, that:

But where the *quo warranto* proceeding is not available alternative equitable remedies are not barred. “[W]here the remedy by *quo warranto* is available, it is usually held that there is no concurrent remedy in equity, unless by virtue of

statutory provision. But if *quo warranto* is not an adequate remedy, it will not be a bar to alternative remedies.” 65 Am Jur. 2d *Quo Warranto* § 7 (1972). [At 952.]

The availability of other remedies drew a line around Declaratory Judgment Act suits in annexation cases. That case pointed to two conditions that it had imposed on such suits:

First, we permitted only challenges to *ultra vires* acts, that is, tests of “[t]he validity of an annexation ordinance alleged to exceed the authority delegated by the legislature.” *Earhart*, 970 S.E.2d at 954. Second, we stated that it is only “*where the quo warranto proceedings is not available*, [that] alternative equitable remedies are not barred.” *Id.* At 952 (citing 65 Am.Jur.2d *Quo Warranto* § 7 (1972)) (“Where the remedy by *quo warranto* is available, it is usually held that there is no concurrent remedy in equity, unless by virtue of statutory provision.”) [Emphasis added (by court).] [At 10.]

Highwoods emphasized that *Bristol v. Earhart* involved a case where the absence of people in the annexed area meant that there could be no plaintiffs: No plaintiffs, no case, no case, no remedies for an *ultra vires* annexation.

In *Allen v. City of Memphis*, 397 S.W.3d 572 (Tenn. Ct. App. 2012), which involved an action for a declaratory judgment, based on open meetings violations, the court citing *Bristol* and *Highwoods*, declared that:

[T]he specific deficiencies alleged by Appellants to support an invalidation of Ordinance 4321 are unclear. But, Appellants’ claims unquestionably relate to alleged errors in the annexation hearings. In the past, our Supreme Court has determined that errors in notice, public hearings and plans of service fall within the ambit of “procedural defects[.]” *Southwest Tenn. Elec. Mem., Corp.*, 359 S.W.3d at 604 (citing *City of Watauga*, 589 S.W.2d at 905) and “courts have no power to vacate an annexation ordinance for purely procedural defects.” *City of Watauga*, 589 S.W.2d at 906. Because the Appellants do not allege that Ordinance 4321 adopted by the City Council “exceeded the authority delegated by the legislature,” and the grounds raised for invalidating Ordinance 4321 are properly classified as “procedural defects.” Appellants were required to challenge the Ordinance 4321 through the *quo warranto* procedure. [At 581.]

WHO MAY CHALLENGE ANNEXATIONS BY ORDINANCE?

“Aggrieved Owners of Property”

Under T.C.A. § 6-51-103(a)(1)(A) any “aggrieved owners of property” that *borders on* or lies within the territory annexed have 30 days to challenge an annexation. Notwithstanding the statutory language that gives abutting landowners the right to challenge an annexation, *State ex. rel. Cordova Area Residents for the Environment v. City of Memphis*, 862 S.W.2d 525 (Tenn. App.1992), held that part of the statute unconstitutional. For that reason, only the owners of property that lies within the territory proposed for annexation have standing to challenge the annexation.

An aggrieved owner of property challenging an annexation loses his cause of action upon his transfer of ownership of the property. *McNamee v. City of Knoxville*, 824 S.W.2d 550 (Tenn. Ct. App. 1991).

A county that owned a mere easement in county roads in the territory sought to be annexed was not an “aggrieved owner of property” within the meaning of T.C.A. § 6-51-103(a)(2)(A), held *State ex rel. Kessel v. Ashe*, 888 S.W.2d 430 (Tenn. 1994). In that case, the county admitted that it did not own the fee to its roads. The court distinguished *Spoone v. Mayor of Morristown*, 431 S.W.2d 827 (1968), in which the court had earlier held that a county that owned the roads and a school in the area proposed for annexation was an aggrieved owner of property. The county’s interest in the roads in that case was not clear, and the question was whether a legal person as well as a natural person could qualify as an “owner of property” under T.C.A. § 6-51-103(a)(2)(A).

TIME FOR CHALLENGING ANNEXATIONS BY ORDINANCE

Quo Warranto Challenges

An annexation ordinance becomes effective 30 days after its final passage. T.C.A. § 6-51-102(a)(1). An “aggrieved owner of property” lying within the annexed territory can, *prior to the operative date of the annexation*, file a *quo warranto* suit to contest the reasonableness of the annexation in accordance with T.C.A. Title 6, Chapter 51, Part 1, T.C.A. § 6-51-103 and T.C.A., Title 29, Chapter 35. T.C.A. § 6-51-103 says:

After 30 days have passed, a *quo warranto* suit against the annexation is not subject to judicial review and cannot be filed. [*Bastnagel v. Memphis*, 457 S.W.2d 532 (1970); *City of Oak Ridge v. Roane County*, 563 S.W.2d 895 (Tenn. 1978).] In the unreported case of *Coleman v. City of Memphis*, 2001 WL 1381277 (Tenn. Ct. App.), the court also held that a *quo warranto* suit filed by the plaintiff was not filed within 30 days when on August 1, 1995, the city council passed the annexation ordinance on third and final reading; on August 15, 1995, a motion to reconsider the ordinance passed; on August 29, 1995, the plaintiffs filed a *quo*

warranto suit to which they attached the annexation ordinance adopted by the city on August 1, 1995. The ordinance underwent significant changes between August 15 and the date of its final passage on September 19, 1995.

“For this reason,” concluded the court, “it is apparent that when Plaintiffs filed their suit on August 29, 1995, they were not ‘aggrieved property owners’ as the ordinance was still being debated and amended throughout the city’s legislative process.” [At 5.]

The right to commence a new action within one year from the date of a voluntary nonsuit under T.C.A. § 28-1-105 does not apply to *quo warranto* suits against annexation ordinances. [*Brent v. Town of Greeneville*, 309 S.W.2d 121 (1958).]

CHALLENGES BY DECLARATORY JUDGMENT

Constitutional challenges and challenges reflecting *ultra vires* annexations are not subject to the 30-day limit contained in T.C.A. § 6-51-102(a)(1). [*State ex rel. Earhart v. City of Bristol*, 970 S.W.2d 948 (Tenn. 1998).] For an analysis of *Earhart* and other cases that have interpreted that case, see above and Chapter 9, Problem Annexations.

LAWSUIT VENUE

A suit contesting an annexation of territory in a county other than the one in which the municipality's city hall is located shall be filed in the county where the city hall is located. The chancellor must then change the venue to a county adjacent to either the county where the city hall is located or the county where the proposed annexed territory is located. T.C.A. § 6-51-103(g).

ABANDONMENT AND REPEAL OF ANNEXATION PROCEEDINGS

T.C.A. § 6-51-106 provides that “Any annexation proceedings initiated under § 6-51-102 or § 6-51-104 may be abandoned and discontinued at any time *by resolution* of the governing body of the municipality.” This statute applies only where the annexation has been “initiated” but not finally passed. However, an annexation ordinance finally passed can be repealed even after it has been challenged, *provided the repeal has been done by ordinance* (not by motion or resolution). The repeal of an annexation ordinance renders the ordinance moot. *Lee v. City of Chattanooga*, 500 S.W.2d 917 (Tenn. Ct. App. 1973), cert. denied, 419 U.S. 869 (1974); *City of Bluff City v. Morrell*, 764 S.W.2d 200 (Tenn. 1988); *Schaltenbrand v. City of Knoxville*, 788 S.W.2d 812 (Tenn. Ct. App. 1989).

LIMITATION ON FUTURE ANNEXATION IF ANNEXATION ORDINANCE HELD UNREASONABLE

If the court finds that the annexation ordinance is unreasonable or has been done by the exercise of powers not conferred by law it “shall” issue an order vacating the ordinance, and the city shall be prohibited from annexing any part of the territory proposed for annexation by the vacated ordinance for a period of at least 24 months following the date of the order. If the court finds the ordinance reasonable, it is operative 31 days after the judgment unless an appeal has been taken. A similar rule applies to judgments on the appeal of the annexation ordinance, except that if the ordinance is upheld it is operative “forthwith by court order.” T.C.A. § 6-51-103(c). In the unreported case of *Cathey v. City of Dickson*, 2002 WL 970429 (Tenn. Ct. App.), it was held that the 24-month ban does not apply to annexation ordinances that have been repealed; the repeal does not reflect an admission by the city that the ordinance was unreasonable.

PLAN OF SERVICES

A city annexing territory by ordinance or by referendum, must adopt a plan of services that outlines the services to be provided in the territory proposed for annexation and the timing of those services. [See Chapter 6, Plan of Services.]

CHAPTER 6

PLAN OF SERVICES¹

ANNEXATION BY ORDINANCE

Plan of Service Required

Under *Public Acts 1998*, Chapter 1101, a city annexing territory by ordinance was required to adopt a plan of services that outlined the services to be provided to the annexed area and the timing of those services. *Public Acts 2005*, Chapter 411, amended T.C.A. § 6-51-104(b) to require that a plan of services be adopted for annexations by referendum. [See Chapter 4, Annexation by Referendum.]

Effective Date of Plan of Services Requirement

For an annexation ordinance that was not final on November 25, 1997, where the city had not prepared a plan of services, it had 60 days to prepare one. [Chapter 1101, § 20; T.C.A. § 6-51-102(a)(2).] Presumably, such a plan of services must have met the same reasonableness standard as to the scope and implementation schedule as prescribed by T.C.A. § 6-51-102(b) for annexations accomplished by cities after the effective date of Chapter 1101 (May 19, 1998). [See Plan of Services Must be Reasonable, immediately below.]

Plan of Services Must Be Reasonable

Under T.C.A. § 6-51-102 [annexation by ordinance] the plan of services must be “reasonable” with respect to both the scope of services and to the implementation schedule. The implementation schedule must provide for delivery of services in the new territory that are comparable to those provided to all citizens of the city. The plan must address the following services, whether or not the city currently provides those services:

- Police and fire protection;
- Water, electrical, and sanitary services;
- Road and street construction and repair;
- Recreational facilities and programs;
- Street lighting; and
- Zoning services.

The plan may exclude services that are provided by another public or private agency other than those services provided by the county. The city may include services in addition to those required to be addressed. T.C.A. § 6-51-102(b).

¹For sample resolutions on plans of services, see Appendices D and E.

Submission of Plan of Services to Planning Commission

Before its adoption, the plan of services must be submitted to the planning commission (if the city has one), which must issue a written report on it within 90 days. (The 90-day deadline can be extended by the city governing body by resolution if it chooses to do so.) In an unpublished opinion, *New Providence Utility District v. Clarksville*, filed November 14, 1966, the Tennessee Supreme Court considered an objection that “approval of the plan of services by the Planning Commission by a resolution, and a certified copy of such resolution” did not comply with the statutory requirement “that a written report of the Commission’s study of the plan be furnished the City.” In rejecting this contention the court said:

The submission of the plan of services to the Planning Commission and its report to the legislative body of the municipality is part of the legislative process. The form and sufficiency of the report is a matter for determination by the legislative body and not the courts. The Planning Commission had the alternative of approving, modifying or rejecting the plan of services submitted to it for study. That body adopted the resolution approving the plan and so reported to the City Council by a certified copy of the resolution. There is nothing in the statute that requires the Planning Commission to report to the City Council its findings in any particular form.

Public Notice and Hearing on Plan of Services

The city’s governing body is required to hold a public hearing on the plan after giving 15 days notice in a newspaper of general circulation in the city. The notice must include at least three locations where copies of the plan are available for public inspection. T.C.A. § 6-51-102(b).

Notice of Plan of Services to County Mayor

Public Acts 2005, Chapter 411, amended T.C.A. § 6-51-102(b)(1) [annexation by ordinance] and T.C.A. § 6-51-104 [annexation by referendum] to require that after a plan of services is adopted, the municipality shall forward a copy of it to the county mayor in whose county the territory being annexed is located.

Notice of Plan of Services to Emergency Communications Districts

Public Acts 2005, Chapter 411, amends T.C.A. § 6-51-119(a) to require that upon the final passage of an annexation *ordinance* the legislative body of the annexing municipality provide to any affected emergency communications district a copy of the portion of the plan of services dealing with emergency services and a detailed map designating the annexed area. The map must identify all public and private streets, including street names and direction indicators, in the annexed area. The map must also include or have appended a list of address ranges for each street in the annexed

area. For contested annexation ordinances, in cases in which the municipality plans to begin providing emergency services in the annexed territory immediately, the municipality must notify the emergency communications district when the annexation becomes final.

The notification must be sent by certified return receipt mail or any other method that assures receipt by the district.

Section 6-51-119 provides that compliance or noncompliance with this provision is not admissible against the municipality in any case brought under T.C.A., Title 6 [presumably Chapter 51, which governs annexation and challenges to annexation], Title 29, Chapter 14 [the Declaratory Judgments Act, under which challenges against annexations upon grounds other than the reasonableness of the annexation would be brought], or against the municipality or any affected emergency communications district under T.C.A., Title 29, Chapter 20 [the Tennessee Tort Liability Act].

For similar notice provisions that apply to annexations by ordinance, see Chapter 5, Annexation by Ordinance. For similar notice provisions that apply to annexations by referendum, see Chapter 4, Annexation by Referendum.

ANNEXATION PROHIBITED IF CITY IS IN “DEFAULT” ON PRIOR PLAN/S OF SERVICE

A city cannot annex “any other territory” under T.C.A. § 6-51-102 “if the municipality is in default on any prior plan of services.” It was widely reasoned that limitation applied only to annexations that were not final on November 25, 1997, and forward from that date. Chapter 1101, §§ 19 and 20; T.C.A. § 6-51-102(a) and (b)(5); T.C.A. § 6-51-108(b). But in unreported *State ex rel Cain v. City of Church Hill*, Slip Copy, 2008 WL 4415579 (Tenn. Ct. App.), it was declared that T.C.A. § 6-51-108 could be applied retroactively. This case arose on appeal by the city from the trial court’s grant of summary judgment to the plaintiffs who argued that under T.C.A. § 6-51-108, they were entitled to sewer service with respect to the city’s annexation of their property and its plan of services dated in 1988. The trial court issued a writ of mandamus requiring the city to extend sewer service to the plaintiff’s property within 16 months. The city had unsuccessfully argued that T.C.A. § 6-51-108 should not be applied retroactively and that the plan of services had provided that, “A sanitary sewer system will be provided as soon as economically feasible. A study will have to be conducted to determine the cost.” [At 2.]

The Court vacated the trial court’s grant of summary judgment and remanded the case to the trial court for further proceedings.

But on the question of whether T.C.A. § 6-51-108 should be applied retroactively, the Court said:

...The City argues that the general presumption against

applying laws retroactively, see, generally *Nutt v. Champion Intern, Corp.* 980 S.W.2d 365, 368 (Tenn. 1998), should prevent retroactive application here, since, as the trial court put it, [t]he legislature has not given us any guidance as to how they intended it to apply; where they intended it to be applicable and how that was to work.” However, as the plaintiff correctly points out, this presumption is reversed “for statutes which are remedial or procedural in nature. Such statutes apply retrospectively ... unless the legislature indicates a contrary intention or immediate application would produce an unjust result.” *Kee v. Shelter Ins.*, 852 S.W.2d 226, 228 (Tenn. 1993). The right to enforce a plan of services via mandamus under Tenn. Code Ann. § 6-51-108(d) is clearly a remedial right, and we think the statute as a whole is essentially “remedial or procedural” in nature. We also see no reason to conclude that the retroactive application in this case “would produce an unjust result.” Accordingly, we conclude that the statute is applicable in this case. [At 6.]

This part of the Court’s decision appears to potentially put the sewer service parts of plans of services adopted in connection with annexations that pre-date November 25, 1997 on the judicial firing line.

But the Court had a problem with the trial court’s conclusion that the plaintiffs were entitled to summary judgement:

Because the plan of services makes only a conditional promise of sewer service-conditioned upon economic feasibility-a proper grant of summary judgement for the plaintiffs would necessarily require a finding that there was no disputed issue of material fact regarding the economic feasibility of the sewer service. Yet no such finding was ever made.... [At 7.]

The Court pointed out that the dispute between the plaintiffs and the city over whether the sewer extension to the plaintiff’s property was economically feasible was “hotly disputed.” For that reason, declared the Court, “The plaintiff’s simply did not demonstrate for summary judgment purposes, that they were entitled to a ‘judgement on the papers’.” [At 7.]

The Court also rejected the plaintiff’s attempt to apply an “implied contract theory of the recovery”:

Much ink has been spilled, by both sides, regarding matters

that relate only to the implied contract theory: what statements were, or were not, made by which city officials; what actions the city council took, or did not take; whether the completion of the sewer line constitutes only a ministerial act, because of prior city council resolution, or whether it remains a discretionary act; and so forth. [At 7.]

None of those issues related to the sole question of whether the plaintiffs were entitled to summary judgment. But it is reasonable to speculate that the theories of economic feasibility of the sewer extension to the annexed property, and of implied contracts, not to mention other possible theories, for requiring cities to provide sewer service to annexed property under plans of service that date prior to November 25, 1997 will be raised again.

It is not clear whether a plaintiff could bring a *quo warranto* challenge to an annexation by ordinance on the ground that it is unreasonable because the city is in default on a plan of services from a previous annexation. But, presumably, such a challenge could be brought under the Declaratory Judgments Act found at T.C.A. § 29-14-101 et seq. on the ground that the annexation violates the annexation statute. [See Chapter 5, Annexation by Ordinance, Challenges to the Ordinance Based on Constitutional and Other Grounds, and Chapter 9, Problem Annexations.]

CHALLENGING A PLAN OF SERVICES

It does not appear that T.C.A. § 6-51-102 or § 6-51-108 give property owners the right to challenge the reasonableness of a plan of services separate from their individual rights to challenge the annexation ordinance based upon their status as property owners in the annexed territory. However, arguably, property owners have the right to challenge the reasonableness of the annexation; presumably they can argue that the annexation is unreasonable on the ground that the plan of services is unreasonable or that the territory in question does not need the services contained in the plan of services. [Chapter 1101, § 20; T.C.A. § 6-51-102; T.C.A. § 6-51-103. See Chapter 5, Annexation by Ordinance, Trial and Burden of Proof.] But that may not be true, given that a remedy for enforcing the plan of services is prescribed by the annexation law. [See Enforcing the Plan of Services, immediately below.]

ENFORCING THE PLAN OF SERVICES

A property owner subject to the plan of services can sue the city to enforce the plan of services 180 days following the date the annexation ordinance becomes effective. That right to sue is extinguished when the plan of services is fulfilled. [T.C.A. § 6-51-108(d).]

If the court finds that the city has “*materially and substantially*” failed to comply with its plan of services, the city must be given the opportunity to show cause for the failure. If the court determines that the failure is due to natural disaster, act of war, terrorism, or

reasonably unforeseen circumstances beyond the control of the city that materially and substantially impeded its ability to carry out the plan of services, the court can alter the *timetable* of the plan. But if the court finds that the city's failure to comply with the plan of services is none of those reasons, it "shall":

- Issue a writ of mandamus to compel the city to provide the services contained in the plan;
- Establish a timetable for providing those services; and
- Enjoin the city from any further annexations until the services subject to the court's order have been provided to the court's satisfaction. T.C.A. § 6-51-109.

Progress Report on Plan of Services⁶

Six months after the plan is adopted and annually thereafter until it is fully implemented the city must publish a report on its progress toward fulfilling the plan and must schedule and hold a public hearing on the report. These reporting and hearing requirements apply to any plan of services not fully implemented, and any resident or property owner in the annexed area covered by the plan can file suit to force a city to prepare this report if it has not done so on schedule. T.C.A. § 6-51-108.

Amending a Plan of Services

A plan of services may be amended under limited conditions:

- An occurrence such as a natural disaster, an act of war, terrorism, or other unforeseen circumstances beyond the city's control; or
- The amendment does not substantially or materially decrease the type or level of services or delay the provisions of such services; or
- The amendment has received approval in writing of a majority of the property owners by parcel in the annexed area.

Before any amendment is adopted, the city must hold a public hearing preceded by at least 15 days notice. T.C.A. § 6-51-108(c).

An aggrieved property owner in the annexed territory can challenge the legality of an amendment to the plan of services within 30 days after the amendment is adopted. If the court finds that the city unlawfully amended the plan, it shall "decree the amendment null and void and shall reinstate the previous plan of services." T.C.A. § 6-51-108(d).

ANNEXATION BY REFERENDUM

T.C.A. § 6-51-104(b) [annexation by referendum] provides that "the plan of services shall address the same services and timing of services as required in § 6-51-102"

⁶ See Appendix F for sample progress report on plan of services.

[annexation by ordinance]. [See Chapter 4, Annexation by Referendum, Notice and Public Hearing on Annexation and Plan of Services Required.]

That act does not indicate to what extent the above statutes apply to plans of services in annexations by referendum. *It is not clear whether that language embraces statutes governing annexation by ordinance that deal with a broad range of plan of services issues, including the effect of the failure of cities to fulfill prior plans of services, progress reports on plans of services, amending plans of services, and challenging and enforcing plans of services.* It should probably be assumed that they do.

For this reason, a city contemplating annexation by referendum should consider drafting a plan of services that would survive a legal challenge as if it had been done in connection with an annexation by ordinance.

CHAPTER 7

“POPULATION BRACKETS” CONTAINED IN THE ANNEXATION LAW

Generally

Tennessee statutes are rife with various “population brackets” under which cities and counties in Tennessee are excepted from, or included under, a statute or statutes. The same was true of numerous Tennessee annexation statutes. Some of those population brackets were eliminated over time. [See in particular, *Frost v. City of Chattanooga*, 488 S.W.2d 370 (Tenn. 1972), *Pirtle v. City of Jackson*, 560 S.W.2d 400 (Tenn. 1977), *Vollmer v. City of Memphis*, 730 S.W.2d 619 (Tenn. 1987), below.] But Public Acts 2014, Chapter 707, § 2, deleted T.C.A. § 6-51-102(a), (c) and (d), which had contained most of the remaining population brackets.

Article XI, § 8, of the Tennessee Constitution provides that “The Legislature shall have no power to suspend any general law for the benefit of any particular individual....” That provision has repeatedly been interpreted to prohibit the passage of laws containing population brackets and other classifications to benefit specific counties or cities as well as individuals, including private acts that suspend general laws, *unless the classification rests upon a reasonable basis*. [See, among the literally dozens of cases in this area, *Vollmer v. City of Memphis*, 730 S.W.2d 619 (Tenn. 1987); *Mink v. City of Memphis*, 435 S.W.2d 114 (1968); *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439 (Tenn. 1978); *Knoxville’s Community Development Corp. v. Knox County*, 665 S.W.2d 704 (Tenn. 1984); *Brentwood Liquors Corp of Williamson County v. Fox*, 496 S.W.2d 454 (Tenn. 1973); *Estrin v. Moss*, 430 S.W.2d 345 (1968); *Pirtle v. City of Jackson*, 560 S.W.2d 400 (1977); *Clark v. Vaughn*, 146 S.W.2d 351 (1941); *Lineberger v. State ex rel. Beeler*, 129 S.W.2d 198 (1939); *State ex rel Smith v. City of Chattanooga*, 144 S.W.2d 1096 (1940); *Town of McMinnville v. Curtis*, 192 S.W.2d 998 (1946); *Prescott v. Duncan*, 148 S.W. 229 (1912); *Board of Education v. Shelby County*, 330 S.W.2d 569 (1960); *Johnson City v. Allison*, 362 S.W.2d 813 (1962); *State ex rel. v. Mayor of Dyersburg*, 235 S.W.2d 814 (1954); *Wiseman v. Smith*, 95 S.W.2d 42 (1936); *Blackwell v. Miller*, 493 S.W.3d 88 (Tenn. 1973); and numerous cases cited therein.]

POPULATION AND OTHER BRACKETS IN ANNEXATION PRIORITIES STATUTE

Population brackets are also found in T.C.A. §§ 6-51-109 and 110. These population brackets may also violate Article XI, § 8, of the Tennessee Constitution.

T.C.A. § 6-51-109 provides for the annexation by a larger municipality of all or part of the territory in a smaller municipality upon the petition of 20 percent of the voters of the smaller municipality if the larger municipality annexes by ordinance the territory proposed in the petition and the annexation is approved in a referendum by a majority of voters in the smaller municipality. T.C.A. § 6-51-110(g) authorizes annexation by a smaller municipality of territory within the corporate limits of a larger municipality if the territory is fewer than 75 acres and meets other qualifications. T.C.A. § 6-51-110(a)

contains several questionable population and other brackets that are apparently aimed at T.C.A. § 6-51-109 and T.C.A. § 6-51-110(g). Moreover, T.C.A. § 6-51-109 and T.C.A. § 6-51-110(g) should probably be examined to determine whether they serve any useful purpose.

T.C.A. § 6-51-110(a) provides that nothing in this part [T.C.A., Title 6, Chapter 51, part 1] nor in T.C.A. § 6-51-301 [mutual adjustments provision] shall be construed to authorize a smaller municipality to annex territory within the corporate limits of a larger municipality. It also says the same thing with respect to the annexation by a larger municipality within the corporate limits of a smaller municipality in existence at the time of the proposed annexation *except as to municipalities*:

- In counties with a population of not less than 65,000 nor more than 66,000 according to the 1970 or subsequent federal census;
- In counties with a population of 400,000 or more according to the 1970 or subsequent federal census; and
- In counties having a metropolitan government, by a larger municipality with respect to territory within the corporate limits of a smaller municipality in existence for 10 or more years.

In addition, the same statute provides that, notwithstanding any other provisions in this chapter [T.C.A., Title 6, Chapter 51] in counties having a population of not less than 276,000 nor more than 277,000 according to the 1970 or subsequent federal census, nothing in this part [T.C.A., Title 6, Chapter 51, Part 1] shall be construed to authorize annexation by a larger municipality of territory within the corporate limits of any smaller municipality in existence at the time of the proposed annexation.

T.C.A. § 6-51-110(d) also contains population brackets and another bracket with respect to when an annexation ordinance is initiated as to annexation priorities. The brackets exempt from the application of the statute counties having a population of not less than 65,000 nor more than 66,000 and counties having a population of 400,000 or more according to the 1970 or subsequent federal census. It also exempts counties with a metropolitan government.

CHAPTER 8

ANNEXATION AND PLAN OF SERVICES PUBLIC NOTICE AND HEARING ISSUES⁷

STATUTORY ANNEXATION ORDINANCE AND PLAN OF SERVICES HEARING REQUIREMENTS

Generally

The public notice and hearing requirements for annexation ordinances and plans of services were strengthened by Public Acts 1998, Chapter 1101, and by subsequent statutes. However, some of the pre-Chapter 1101 cases interpreting and applying the annexation ordinance public hearing requirements (there are no such cases interpreting and applying the plan of services public hearing requirements) probably apply to the public notice and hearing requirements for annexations by referendum in Chapter 1101. But some of those cases reflect the failure of cities to strictly abide by the public hearing and notice requirements. Such a failure might not necessarily be fatal to an annexation or to a plan of services, but it invites that result and always gives the person challenging the annexation another issue to present to the court. Such failures are easy to avoid by knowing and strictly obeying public notice and hearing requirements contained in the annexation laws.

Several recent statutes require cities to give the county mayor and emergency communications districts notice of both annexations and plans of services. This chapter deals only with statutes and cases dealing with public notice requirements. [See Chapter 4, Annexation by Referendum; Chapter 5, Annexation by Ordinance; and Chapter 6, Plan of Services for the above notice requirements.]

LEGAL STATUS OF DEFECTS IN ANNEXATION BY ORDINANCE AND ANNEXATION BY REFERENDUM

Public notice and plan of services hearing issues were determined in annexation by ordinance cases to be procedural in nature. It is said in *Highwood Properties, Inc. v. City of Memphis*, 297 S.W.3d 695 (Tenn. 2009), that:

[T]he courts have no power to vacate an annexation ordinance for purely procedural defects because no such authority has been granted by statute. *City of Watauga v. City of Johnson City*, 589 S.W.2d 901, 906 (Tenn. 1979). Rather, the general rule is that defects in an annexation ordinance must be presented in the context of a challenge to its reasonableness or necessity by way of a timely *quo warranto* challenge. *City of Oak Ridge*, 583 S.W.2d at 898;

⁷For sample resolutions for a public hearing on annexation by referendum and by ordinance, see Appendices D and E.

see also *City of Knoxville v. State ex rel. Graves*, 207 Tenn. 558, 341 S.W.2d 718, 721 (1960) holding that allegation was passed without a public hearing should be considered in connection with the question of the reasonableness of the ordinance. (Internal quotation marks omitted by writer). [At 208.]

A “timely” *quo warranto* challenge to an annexation ordinance must be brought within thirty days of the final passage of the annexation ordinance.

Quo warranto challenges to annexations by referendum are not authorized by Tennessee annexation law. But Public Acts 2014, Chapter 707 preserved Tennessee Code Annotated, § 6-51-102(b) which presently provides for a plan of services in both annexation by ordinance and annexation by referendum. Tennessee Code Annotated, § 6-51-102(b)(1) requires that “The plan of services shall be reasonable with respect to the scope of services to be provided and the timing of services.”

But the notice requirements for annexation by referendum are particularly strict, directing that each property in the territory be given notice of the proposed annexation. [See Chapter 4, Annexation by Referendum.]

Plan of Services

T.C.A. § 6-51-102(b)(4) provides that before the plan of services is adopted, the city must hold a public hearing. Notice of the time, place, and purpose of the public hearing “shall be published in a newspaper of general circulation in the municipality not less than fifteen (15) days before the hearing.” The notice must also include the *locations* of a minimum of three copies of the plan of service, which the municipality must also make available for public inspection during all business hours from the date of notice of the public hearing.

PUBLIC NOTICE AND HEARING ISSUES

City Charter Generally Governs Annexation Ordinance and Probably Annexation Resolution Procedures

There are no formal annexation ordinance or resolution procedures prescribed by Tennessee’s annexation law. That is also true of annexation by referendum. Annexation ordinances should be adopted following the ordinance procedures prescribed by the annexing city’s charter. It was held in *State ex rel. Balsinger v. Town of Madisonville*, 435 S.W.2d 803 (1968), that an annexation ordinance was not required to be read at three separate meetings because neither the state’s annexation law nor the charter required such a procedure. With respect to annexation by referendum, generally most municipal charters in Tennessee either do not provide for resolution procedures or require their passage on only one reading. However, where a charter does prescribe resolution procedures, they should be followed.

T.C.A. § 6-51-102(a)(1) provided that a city “after notice and public hearing, by ordinance, could extend its corporate limits by annexation....” In the unreported case of *State ex rel. Gentry v. City of Bristol* (Tenn. Ct. App., June 5, 1972), an annexation ordinance was attacked on the ground that the ordinance was passed on first reading prior to the public hearing. Under the city’s charter, it took two readings to pass the ordinance. The record showed that the ordinance was passed on first reading on December 1, 1970; that notice was thereafter published and a public hearing held on December 15, 1970; and that the ordinance was passed on second and final reading immediately after the public hearing. The court was of the opinion that there was substantial compliance with the statute.

Where the charter of the city provided that no ordinance could be adopted at the same meeting at which introduced, the requirements of T.C.A. § 6-51-102 were met by having the public hearing four days after the introduction but before the ordinance was adopted. [*Pirtle v. City of Jackson*, 570 S.W.2d 400 (Tenn. 1977).]

Even irregularities in city ordinance adoption procedures may be “forgiven” in some cases. An annexation ordinance in *Saylors v. City of Jackson*, 575 S.W.2d 246 (Tenn. 1978), was held valid even though it had not received a second as required by *Robert’s Rules of Order* (RRO), which the city had adopted to govern its meeting procedures, because the action on the ordinance was unanimous. RRO declares that where such action is unanimous, a violation of the rules is without consequence.

Changing the Area to Be Annexed

The question of whether a city can describe an area being considered for annexation, for purposes of the public hearing, and subsequently annex parts of the area by several ordinances, perhaps in all less than the area on which the hearing was conducted, was raised in *Senff v. Columbia*, 343 S.W.2d 888 (1961). The Tennessee Supreme Court appears to have approved such procedure:

As a result of this notice and hearing an ordinance was not drawn immediately to take in the whole area pursuant to the notice but numerous and various ordinances were passed taking in smaller areas within the areas as prescribed in the notice, the very obvious reason being that in many of these other areas the people were asking for it and they knew there would be no contest about it. [At 889.]

In *Maury County Farmers Co-op Corp. v. Columbia*, 362 S.W.2d 219 (1962), it was held that an annexation ordinance could annex two separate areas that were not contiguous to each other as long as each was contiguous to the city. To the argument that the annexation of one area might be found to be reasonable and the annexation of the other unreasonable, the court responded that “the part of the ordinance describing that area might be eliminated under the familiar doctrine of elision.” [At 221.]

ADEQUACY OF PUBLIC NOTICE AND HEARING

Generally

There are no reported cases involving the adequacy of the public hearing on plans of services. Arguably, the cases involving the adequacy of the public hearing in annexation cases apply to the public hearings on the plan of services. However, *Morton v. Johnson City*, 333 S.W.2d 924 (Tenn. 1979) speaks of the “political” component of the annexation hearing:

...The words here in the Statute of a “public hearing” were not used with respect to a proceeding in which the constitutional rights of any person might be affected. The subject before the Commission was the adoption of an ordinance annexing the territory in question. Such a hearing as is required under the political or legislative issue of this kind is a kind of hearing that is to be accorded *so that this body may make up its mind from a political standpoint* [Emphasis is mine.] in their legislative action as to whether or not it is feasible and right to annex this territory.

In *Commonwealth v. Sisson*, 189 Mass 247, 75 NE 619, 1 LRS, NS, 752, 109 Am. St. Rep. 630, the Massachusetts court had before it the question of whether or not the Board of Health acting in a legislative capacity gave a proper kind of hearing under a similar act which required a public hearing. The court held...a board...acting in a legislative capacity...is not required to act on sworn evidence...its action is final as is the action of the legislature in enacting the statute...[and] questions of fact passed on in adopting the provisions cannot be tried over in the courts. In other words the only suggestions and the only requirement under this statute is that it be public; that the City Commission have an open public hearing so that they can hear those who are for or against the proposition and then make up their own minds from a legislative standpoint of whether or not such an ordinance would be feasible in view of their legislative duty to the City.

This presents, under the facts in this case, a question of law for the Court to determine. There was no action being taken at this meeting by the Commission; there was no reason why the Commission should enter into an agreement pro or con with those appearing to speak their piece on behalf of this legislation. The only question was to allow those that

wished to stay and say their piece to be allowed to do so and then the Commission could make up its own legislative mind.
[At 929.]

Some of the same political considerations apply to hearings on plans of services, but given the Tennessee Open Records Law and the increasing statutory regulation of plans of services, the governing body of an annexing municipality should properly insure that the plan of services receives the weighty attention that it deserves.

Inaccurate Descriptions of Territory to Be Annexed

It has been held that an inaccurate description did not invalidate an annexation because an appended map correctly showed the territory to be annexed. [*Johnson City v. Maden*, 304 S.W.2d 317 (1957).] However, great care should be taken to ensure that the public hearings on annexations reflect maps and boundary descriptions of the territory proposed for annexation that are consistent and accurate.

Inadequate Notice of Hearing

In *State ex rel. Robbins v. City of Jackson*, 403 S.W.2d 304 (1966), an official notice published only five days in advance, taken together with a news article referring to the public hearing to be held and setting forth the area proposed for annexation, which appeared in the newspaper seven days prior to the public hearing, was held to be substantial compliance with the statute. But it is not clear how much tolerance the courts will exercise when there has been a failure of adequate notice in terms of time. In *Surgoinsville v. Sandidge*, 866 S.W.2d 553 (Tenn. Ct. App. 1993), 11 days notice of a public hearing on an amendment to a zoning ordinance was held not to be substantial compliance when T.C.A. § 13-7-203 required “at least” 15 days notice.

An annexation ordinance was attacked in *Senff v. Columbia*, 343 S.W.2d 888 (1961), on the ground that the notice was insufficient because it had been given too long (nine months) before the ordinance was adopted. Holding that the notice was adequate, the court reasoned that for approximately nine months after the notice was given the proposed annexation received constant publicity in the newspaper.

Location and Environment of Public Meeting

The location and environment of the meeting involving the passage of an annexation ordinance have also been issues. As to the location of a public hearing, the Tennessee Supreme Court in *Morton v. Johnson City*, 333 S.W.2d 924 (Tenn. 1979), said this:

The call was for a meeting at the City Hall before the City Commission. This notice did not designate any particular room and of course the very obvious and only place that the meeting should and would be held, unless designated otherwise in the notice, is in the regular chambers of the City

Commission. Thus it is that the notice was sufficient to notify the inhabitants that the meeting would be in the Commission room.... [At 930.]

In that case 300 people were gathered outside the meeting room, which could hold only 40 people. The city commission refused to adjourn to another room but announced that it would hear everyone who wished to speak, “even if it took all night to do it.” Many of those who were present did not stay, but the commission heard anyone who wished to speak. The public hearing was adequate, declared the court, while it spoke of the purpose of the public hearing.

The court also gave clear instructions regarding the time of holding a public hearing:

The day that this public hearing was called for and held was on a Tuesday night while the regular meetings of the Commission were on Thursday night... The argument is that then this was not properly called because not held on a regular night. Of course this public hearing or hearing as was conducted by the Commission did not have to be on their meeting night....They could have this meeting anytime that they saw fit to have these public hearings. [At 930.]

Morton stands for the clear proposition that the purpose of the public hearing requirement is that the governing body “hear” any person who wishes to speak for or against the annexation proposal. It was cited in *State v. City of Columbia*, 360 S.W.2d 39 (1962), in which the Tennessee Supreme Court also held the public hearing on an annexation ordinance adequate. There, 100 to 125 people were present for the hearing, and all who wished to do so were permitted to speak, “with the possible exception of one man, who jumped up so frequently he was asked to keep quiet.” The meeting lasted about 90 minutes with a break of approximately 20 minutes. [At 42.]

In *Stall v. Knoxville*, 364 S.W.2d 898 (1962), the adequacy of the public hearing was also brought under attack. The court referred to the criteria set out in *Morton v. Johnson City*, above, and concluded:

The Trial Judge found in the instant cases that these requirements were met, and the record clearly supports him in this regard. Proper notice of the hearing was given. It was held at the time and place designated in the notice. The council members were present with the mayor presiding, the doors were opened to the public. The record shows that opinions and discussions were invited and that many opinions were given and much discussion was had. The council chambers might not have seated all who wished to

come. However, the record shows that the meeting lasted for several hours and anyone who wished to be heard had the floor. [At 901.]

When an annexation ordinance reaches the stage of a public hearing a majority of the city's governing body is probably a proponent of the annexation, but before and during the hearing the board should not take a hard position that indicates the matter is a "done deal." The purpose of the public hearing is to provide an opportunity for objectors to bring to their attention any facts and relevant considerations that might have escaped their attention. In *Maury County Farmers Co-op v. Columbia*, 362 S.W.2d 219 (1962), the Tennessee Supreme Court considered an objection that "the city commissioners had already made up their legislative minds to annex," based upon certain answers given by one of the commissioners on cross-examination but rejected it on the grounds:

...that a reading of the whole of the testimony clearly shows that while the commissioners had proposed such annexation, as shown in the public notice, they had not foreclosed their minds, but afforded a fair and proper hearing and passed the ordinance only after careful consideration of the need and effect of the annexation.
[At 221-22.]

Generally, a governing body should simply "hear" persons who wish to speak during public hearings on annexation ordinances and resolutions and make no effort to justify the annexation proposal; to do so will usually lead to long and meaningless arguments. A good procedure is for the mayor or other presiding officer to recognize each person who wishes to speak and thank him courteously at the conclusion of his remarks. If the crowd is large, the governing body may wish to direct that slips of paper or cards to be signed by persons who desire to speak be circulated among the audience and direct the presiding officer to call on them in some order. It may also direct that a time limit be imposed on each speaker.

Recent public attention to defects in public hearings for lack of the ability of the audience to hear the proceedings should probably be taken into account when annexation and plan of services hearings are scheduled. Such public meetings frequently cause controversy and unusually large public attendance. For that reason, the environment of the meeting and its ability to accommodate crowds and sometimes noise should be considered.

CHAPTER 9

“PROBLEM” ANNEXATIONS

GENERALLY - PROCEDURAL VIOLATIONS

Following *Bristol v. Earhart*, 970 S.W.2d 695 (Tenn. 1970), there was debate over whether that case applied only to annexations that did not contain any people, private property or commercial property. *Highwoods Properties, Inc. v. City of Memphis*, 297 S.W.3d 695 (Tenn. 2009) addressed that question:

In *State ex rel. Earhart v. City of Bristol*, however, we recognized an exception (*other than a constitutional challenge*) to the rule and held that, in certain situations where no *quo warranto* action is statutorily available, it is permissible to challenge an ordinance’s validity with a declaratory judgment action. 970 S.W.2d at 953. In *Earhart* the validity of an ordinance enacted several years earlier was challenged because the annexed area contained no “people, private property, or commercial activity.” Id at 954. See *State ex rel. Collier v. City of Pigeon Forge*, 599 S.W.2d 545, 547 (Tenn. 1980) Long and lean...annexations, *so long as they take in people, private property, or commercial activity*, by necessity cannot be challenged in a *quo warranto* action because only an ‘aggrieved owner of property that borders or lies within territory that is the subject of an annexation ordinance prior to the operative date thereof may file such a challenge.’ Tenn. Code Ann. § 6-51-103(a)(1)(A). (Emphasis is the court’s). We held, therefore, that the action for a declaratory judgment was permissible, but limited our holding in two key ways. First, we permitted only challenges to *ultra vires* acts, that is, test of the validity of an annexation ordinance alleged to exceed the authority delegated by the legislature. *Earhart* 97 S.W.2d 954. Second, we stated that it is only *where the quo warranto proceeding is not available*, [that] alternative equitable remedies are not barred. Id at 952. [citing 65 Am. Jur.2d *Quo Warranto*, § 7 (1972)] (Where the remedy by *quo warranto* is available, it is usually held that there is no concurrent remedy in equity unless by virtue of statutory provision). [At 708.] [Internal quotation marks, etc. omitted by writer]. [Emphasis is mine.]

Plaintiffs in *Highwoods*, said the court, failed in their claim for a declaratory judgment voiding the annexation at issue, because:

Reduced to its essence, the challenge by Plaintiffs is to a

single aspect of the court's approved settlement of the earlier lawsuit attacking the reasonableness of the Ordinance. That is, the City's consent to delay the planned annexation of Area B until 2013. A delay in the effective date of the annexation fits more neatly within the classification of procedural defects, as defined in *City of Oak Ridge* and *City of Watauga*-issues that we held must be presented in a *quo warranto* proceedings and considered in the context of the reasonableness of the annexation. [At 708-09.]

While *Bristol v. Earhart* may have been limited to annexation ordinances that took in no person, private property, or commercial property, both *Earhart* and *Highwoods* appear to open the door to annexation suits based on *ultra vires* annexations that are not authorized by the General Assembly. If that is so, it is probably a very narrow opening. With particular respect to annexations by referendum, it is difficult to say here what kinds of annexations that category might encompass. One category comes immediately to mind: annexations that are not contiguous.

GENERALLY – CONSTITUTIONAL VIOLATIONS

Highwoods Properties, Inc. v. City of Memphis, 297 S.W.3d 695 (Tenn. 2009), declares that:

The importance of correctly resolving constitutional issues suggests that constitutional issues should rarely be foreclosed by procedural technicalities. Colonial Pipeline, 263 S.W.3d at 844-45...The stringent restrictions on any challenge to an annexation apply only when constitutional issues are not at stake. [At 709.]

In that case, the city annexed Area A and Area B, the latter of which became effective later than the annexation of the former. One of the questions was whether the fact that the population in Area A would pay taxes longer than the population in Area B violated the tax equality and uniformity requirement of Article II, Section 28 of the Tennessee Constitution. That issue qualified as a constitutional question, said the Court, but held that Article II, Section 28 was not violated because:

"There is nothing in the record to suggest that the City of Memphis or any other taxing authority is implementing different tax rates within its own borders. Area B will not be annexed into the city limits of Memphis until 2013, so it is not

necessary that Area A and Area B property be taxed at the same rate at this time. They are currently in different jurisdictions for purposes of this analysis.” [At 710.]

But it is difficult to determine what other constitutional issues may arise in annexations. Presumably, such issues could arise under the Fourteenth Amendment to the U.S. Constitution as well as provisions of the Tennessee Constitution. But there is no record of Tennessee annexations, by ordinance or by referendum, being overturned on constitutional grounds. However, several annexation cases have put constitutional issues in a special category, presumably in the event they should arise. See *Highwoods*, immediately above [at 709], and *Vicars v. Kingsport*, 659 S.W.2d 367 (Tenn. Ct. App. 1983) [At 369-370]. Even hearing and notice procedural defects in annexations have been resolved under state annexation laws. It was held in *City of Oak Ridge v. Roane County*, 563 S.W.2d 895 (Tenn. 1978) that, “...the courts are not expressly or impliedly authorized to void a municipal [annexation] ordinance for failure of the municipality to give notice or hold a public hearing.” [At 896], and in *City of Wautaga v. City of Johnson City*, 589 S.W.2d 901 (Tenn. 1979), that “...courts were without statutory or common law authority to vacate an annexation ordinance for failure to follow the procedures outlined in [what is now Tenn. Code Ann. § 6-51-102], such as procedural defects in notices and public hearings.” [At 905.]

Substantive constitutional challenges to Tennessee’s annexation law have also been turned aside. Article XI, Section 9 of the Tennessee Constitution, amended in 1953, provides that, “The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered,” which in 1955 resulted in the adoption of Public Acts 1955, Chapter 113, Tennessee’s first comprehensive annexation law. It was said of that annexation law in *State ex rel. Balsinger v. Town of Madisonville*, 435 S.W.2d 803 (1968), that:

It is contended that this act is void because it is in conflict with the fifth amendment of the Constitution of the United States, which provides that ‘no person shall be *** deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation’; and also because in conflict with similar provisions of the constitution of the state of Tennessee, ‘that no man shall be *** deprived of his life, liberty or property but by the judgment of his peers or the law of the land (article I, § 8); and ‘that no man’s particular services shall be demanded, or property taken or applied to public use without the consent of his representatives, or without just compensation being made therefore.’ Article 1, § 21.... As a matter of course, the act would be inoperative, null or void,

if, in fact, it violated any of those provisions. But it cannot be that it does so. The extension of corporate limits so as to include additional territory is in no sense an impairment of the owner's liberty. Nor is it a taking of private property for public use. If it were held to be so, then no municipal corporation could be established or enlarged, and none of these valuable instrumentalities of the State would have a lawful existence.... Even the statutes of annexation to which complainants ascribe the sanctity of general laws would be utterly unavailing for the same reason. [At 281-82.]

CORRIDOR ANNEXATIONS

Generally

Chapter 1101 set restrictions on how and when corridor annexations could occur during the period before the countywide growth plan was adopted. Those restrictions expired after the adoption of the countywide growth plans. T.C.A. § 6-58-108(c). But, corridor annexations, whether done by ordinance or by referendum, must still be approached with caution.

In *State ex rel. Collier v. City of Pigeon Forge*, 599 S.W.2d 545 (Tenn. 1980), the Tennessee Supreme Court distinguished between “corridor,” “strip,” and “shoestring” annexations on one hand, and “long and lean” annexations on the other. In that case, the city annexed an area contiguous to the city about one mile long, the width of the main highway through the city. The territory had a population of 47 people. In upholding the annexation as reasonable, the court said:

We should emphasize that this is not, as appellants insist, merely a “strip” or “shoestring” or “corridor” annexation, although it is long and lean. Such annexations, so long as they take in people, private property, or commercial activity, and rest on some reasonable and rational basis, is not per se to be condemned. We do not deal with an annexation wherein a city attempts to run its corporate limits down the right-of-way of an established road without taking in a single citizen or a single piece of private property. Such an annexation is perhaps questionable and is not here involved. As in any annexation, and more particularly one where a geometrically irregular parcel of land is annexed, the Court must scrutinize the stated and ostensible purpose of the annexation. [At 547.] [Emphasis is mine.]

There are two substantive points in *Collier*:

- First, by whatever name they are called, annexations that run down rights of way or other artificial or natural features of land and that take in no other territory or people are “perhaps questionable”; and
- Second, in any annexation, particularly those involving geometrically irregular parcels of land, the court must scrutinize the stated and ostensible purpose of the annexation.

In a broad sense, most annexations are geometrically irregular, but *Collier* applied that description to annexations that are not reasonably consistent with the planned and orderly growth of the city. [Also see *Hart v. City of Johnson City*, 801 S.W.2d 512 (Tenn. 1990).]

Challenges to Strip, Shoestring, and Corridor Annexations

Generally, T.C.A. § 6-51-103 authorizes challenges to annexation ordinances by *quo warranto* suits by property owners inside the annexed territory within 30 days following the annexation. But in *State ex rel. Earhart v. City of Bristol*, 970 S.W.2d 948 (Tenn. 1998), the Tennessee Supreme Court held that T.C.A. § 6-51-103 applies only to challenges based on the reasonableness of the annexation. *It permitted property owners annexed in 1995 by the City of Bristol to challenge by a declaratory judgment suit a corridor annexation adopted in 1989; the territory annexed in 1995 was attached to the corridor annexed in 1989.* Citing *State ex rel. Collier v. City of Pigeon Forge*, 599 S.W.2d 545 (Tenn. 1980), the court frowned upon some corridor annexations, declaring that “the 30 day limitation does not apply to declaratory judgment suits contesting the validity of an ordinance which purports to annex an area that does not include people, private property, or commercial activity and is, therefore, void.” [At 954.] [Citing *Collier*.]

In that connection it also declared that:

The majority of courts have interpreted the requirement that annexed land be “contiguous” to not allow the annexation of thin strips of land to connect a larger parcel of land to a municipality. [Citation omitted.] These decisions articulate the principle implicit in the Tennessee statute. [At 953-54.]

The challenge to the annexation in *Earhart* was based on the proposition that the annexation was an *ultra vires* act.

“DONUT HOLE” ANNEXATIONS

Generally

Donut hole annexations rest on legally shaky ground in Tennessee. In *City of Kingsport v. State ex rel. Crown Enterprises, Inc.*, 562 S.W.2d 808 (Tenn. 1978), Crown Enterprises challenged Kingsport’s annexation of 806 acres, which included an 85-acre industrial park owned by Crown Enterprises and used by its subsidiary, Mason and

Dixon Lines (M&D). The trial court found the annexation unreasonable for several reasons: The 85-acre site used by M&D was industrial, M&D provided virtually all its own services, and annexation of the M&D property was solely for the purpose of obtaining tax revenue in violation of T.C.A. § 6-51-103.

In overturning the trial court, the Tennessee Supreme Court declared that, “The basic fallacy in the trial judge’s conclusion is that he treated the controversy as if the Crown-M&D Property were the only territory being annexed as opposed to being but a small portion of a substantially larger territory being annexed in good faith.” The court was not impressed with Crown Enterprise’s argument that M&D didn’t need city services because:

The whole process of annexation would be frustrated if the city could only annex those properties then in need of city services. The result of this would tend to *create islands of unincorporated areas within a city and the archipelagic monstrosity thus created would thwart the rendition of essential city services and would not be in the public interest.*

Appellees do not contest the annexation of the remaining property. Should we uphold their contention the result would be the creation of an 85 acre island or enclave, completely surrounded by the City of Kingsport. This area thus omitted would be within, but not a part of a city. *Absent the most compelling considerations, such a situation would be intolerable and an annexation that produced such a result would not meet the test of reasonableness.* [At 814.]
[Emphasis is mine.]

Kinds of Donut Hole Annexations

The courts in other states have gone both ways on the question of whether donut hole annexations meet the test of contiguity where, as in the case of Tennessee, the annexation statute does not define the term “contiguity.” Two kinds of donuts have been issues in those cases: one where one or more parts of the donut hole actually touches the city (technically, the donut is broken at one or more points) and one where the donut hole is completely surrounded by the city. The weight of authority is that donut hole annexations of the latter kind do not meet the test of contiguity. [See 49 ALR3d 589.] *City of Kingsport v. State ex rel. Crown Enterprises, Inc.* 582 S.W.2d 808 (Tenn. 1978), points to the prospect that the Tennessee courts could also follow the majority rule and hold that such annexations are not contiguous, and for that reason violate state law requiring annexations to adjoin the existing city. [See Chapters 4 and 5, Annexation by Referendum, and Annexation by Ordinance.] Annexations by referendum or by ordinance must be contiguous.

Indeed, it would take only a short step for the Tennessee courts to connect *Crown Enterprise* and *Earhart* on that point.

ANNEXATION BY ACQUIESCENCE

Two unreported Tennessee cases deal with the question of how the courts might treat an annexation that is procedurally defective in some way but that has been treated by both the municipality and the population in the annexed territory as part of the municipality for a long period.

In *King v. City of Watertown*, 1986 WL 10696 (Tenn. Ct. App.), the city's charter required ordinances to be passed on two readings and to be signed by the mayor. The annexation ordinance at issue in this case was passed only once on January 26, 1976, and never signed by the mayor. The court held that the 30-day limit on the filing of *quo warranto* annexation suits contained in T.C.A. § 6-51-103 did not apply because the annexation ordinance had never been passed, but it also held that the "annexed" territory was part of the city by acquiescence.

The court reasoned that:

1. The property appeared on the tax rolls of the city in 1978, and the plaintiff's predecessors in title paid city property taxes for the years 1978 through 1982. The plaintiffs purchased the property on November 5, 1982, and paid city property taxes for the year 1983 and business taxes in 1982 and 1983 for the grocery and fruit market they operated there.
2. The city charges outside residents for water at the rate of one-and-one-half times the rate it charges inside residents. The plaintiffs have at all times paid the inside water rate.
3. The city provides free garbage pickup to city residents and to businesses for \$6 per month. The plaintiffs turned down city garbage service for their store.
4. The plaintiffs were provided city police protection.
5. All the county and city maps since 1978 showed the property as being located within the city limits of Watertown.
6. The plaintiffs raised no question regarding being a part of the city until 1983 when they applied to the Wilson County Beer Board for a license to sell beer at their grocery store. The sale of beer was prohibited inside the city of Watertown. They were refused a license because the city of Watertown contended the property was within the corporate limits of the city.

Citing *Roane County v. Anderson County*, 14 S.W. 1079 (1890), *Putnam County v. White County*, 203 S.W. 334 (1918), and *Putnam County v. Smith County*, 164 S.W. 1147 (1914), for the proposition that a county could lose property to another county by laches and long acquiescence, the court also pointed to several cases in other jurisdictions in which it had been held that a local government can lose property to another local government by acquiescence: *City of Whiting v. City of East Chicago*, 359

N.E.2d 536 (1977); *Sarry v. Lake*, 28 P.2d . 80 (1933) (Calif.); *LaPorta v. Village of Philmont*, 346 N.E.2d 503 (1976) (New York). It also pointed to *Township of Scotch Plains v. Town of Westfield* for the proposition that “It has also been held that maps published by authority of law may be referred to as evidence.” [At 4.]

In this case, concluded the court:

We are of the opinion that acquiescence over the long period of time in the location of the municipal boundary by both the municipality and the inhabitants of the municipality where municipal action and improvements have been done under the assumption that the property is located within the boundary will support the conclusion that the boundaries acquiesced in are the true boundaries...Here, plaintiffs and their predecessors in title have acquiesced in the property being considered inside the city limits of Watertown, Tennessee. The property was originally zoned and subdivided to the plaintiffs' and their predecessors' benefit by and according to the zoning codes of the City of Watertown. City services have been provided to and enjoyed by the plaintiffs. City and county maps show the property to be inside the corporate limits of the City of Watertown.... Plaintiffs acquiesced in their property being a part of the City of Watertown until such time as it no longer suited their purposes. Then, and only then, did they raise any objection. [At 4.]

It is clear that a similar result would have been reached in *White v. City of Townsend*, 1995 WL 306877 (Tenn. Ct. App.), had not the city held two annexation referenda [the first ended in a tie, the second in a defeat for the annexation] pending the appeal of the trial court's decision in 1994 that the annexation ordinance passed in November 1959, was procedurally defective. The court at length discussed *King v. City of Watertown* and declared that:

We are of the opinion that under the authority of *King* and under the circumstances here the plaintiffs' property was, prior to this action, located within the corporate limits of the City of Townsend. We are compelled to point out, however that a Rule 11, T.R.A.P., application was made to the Supreme Court for review of *King v. City of Watertown*.

Permission to appeal was denied, with the Supreme Court concurring in results only, January 5, 1987. Since we are not privy to the reasons of the Supreme Court for their action,

we nevertheless accept King as an implicit approval of the principle of “annexation by acquiescence,” since in our view, the result reached in King could have been reached in no other way except through annexation by acquiescence or some form of estoppel brought about the acquiescence and acceptance of city services. [At 7.]

But the court reasoned that “the action of the city in calling two referenda while asserting the property in question is within the municipal boundaries of the city is contradictory and an effective disclaimer of ‘annexation by acquiescence.’” [At 10.]

CHAPTER 10

EFFECT OF ANNEXATION ON OTHER GOVERNMENTS

ANNEXING MUNICIPALITY'S RIGHT TO PROVIDE MUNICIPAL SERVICES

Two statutes generally address the right of an annexing municipality to provide municipal services inside the annexed territory, including utility services: T.C.A. § 6-51-111 with respect to all municipal services except service provided by electrical cooperatives, and T.C.A. § 6-51-112 with respect to services provided by electrical cooperatives.

T.C.A. § 6-51-111 provides that following an annexation accomplished by either ordinance or referendum:

... an annexing municipality and any affected instrumentality of the State of Tennessee, such as, but not limited to, a utility district, sanitary district, school district, or other public service district, shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets, and liabilities of such state instrumentality that justice and reason may require in the circumstances. Any and all agreements entered into before March 8, 1955, relating to annexation shall be preserved. The annexing municipality, if and to the extent it may choose, shall have the exclusive right to perform or provide municipal and utility functions and services in any territory which it annexes, subject, notwithstanding § 7-82-301 or any other statute, subject, however, to the provisions of this section with respect to electric cooperatives. [Subsection (a).]

The same statute provides that:

- Subject to the annexing city's exclusive rights under the statute, any matters upon which the parties have not come to a written agreement in 60 days after the operative date of the annexation shall be settled by arbitration and review under the rules set out in the statute. [Subsection (b).]
- Where the annexed territory is being provided with utility service by a state instrumentality, the agreement or arbitration award must protect the bondholders and contract rights under the conditions of the statute. [Subsection (c).]

- If a private individual or business entity provides utility services within the boundaries of a municipality pursuant to a privilege, franchise, etc., from the municipality, and the municipality annexes territory which includes the service area of a utility district, the private individual or business and the utility district shall attempt to reach an agreement for the latter to convey to the former any or all public functions, rights, duties, property, assets and liabilities of such utility district that reason and justice may require. If an agreement is not reached, then notwithstanding the change of municipal boundaries, the service area of the utility district shall remain unchanged and the private individual or business entity shall not provide utility service in the utility district's service area. [Subsection (d).]
- If at the time of the annexation the annexed territory is being provided with utility service by a municipal utility service or other state instrumentality, including a utility district, the annexing municipality can purchase all or part of the utility system by delivering to the utility system written notice of its election to exercise its right under the statute to be the exclusive service provider. The purchase price and terms of payment shall be those agreed upon by the parties. If the parties cannot agree on a purchase price, a final determination of the fair market value of the properties being acquired and all other outstanding issues related to the provision of utility services in the annexed area shall be made using the arbitration procedures contained in Subsection (b), above. Additional provisions governing arbitration are contained in the statute. [Subsection (e).]

STATUTORY CONFLICT INVOLVING WATER AND WASTEWATER TREATMENT AUTHORITIES

T.C.A. § 6-51-111 prescribes an absolute right by an annexing municipality to provide utility services inside the annexed territory, but T.C.A. § 5-6-120 provides that notwithstanding any other statute, "From and after the creation of a water and wastewater treatment authority and the establishment of its service area, the authority shall be the sole and exclusive provider of its authorized service in its service area," except that it can "cede all or any portion of its service area to another governmental entity upon the [authority's] board determining in its sole discretion that the public convenience and necessity requires the same."

In unreported *City of Collegedale v. Hamilton County Water and Wastewater Treatment Authority*, 2002 WL 1765776 (Tenn. Ct. App.) Collegedale annexed certain territory in Hamilton County, and both the city and the water and wastewater treatment authority claimed ownership and control of sewer facilities in the annexed territory. The former argued that under Tennessee Code Annotated, § 6-51-111(b) "subject to such the exclusive right [of the city] to provide services in the annexed area under subsection (a) of that statute" the parties were to arbitrate other matter upon which they did not agree, the latter argued that under Tennessee Code Annotated, § 5-6-120 it had the exclusive

right to provide sewer service in the annexed territory. However, the court did not resolve the conflict between the two statutes; rather, it held that, “the language contained in T.C.A. § 5-6-120(a)(1), above referenced is only applicable to areas which have been ‘designated,’” and “it is undisputed that no specific designation of a service area had been made as of the effective date of the City’s annexation.” [At 3.] Presumably, the city’s right to provide utility service in the annexed area was ultimately upheld.

Tennessee Attorney General’s Opinion 14-19 (February 14, 2014) opined that Tennessee Code Annotated, § 6-51-111 took precedence over Tennessee Code Annotated, § 5-6-120. It reasoned that an amendment to Tennessee Code Annotated, § 6-51-111(e) by Public Acts 2003, Chapter 93, (subsequent to the City of Collegedale case, above) broadened that statute’s application from “electric service” and “electric distribution system” to “utility service” and “utility system.” It concluded that:

Because there is an irreconcilable conflict between those two statutes, the later-enacted provisions of Tenn. Code Ann. § 6-51-111(e) impliedly repeal the provisions of Tenn. Code Ann. § 5-6-120 to the extent of the inconsistency between the two. As a result, when an annexing municipality wants to provide water and/or wastewater services in annexed territory that is claimed to be within a WWTa’s existing “service area” the applicable statutory provisions are those in Tenn. Code Ann. § 6-51-111(e).

ANNEXING MUNICIPALITY’S PAYMENT OF COMPENSATION

Subsection (e), above, was added to T.C.A. § 6-51-111 by Public Acts 1998, Chapter 922, undoubtedly in response to the case of *Knoxville Utilities Board v. Lenoir City Utilities Board*, 943 S.W.2d 979 (Tenn. Ct. App. 1996). The question in that case was whether T.C.A. § 6-51-111 or T.C.A. § 6-51-112 controlled the taking by the City of Knoxville of utility property owned by the Lenoir City Utilities Board in territory annexed by the City of Knoxville. At the time of the annexation T.C.A. § 6-51-111 contained no provisions for compensation to be paid by an annexing municipality for such property to governmental entities covered by that statute, while T.C.A. § 6-51-112 provided for compensation to be paid by an annexing municipality to electrical cooperatives for the taking of such property. The Lenoir City Utilities Board did not qualify as an electrical cooperative under T.C.A. § 6-51-112; rather, it fell under T.C.A. § 6-51-111 and was not entitled to compensation for the taking of its property by the City of Knoxville. But subsection (e) is limited to municipal electrical services and state instrumentalities, including utility districts; it does not apply to utilities providing other kinds of utility services or to electrical cooperatives.

The Tennessee Supreme Court in *Hamilton County v. City of Chattanooga*, 310 S.W.2d 153 (1958) held that a county is an affected instrumentality within the statute, and in

City of Lenoir City v. State ex rel. City of Loudon, 571 S.W.2d 298 (Tenn. 1978), held that a municipality is an affected instrumentality within the statute.

T.C.A. § 6-51-112 provides that if the annexing municipality owns and operates its own electric system, it shall either offer to purchase any electric distribution properties and service rights within the annexed area that are owned by an electric cooperative, or grant such cooperative a franchise to serve the annexed area. Procedural details are spelled out in that section.

UTILITY DISTRICTS⁸

Protection of Utility Districts Under State Law

In *Hendersonville v. Hendersonville Utility District*, 506 S.W.2d 149 (Tenn. Ct. App. 1973), it was held that although a city by its offer would acquire all of a utility district's assets and would assume all of its liabilities, arbitration was a necessary prerequisite to filing of suit by the city to be allowed immediately to assume control and operation of the system.

The court outlined some of the items that should be considered as subject to arbitration:

It is the argument of the City that since the City by its offer will acquire all of the Utility District's assets and will assume all of the liabilities of the Utility District there is simply nothing to arbitrate as the Utility District is a public agency holding property by virtue of a trust in favor of the public and the City occupies the same status. Therefore, it is only the matter of a successor trustee assuming all the assets, whatever they might be, and liabilities, whatever they might be, of the first trustee. This being true, there can be no disputed issues which would be the subject of a proper arbitration. It is readily admitted, that if only a small portion of the Utility District was taken over by the City and the Utility District were to continue its operation in the non-annexed area, such things as the value of the facilities received, the division of liability for bonded indebtedness, etc., would be the proper subject of arbitration.

⁸ Appendix G contains a resolution of the City of Jackson setting forth the terms and conditions for taking over a utility district and a subsequent ordinance fixing water rates in the acquired area, a contract whereby the City of Memphis took over the utility district in the Frayser area, resolutions adopted by a utility district and Johnson City for this purpose, and a contract for the City of Clinton to take over the First Utility District of Anderson County.

We cannot agree with this argument. The statute does not limit its application to cases of a partial take-over. It should be noted that it is required by the statute that the parties “shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets and liabilities of such state instrumentality that justice and reason may require in the circumstances.” The statute also contemplates possible disagreements between the parties on the matters to be attempted to be agreed upon for it further provides “any such matters upon which the respective parties are not in agreement in writing within sixty (60) days after the operative date of such annexation shall be settled by arbitration with the laws of arbitration of the state of Tennessee effective at the time of submission to the arbitrators, and subsection (2) of § 23-501 shall not apply to any arbitration arising under §§ 6-309–6-320.”

We do not here attempt to list or limit in any way items which could be in dispute and the subject of arbitration for such attempt would be beyond the scope of this appeal, but even when the annexing authority is to take over an entire utility district, the date of takeover might very well be the subject of disagreement and arbitration. In the instant case, that problem is present as well as others. For instance, the second paragraph of the statute provides for protection of the bond holders to be an item of the agreement of arbitration. Also, it must be born in mind in this case that the City is going to, or so they say they will provide services for members of the Utility District outside the annexed area. It would seem to us that “justice and reason may require” some sort of written agreement on this subject by the City and release of the Utility District trustees.

We hold the arbitration as set out in the statute is a necessary prerequisite to the filing of such a suit as this. We think it would be somewhat difficult for the Chancellor below to order a take-over of assets when a list of those assets is not before the Court and the Chancellor has no knowledge of what they actually are. This case involves more than underground pipes and fireplugs, it involved service equipment, bonded indebtedness, etc. As we view it, to hold any other way would defeat the purpose of the statute, which no doubt was to relieve the Court of having to supervise the

dispute between the parties until some sort of agreement or award had been made through arbitration which the Court could either at that time approve or disapprove. [At 151-52.]

After the City of Memphis annexed an area that included a part of the area served by a utility district, the city entered into an agreement to take over and to assume all obligations of the district. Before the annexation the district had contracted with a subdivision developer, agreeing to build water supplying facilities and to supply water to the subdivision. The developer had deposited \$88,456.90 with the district as the estimated cost of construction, and the district agreed to refund the deposit by annual payments equal to 50 percent of water revenues from its customers in the subdivision for a period of 10 years or until the total amount of the deposit was repaid. The contract contained a provision that in the event the ownership or contract of the district was sold or transferred the balance of refunds would be paid in full at that time. The developer sued to enforce the terms of the contract, and the Tennessee Court of Appeals, held that the city was bound by the acceleration of refund provision of the contract. *Pitts & Company, Inc. v. City of Memphis*, 558 S.W.2d 448 (Tenn. Ct. App. 1977).

The City of Knoxville persistently declined to resort to arbitration in a wrangle with the Fountain City Utility District that lasted for more than four years. Practically all of the district had been annexed, and it was conceded by all that acquisition by the city was the only reasonable solution. The utility district refused to go out of business, however, unless the city would agree to use its surplus funds to reimburse its customers for their "equity" in the system. As the successor public agency, the City of Knoxville was, of course, entitled to assets in the form of surplus funds as well as pipes in the ground and other properties. For that reason, its agreement to this disposition of such funds was the equivalent of it making payment. Finally, to end the long dispute without recourse to the courts, the city in 1966 agreed to a distribution of \$387,500 in surplus funds, which the district paid to the customers it was serving on December 31, 1965.

PROTECTION OF UTILITY DISTRICTS UNDER FEDERAL LAW

It is provided by 7 United States Code, § 1926(b) that:

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the areas to be served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of such event be the basis of requiring such association to secure any franchise, license, or permit

as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.
[Emphasis is mine.]

This law applies even where the municipality has annexed the area in which it wishes to provide utility service. The reason is that many, if not most, utility districts have outstanding FmHA or RECD loans.

However, some recent cases have held or implied that where a utility district does not meet the “service provided or made available” requirement of § 1926(b), it is not accorded the protection of that statute.

The U.S. Sixth Circuit Court of Appeals (in which Tennessee is located) denied a water district’s claim to the exclusive right to provide service in territory annexed by a city and in territory that lay outside its boundaries. In *Lexington-South Elkhorn Water District v. City of Wilmore, Ky.*, 93 F.3d 230 (1996), the court observed that the water district provided no water service in, and had received no requests for service from, any of the disputed areas. In the annexed area, the water district had no facilities in or adjacent to the disputed properties; in the 10 areas outside the limits of the annexed territory, only one contained the water district’s main, and that main had been constructed after the city had begun providing water service in the area; and in the other nine areas outside the annexed territory that contained no mains, one of the areas had a main within 50 yards; the others ranged in distance from 0.1 to 0.4 miles.

Reviewing earlier cases on the application of § 1926(b), the court said that:

These cases teach that whether an association had made service available is determined based on the existence of facilities on, or in the proximity of, the location to be served. *If an association does not already have service in existence, water lines must either be within or adjacent to the property claimed to be protected by § 1926(b) prior to the time an allegedly encroaching association begins providing service in order to be eligible for § 1926(b).* Based on the location of Lexington-South Elkhorn’s distribution lines, it had not made service available prior to the time that Wilmore began providing service to the disputed properties.... [At 237.]
[Emphasis is mine.]

But language in that case suggests that had the district obtained the certificate of necessity that water districts were required under Kentucky law to obtain with respect to territory in which they claimed the right of service, the question of whether service was “available” may have been closer. The court pointed out that Kentucky law required a water district that had obtained such a certificate to make reasonable extensions of

water service to all customers at least the first 50 feet, and a longer one where the 50-foot extension was unreasonable under the circumstances. But immediately after making that observation, the court declared, “Thus, a key factor in determining whether a water district has made water service available is the proximity of the water district’s distribution lines to areas in dispute.” [At 235.]

Sequoyah County Rural Water District No. 7 v. Muldrow, 191 F.3d 1192 (10 Cir. 1999), declares that, “Courts are in disagreements about what is required to satisfy the ‘made services available’ requirement of § 1926(b).” [At 1201.] It divides the cases into three categories based on the kind of test the particular court applied to determine if the service was made available: (1) legal obligation (under state law) to provide utility service test, (2) “pipes in the ground test,” and (3) a combination of both tests.

The court in that case decided there was no state (Oklahoma) law duty to provide service but declared that even if there were:

...we do not think that such a duty, standing alone, is sufficient to meet the “made service available” requirement. For one thing, to hold that a legal duty is sufficient to meet the requirement would be contrary to the language of the statute, which provides protection only against curtailments of “service provided or made available.” 7 U.S.C. § 1926(b). In addition, allowing a water district to meet the requirement simply by showing a legal duty to serve may undermine the principle goals of the statute, which is to “encourage water development by expanding the number of potential users of such systems.” [Citations omitted.] “Inherent in the concept of providing service or making service available is the capability of providing service, or, at a minimum, of providing service within a reasonable time.” [Citing *Bell Arthur*, below.] If a water association has a legal duty to provide service but has no proximate or adequate facilities or cannot provide them within a reasonable time, it is the customer who suffers. For these reasons, we think that the second prong of § 1926(b) should focus primarily on whether the association has *in fact* [emphasis is the court’s] “made service available,” i.e., on whether the association has proximate and adequate “pipes in the ground” with which it has served or can serve the disputed customers within a reasonable time. [At 1203.]

The court sent this case back to the district court to make a finding of fact on the question of whether the water association had “made service available” under the “pipes in the ground” test.

Whatever confusion the cases create with respect to the question of whether the state

law that requires a utility district to provide service to customers in its service area should be weighed in determining whether service is “available” under § 1926(b), Tennessee is among those states whose laws regulating utility districts do not require such districts to provide service as a matter of right. For that reason, the “pipes in the ground” test probably applies to Tennessee under *Lexington-South Elkhorn Water District* and subsequent cases in other federal judicial jurisdictions.

The question of what is “available” utility service was hit almost head on in *Bell Arthur Water Corporation v. Greenville Utilities Commission*, 173 F.3d 517 (4th Cir. 1999). There, in 1994, the Greenville, North Carolina, Utilities Commission agreed to provide sewer service to the Ironwood development. In 1995, the City of Greenville annexed the Ironwood development, following which the Greenville Utilities Commission and Bell Arthur engaged in a dispute over which of them should provide water service to Ironwood. Bell Arthur already had a six-inch water line in the area, which it had paid for with FmHA loans, but those loans had been retired. However, in 1993, Bell Arthur had borrowed money from FmHA to finance the extension of water services in its service area to territory that did not involve Ironwood.

Bell Arthur’s own engineers determined that providing water service to Ironwood would require a 14-inch water line at a cost of \$650,000. In May 1995, Bell Arthur agreed in writing to provide both temporary and permanent water service to Ironwood and began temporary service to a construction trailer there. However, Bell Arthur took no further steps to provide water service to Ironwood until 1996 when it obtained necessary permits from the state. In August 1996, Bell Arthur’s board resolved to borrow the necessary funds to construct the larger water line, and in December 1996 borrowed \$1 million from a private bank for that purpose. Apparently, the dispute between Greenville Utilities Commission and Bell Arthur was already in court when Bell Arthur borrowed the \$1 million because the loan was “conditioned on the outcome of this litigation.” [At 521.]

However, the Greenville Utilities Commission had not been idle. In July 1995, it notified the Ironwood developer that it would provide water service and had already ordered the pipe to provide the service, and by October 1995, had constructed a 12-inch water line to Ironwood. Bell Arthur continued water service to the developer’s construction trailer until February 1996.

The U.S. District Court for the Eastern District of North Carolina [972 F. Supp. 3951 (1997)] held that Bell Arthur was not entitled to the protection of 7 U.S.C. § 1926(b), for three reasons:

1. It had paid the FmHA loans with which it had constructed the six-inch water lines into Ironwood;

2. The new FmHA loans it had obtained for water line extensions to an area that did not include Ironwood were not directly related to the service to that area; and
3. Bell Arthur was “not capable of providing the requisite service within a reasonable time after application was made for the service.”

With respect to the first two reasons, the Fourth Circuit Court of Appeals held that Bell Arthur could not rely upon retired FmHA loans to invoke the protection of 7 U.S.C. 1926(b), but held that the 1993 FmHA loans that Bell Arthur had obtained to make water line extensions to areas in its service area, but that did not include Ironwood, triggered the protection of Bell Arthur under 7 U.S.C. 1926(b) for its entire service area, including Ironwood.

With respect the third reason, the court held that:

....Bell Arthur is entitled to the protection of § 1926(b) only for that area. On this issue, we agree with the district court that Bell Arthur was not entitled to protection for the Ironwood area because it did not have the capacity to serve that area, nor did it have the capacity to provide such service within a reasonable time after the request for service was made. [At 525.]

The court reasoned that with respect to § 1926(b):

Inherent in the concept of providing service or making service available is the capacity of providing service or, at a minimum, of providing service within a reasonable time. See *North Alamo Water Supply Corp. v. City of San Juan*, 90 F.2d 910, 916 (5th Cir. 1996) (holding that a water association may establish the availability of service under § 1926(b) by demonstrating, inter alia, that it “has lines and *adequate* facilities to provide service to the disputed areas.” (Emphasis added)); see also *Lexington–South Elkhorn Water Dist. v. City of Wilmore*, 93 F.3d 230, 238 (6th Cir. 1996) (noting that “an association’s ability to serve [under 1926(b)] is predicated on the existence of facilities within or adjacent to a disputed property”). Having a six-inch pipeline in the ground when a 14-inch line is necessary provides no support to a claim that a water association has adequate facility to provide service. We conclude that in order to enjoy the protection of § 1926(b) for an area, an association must demonstrate as a threshold matter that it has adequate facilities within or adjacent to the area to provide service to

the area within a reasonable time after a request for service is made....We hold that Bell Arthur's inadequate six-inch pipe in the ground coupled with only a general, unfulfilled intent to provide the necessary 14-inch pipe sometime in the future does not amount to "service provided or made available."
[At 526.]

Also see the unreported case of *Dyersburg Suburban Consolidated Utility District v. City of Dyersburg*, 2007 WL 1859460 (Tenn. Ct. App.)

SCHOOLS⁹

A city desiring to take over a county school in an annexed area will need to negotiate with the county. The opening sentence in the opinion of *Hamilton County v. Chattanooga*, 310 S.W.2d 153 (Tenn. 1958) is, "The sole question in this case is whether under § 9 of chapter 113 of the *Public Acts of 1955*, T.C.A. § 6-318, counties are included within the phrase 'any affected instrumentality of the state of Tennessee.'"

The question was answered in the affirmative, and the case was remanded for further proceedings. The Tennessee Supreme Court *did not prescribe the terms of settlement between the county and the city*. It may be significant that the court noted that Hamilton County in its bill "prayed for . . . a judgment against the City of Chattanooga for the total amount, supra, expended on said schools," but refused to grant such relief. Subsequently the county and the city reached an agreement that was summarized by the Chattanooga City Attorney as follows:

In the first annexation, under Chapter 113, *Public Acts of 1955*, the City acquired a new school building from Hamilton County. The County had issued bonds under the provisions of § 49-715 of the Code, the interest and principal being payable only from taxes levied on property outside the corporate limits of the City. The City entered into an agreement with the County to pay to it the amount of bonds and interest as they mature, the bonds being serial bonds.

In the next territory annexed there were two school buildings belonging to the County which had been constructed several years before and bonds issued therefor payable on taxes levied on all property in the County, including property in the City. The bonds issued were divided between the County and City as provided by § 49-711 of the Code. There had been some additions to these buildings made from bonds

⁹ See Appendices H-1, H-2 and H-3, the explanations of which are indicated in the appropriate parts of this text on schools.

funds payable only on taxes levied on property outside the City, and also the County has spent some of its capital outlay funds received from sales tax, in making improvements to these schools. The City entered into a contract with the County to reimburse them the amount of the capital outlay funds and to pay to the County annually the balance due on the issue of bonds allocated to the school buildings.

The County in each instance agreed to discontinue levying taxes on property in annexed territories for the payment of the principal of and interest on the urban school bonds.

The City has not paid or agreed to pay any part of the bonds outstanding which were issued for school purposes payable from taxes levied on all the property in the County, including that within the City. The taxpayers of the City will continue to pay on the County bonds, including the bonds used on constructing buildings in the County outside the City.

Where it was alleged that the annexation of territory would reduce the county area liable to taxation for the payment of principal and interest on rural school bonds and thus impair the obligation of contract, it was held that this is not a justifiable issue in a suit in the nature of *quo warranto* attacking the reasonableness of an annexation ordinance. [See *Cope v. Morristown*, 404 S.W.2d 298; *Spoone v. Morristown*, 431 S.W.2d 827 (1968).]

Fairly serious problems developed in Davidson County and Knox County resulting from large annexations by Nashville and Knoxville. The county judges of these two counties were quoted in newspaper stories as saying that annexation without unification of the county and city schools into a single school system would be intolerable, and this position gained substantial support in both communities. The Davidson County problem was submitted to arbitration, but the issue became moot when voters approved a single metropolitan government, including a unified school system, on June 28, 1962.

Several problems arose from the division of a county school district by a new city boundary that cut off county students from the schools they formerly attended. The area annexed by Nashville included approximately 12,500 students, 2,600 of whom had been attending schools outside the annexed area; an additional 1,650 students lived outside but had been attending county schools in the annexed areas. Knox County reported that 14,840 students were attending 29 schools in the area annexed by Knoxville, 2,275 of whom lived beyond the new city boundaries.

A Knoxville city school official suggested as a solution to such a situation at one high school that the county pay tuition to the city for the nonresident students and that the city pay the county for transporting students within the annexed areas. If the tuition rate is reasonable, this would seem a sensible solution; such tuition payments may be little more than it would cost the county to educate the children directly, and the county receives state funds for transportation that are not distributed to city systems. In consideration of county transportation for city schools, a city might even agree to accept county students at tuition rates equal to the net cost per student to operate the county system.

The county judge of Knox County proposed that two high schools be retained by the county on a basis of “law and common horse sense.” A precedent for such an arrangement exists in Chattanooga, where a large county high school has been located in the city for many years. Davidson County school officials proposed that the county retain four of the 22 schools in the annexed areas because 40 percent of the enrollment in these schools was from beyond the new city boundaries, but the city expressed an intention of taking over all schools.

When an annexation case is in litigation, there usually is a considerable time lag before the annexation is finally effective. During this time a problem arises as to building or enlarging school facilities to take care of an increasing number of students attending schools in the area subject to annexation. [See Appendix H-1.] The law provides that during the time that any annexation ordinance is being contested, the annexing municipality and the county governing body may enter into an agreement to provide for new, expanded and/or upgraded services and facilities. T.C.A. § 6-51-103(f).

Preliminary negotiations between Nashville and Davidson County school officials on existing school properties reflect typical conflicts in points of view. The county places a replacement value of \$11,262,732.37 on the buildings, sites, improvements and equipment of 22 schools in the annexed area, which had an original cost of \$7,558,752.88, but an “asking price” was not specified. The city had previously offered \$6.4 million on the grounds that 40 percent of the total county property assessment was in the annexed area, and this amount represented 40 percent of the total *rural school bonds* outstanding against these schools. The city proposed no division of outstanding countywide bonds issued for these schools on the grounds that city taxpayers had paid and would continue to pay taxes for their retirement, but this was rejected by the county on the basis that the city had received its ADA share of these bonds when issued.

Knox County officials stated that the loss of the property tax base in areas annexed would make it impossible to issue rural school bonds (amortized by a tax levy outside the city), and to issue countywide bonds to obtain the amount of funds needed by the county would require an unreasonably large issue because of the required ADA sharing with the city. A suggested partial solution to this problem, which received some city and

county support, was that the city waive its share of such a bond issue if the county would agree to apply the city share against the amount eventually determined to be chargeable against the city for county school facilities taken over by the city.

Eventually an agreement was worked out between Knoxville and Knox County that covered several of the problems discussed above. [See Appendix H-2.] The agreement was negotiated by a “school negotiating committee” and ratified by both local governing bodies. The negotiating committee was composed of two members of county court, the county school superintendent, the county solicitor, one city council member, one city school board member, the city school superintendent, and the city law director.

Twenty-eight schools, valued at \$12 million, were transferred to the city. One school offering a countywide special education program was continued under county operation. The city agreed to pay the debt service on about \$4 million of the outstanding rural school bonds of the county that had been invested in the schools taken over. The city also waived its ADA share of a \$2 million countywide school bond issue, the proceeds of which had been spent primarily on the annexed schools. Further, there was provided a cooperative system of financing all future capital improvements. The later provision includes ongoing planning and capital budgeting of all school facilities in both the city and county.

Section V of the agreement covers the question of which pupils can attend which school with or without tuition. Paragraph (D) requires tuition payments for pupils who resided inside the city at the time annexation proceedings were begun and later moved outside the city, including the annexed area. This provision has been cumbersome and virtually impossible to enforce. All of § V has been rendered null and void by a subsequent agreement reached in connection with the adoption of a county sales tax earmarked for schools. The essence of the latter agreement is that tuition payments are entirely eliminated, and the county provides transportation for city pupils on a reimbursable basis.

A byproduct of annexation and the resulting transfer of county school facilities to the city was the desire on the part of the county to raise its teacher salaries to the level of city teachers. The cost of the salary increases would have required a large increase in the tax rate (the county needed about \$300,000 but would have had to raise in excess of \$1 million to allow for the city's ADA share of the levy). The city school system did not need these additional funds at the time. Section VII of the “Agreement for Transfer of Schools” was amended to provide for an additional payment to the county, permitting an increase in county teacher salaries to the level of city teachers without raising the county tax rate. In exchange, the county agreed to provide transportation for pupils in the annexed areas for one year.

An extensive annexation by Memphis, in four phases (effective on December 31 in each of the years 1968, 1969, 1971, and 1972), resulted in an arbitration proceeding with

Shelby County involving 27 county schools located in the annexed areas. The county asked for approximately \$17 million, the board of arbitration awarded \$1,917,904, and on appeal a chancery court, in a consent order, awarded \$8,213,768 to be taken from future ADA funds due the city school system. The city's brief before the arbitration board, the board's memorandum, and the chancellor's consent order are reproduced in Appendix H-3.

AGREEMENT FOR NEW OR IMPROVED SERVICES AND FACILITIES

During the time that any annexation ordinance is being contested as provided herein, the annexing municipality and the county governing body (and/or affected school, sanitary, or utility district) may enter into an agreement to provide for new, expanded, or upgraded services and facilities (including, but not limited to, equipment, land, and buildings) and capital expenditures (including sale of bonds) to finance such services and facilities, which agreement shall include an equitable division of the cost and liabilities of such capital expenditures between the annexing municipality and the county governing body (and/or affected school, sanitary, or utility district) upon final determination of such contested annexation ordinance. T.C.A. § 6-51-103(f).

CHAPTER 11

“DEANNEXATION” AND OTHER BOUNDARY ADJUSTMENTS

CONTRACTION OF BOUNDARIES (DEANNEXATION)

There are two ways for a city to “deannex” territory, both of which are covered in T.C.A. § 6-51-201.

By Referendum After the Adoption of an Ordinance by the City’s Governing Body
T.C.A. § 6-51-201(a), presently provides that:

Any incorporated city or town, whether it was incorporated by general or special act, may contract its limits within any given territory; provided that three-fourths (3/4) of the qualified voters voting in an election thereon assent to.

That statute is highly confusing due to several amendments. It is not clear on its face whether the vote must be three-fourths of the city voters voting or three-fourths of the voters voting in the territory to be deannexed. However, in light of the history of T.C.A. §§ 6-51-201(a) and 6-51-202, the three-fourths vote probably means a three-fourth vote of the voters voting in a city election.

Complicated reasoning supporting this conclusion follows: That statute derives from *Public Acts 1875*, Chapter 92, and appears in Tennessee Code of 1932, § 3322, which itself was a part of Article III of that code. Under Article III, a city could add territory or contract its limits. With respect to the contraction of limits the city had to adopt an ordinance authorizing a referendum on the contraction. The contraction had to be approved by a three-fourths vote “of the voters qualified to vote in the election of mayor and aldermen or governing body....” For that reason, the three-fourths vote in Article III is, arguably, three-fourths of the voters voting in a *city* election.

Tennessee Code of 1932, § 3322, was specifically amended by *Public Acts 1955*, Chapter 61, as follows:

Any incorporated city or town, whether the same shall have been incorporated by general or special Act, may contract its limits within any given territory, provided three-fourths of the qualified voters voting in an election thereon assent thereto.

Public Acts 1955, Chapter 113, is the first general annexation law of the state. In § 10, without mentioning Tennessee Code of 1932, § 3322, whether the referendum had to be preceded by an ordinance, and whether the vote was a three-fourths vote of the voters voting in the territory or three-fourths of the voters voting in the city, simply said that:

Any city incorporated under any Public or Private Act of the State of Tennessee may contract its city limits within any given territory provided three-fourths of the qualified voters voting in an election thereon assent thereto.

Both of those public acts were codified in T.C.A. § 6-51-201(a) as they appear as indicated above. Although the language relative to the “voters qualified to vote in the election of mayor and aldermen or governing body” was dropped, it still did not limit the voters to those residing in the territory to be deannexed.

T.C.A. § 6-51-202 does require that the referendum be held pursuant to an ordinance describing the territory to be deannexed and requires that the deannexation be approved by a vote of three-fourths of the voters. That statute is consistent with the way it appeared in *Public Acts 1875* and in Tennessee Code of 1932, § 3323, which, again, applied to both additions of territory to cities and to the contraction of city limits.

By Initiative of the City’s Governing Body

T.C.A. § 6-51-201(b) provides a completely separate method of deannexation. It was added by *Public Acts 1984*, Chapter 731. That statute authorizes deannexation by ordinance upon the initiative of the city’s governing body, by a majority vote of the “total membership of the city legislative body.”

However, a petition of 10 percent of the voters residing in the area to be deannexed that is submitted to the city recorder within 75 days of the final reading of the deannexation ordinance triggers a referendum on the deannexation. The referendum is held at the “next general election.” Only voters residing in the territory proposed for deannexation are entitled to vote. It requires a majority vote of those voters to approve the deannexation.

It is not clear whether the “general election” at which the referendum must be held refers to the next general municipal election or to the next general state election; presumably, it could refer to either. T.C.A. § 2-1-104(a)(7) defines the term “election” as “a general election for which membership in a political party in order to participate therein is not required.” General city elections and the “regular November [state] election held on the first Tuesday after the first Monday in November in even-numbered years” appear to meet that definition. [See T.C.A. § 2-1-104(25).]

Once an area is deannexed, the city may continue to levy and collect taxes in the area to pay the excluded territory’s share of any debt contracted prior to the deannexation. T.C.A. §§ 6-51-201 – 204.

CHALLENGE TO DEANNEXATION BY REFERENDUM

Only one case interprets the deannexation statute: unreported *Rich v. City of Chattanooga*, 2014 WL 1513349 (Tenn. Ct. App). It dealt with deannexation by

referendum under Tennessee Code Annotated, § 6-51-201(b). On the date of the general election on August 2, 2012, a referendum was held in Hamilton and Marion counties on the question of whether certain properties annexed by the city in 1972 and 1994 should be deannexed. The referendum, which passed 21-20, included the vote from both counties. The trial court dismissed the plaintiff's *quo warranto* and declaratory judgment challenge to the deannexation, but overturned the referendum election because it wrongfully disenfranchised some voters.

With respect to the plaintiff's *quo warranto* claim, the trial court had held that *quo warranto* was the proper claim, but had been untimely filed. But the Court of Appeals held that *quo warranto* relief is not available in deannexation cases, reasoning that:

According to the plain language of Tennessee Code Annotated, § 6-51-201, deannexation may be accomplished in one of two ways, either through an election receiving approval of three-fourths of the qualified voters or via an ordinance receiving support of a majority of the city legislative body...If annexation is initiated via ordinance, however, ten percent of the citizens residing in the affected area may file a petition opposing the deannexation, and a resultant referendum election will be conducted...if a majority of the voters fail to vote for deannexation “the contraction ordinance shall be void.” *This is the sole method provided by statute for review of deannexation by ordinance.* [At 7.] [Emphasis is mine.]

Pointing to the function of *quo warranto* in annexation cases, the Court said:

As our Supreme Court has declared, “[w]ithin the four corners of the *quo warranto* statute lies the entire jurisdiction and authority of the Courts to review the actions of municipalities in enacting annexation ordinances.” *Highwoods Prop., Inc. v. City of Memphis*, 297 S.W.3d 695, 708 (Tenn. 2009) (quoting *City of Oak Ridge v. Roane County*, 563 S.W.2d 895, 897 (Tenn. 1976)). The Court also noted that the right to challenge an annexation ordinance is a “statutory right” that “in its very origin is limited.” *Highwoods Props., Inc. v. City of Memphis*, 297 S.W.3d at 708 (quoting *Brent v. Town of Greeneville*, 203 Tenn. 60, 309 S.W.2d 121, 123 (Tenn. 1957)).

Utilizing the same rationale, the legislature has provided a statutory mechanism to challenge deannexation by ordinance, which is to file a petition opposing the ordinance

that has been signed by ten percent of the registered voters residing in the affected area...A referendum shall then be held at the next general election, and the voters shall decide the fate of the proposed deannexation...Such is the method of review provided by the legislature and this Court is without authority to expand this statutory remedy...[At 7-8.]

With respect to the plaintiff's declaratory judgment claims, the Court of Appeals, rejected that avenue for such a claim in essentially the same language it used to reject their claims under *quo warranto*, adding that:

The [Supreme] Court further explained, “[s]ubject to some exceptions, a declaratory judgment action should not be considered where special statutory proceedings provide an adequate remedy.” *Highwoods Props.*, 297 S.W.3d at 709 (quoting *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 838 (Tenn. 2008)).... We conclude that the same rationale applies to a challenge to deannexation by ordinance. When challenging deannexation by ordinance, the statute provides for a referendum election as the only remedy. Where, as here, the statutorily provided review of a referendum election was available to and successfully utilized by Plaintiffs, and where the ordinance was invalidated by such action, there should be no further review by the courts because such further review is not specifically provided by statute. See e.g. *Highwood Props.*, 297 S.W.3d at 708. Plaintiffs have not alleged that the passage of this Ordinance constituted an *ultra vires* act...[At 8-9.]

The trial court's reliance on *Committee to Oppose the Annexation of Topsyde and Louisville Road v. City of Alcoa*, 891 S.W.2d 269 (Tenn. 1994) in defining who was a qualified voter in the deannexation of the property in question, was proper held the Court of Appeals. The trial court had interpreted the language in Tennessee Code Annotated, § 6-51-201(b)(3) speaking of voters eligible to vote in the deannexation referendum as “anyone registered to vote in either Hamilton or Marion County, who resides on a lot, any part of which is part of the area to be deannexed.” [At 9] The Court of Appeals declared that Topsyde & Louisville Rd., had held that the phrase “qualified voters who reside in the territory proposed for annexation” in Tennessee Code Annotated, § 6-51-105(a), includes the curtilage of the property of such residents, and approved the extension of that definition to deannexation by referendum.

The voter qualification component of this case is distinguished from the voter qualification component in the Topsyde and Louisville Road case in that it recognized a

Fourteenth Amendment Constitutional issue in such elections. The Court of Appeals agreed with the trial court's decision that:

An election regarding a deannexation ordinance would “invoke the protections against infringements of the fundamental right to vote.” See e.g. *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 629 [parallel citations omitted by me] quoting *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665 [parallel citations omitted by me] [“once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment”) [At 10.]

BOUNDARY ADJUSTMENTS BY CONTRACT

Two contiguous cities may adjust a common boundary by contract to eliminate confusion and uncertainty about its location or to conform the boundary to certain man-made or natural geographical features. T.C.A. § 6-51-302.

MUNICIPAL MERGERS

T.C.A. § 6-51-401 et seq. authorizes municipalities that share contiguous boundaries and that are located in the same county to merge using one of two methods.

Resolution and Referendum

This method requires the governing bodies of municipalities proposing to merge to pass a resolution (or joint ordinance in the case of a proposed merger involving a home rule municipality) requesting a referendum upon the proposed merger. The resolution (or joint ordinance) must be passed by a majority vote of the members to which each of the governing bodies of the municipalities are entitled. The resolution states the name of the municipality that will result from the merger and the charter under which it will operate, which may be the general law mayor-aldermanic charter, the general law manager-commission charter, or one of the charters of the merging municipalities. The resolution may also establish the wards or districts of the new municipality if its new charter provides for such wards or districts. The wording of the merger question that must appear on the ballot is contained in the statute and takes into account the possibility that the merger will involve a home rule municipality and that the charter of the new municipality will be a home rule charter. The referendum must pass by a majority of those voting in each municipality for the merger to become effective. If the referenda are successful, the merger is effective 120 days after the certification of the election results.

Petition and Referendum

Under this method, 10 percent of the registered voters in each municipality may petition for a merger. The petition must contain essentially the same information that must

appear in the resolutions (or joint ordinance in the case of a proposed merger involving a home rule municipality). The rules that govern the merger referenda under the resolution and referendum method apply to this method.

T.C.A. §§ 6-51-406–409 govern questions pertinent to the continuation of ordinances of the municipalities that have merged under both methods and the financial integration of the “old” municipalities into the “new” municipality.

APPENDICES PAGE

Appendix A Annexation Feasibility Studies

Appendix A-1 Annexation Study - Sunny Hill Road Vicinity, Brownsville, Tennessee (March 28, 2013) conducted by Brownsville Planning Staff and Brownsville Energy Authority with Assistance from Southwest Tennessee Development District.

Appendix A-2 Annexation Feasibility Study, City of Franklin, Tennessee, City of Franklin Planning Staff (November, 2006).

Appendix B *Amending Comprehensive Growth Plans.* David Conner, County Technical Assistance Service and Dennis Huffer, Municipal Technical Advisory Service, May 2005.

Appendix C Public Acts 2014, Chapter 707.

Appendix D Annexation Ordinance and Resolution Adopting Plan of Services

Appendix D-1 Annexation Ordinance (Draft), City of Nolensville, Tennessee (2014). (Note that this ordinance reflects an annexation done by referendum. T.C.A. 6-51-104-105 provides that the call for an annexation by referendum is done by resolution. However, there appears to be no reason the call cannot be made by ordinance).

Appendix D-2 Resolution Adopting Plan of Services for above Annexation by Referendum, City of Nolensville (2014).

Appendix E Annexation Ordinances and Plans of Services

Appendix E-1 Multi-Area Annexation Plan of Services Proposal to Planning Commission, City of Bartlett, Tennessee (2013).

Appendix E-2 Annexation Ordinance, City of Franklin, Tennessee.

Appendix E-3 Ordinance Adopting Plan of Services and Annexing Same Territory, City of Signal Mountain, Tennessee (2006).

Appendix F Progress Report on Plans of Service Provided for Area 3A, and Notice of Public Hearing Provided for Area 3A in accordance with T.C.A. section 6-51-108(b), City of Chattanooga (2010).

Appendix G Conveyances of Utility Districts to Annexing Municipalities

Appendix G-1 Jackson Suburban Utility District to City of Jackson, Tennessee (1961).

Appendix G-2 Memphis Suburban Utility District to City of Memphis, Tennessee (1957).

Appendix G-3 North Johnson City Utility District to City of Johnson City, Tennessee (no date).

Appendix G-4 First Utility District of Anderson County to City of Clinton, Tennessee (1986).

Appendix H Conveyance of Schools to Annexing Municipalities

Appendix H-1 Davidson County to City of Nashville (1961).

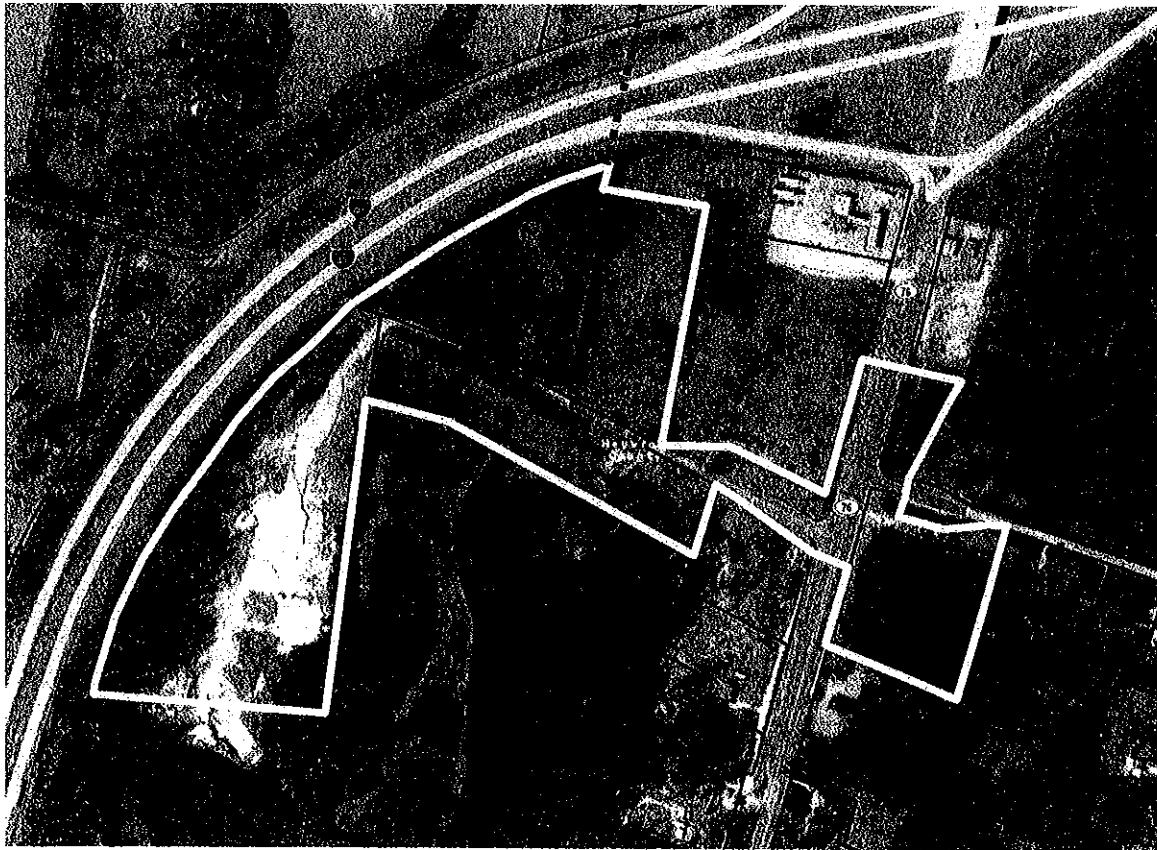
Appendix H-2 Knox County to City of Knoxville (1963).

Appendix H-3 Arbitration Brief for Memphis Board of Education; Board of Arbitration Award, Shelby County vs. Memphis Board of Education; Chancellor's Consent Order, Shelby County vs. Memphis Board of Education; Contract Between Shelby County Board of Education and the Board of Education of the Memphis City Schools (1974).

ANNEXATION STUDY

Sunny Hill Road Vicinity

(Approximately 30 Acres)



March 28, 2013

Prepared by:
Brownsville Planning Staff and Brownsville Energy Authority with assistance from
Southwest Tennessee Development District
102 East College Street
Jackson, Tennessee 38301

ANNEXATION STUDY FOR SUNNY HILL ROAD

Introduction

The Brownsville Municipal Planning Commission has undertaken this study at the request of the Brownsville Board of Mayor and Aldermen. Due to the expressed interest on the part of a property owner to develop land with access to city services, the Planning Commission has undertaken to study the feasibility and desirability of annexing property either side of Highway 76 and south of Interstate 40 adjacent to the City Limits. This study details the size and shape of proposed annexation as well as the revenues and expenditures associated with the annexation. The purpose of the study is to evaluate the initial and recurring costs and potential revenues associated with providing city services to the properties in the annexation study area, as well as the timing of development most effective for providing these services.

Annexation Tennessee State Law - Annexation and County Growth Plan

Tennessee Code Annotated establishes the means through which a municipality may expand its corporate limits. The methods available for annexation vary, depending upon whether the territory to be annexed is within or outside of the municipality's Urban Growth Boundary (UGB). Within the UGB, a municipality may annex territory by any of the means found in TCA Title 6 Chapter 51, which includes measures for annexing property by ordinance and by referendum. Outside of the UGB, a municipality may annex only by amending its Urban Growth Boundary or by referendum (TCA 6-58-111).

Annexation by Ordinance

The legislative body of a municipality may annex territory located within its Urban Growth Boundary by ordinance. A public hearing is required and all other procedures for the passage of an ordinance, which vary by Charter, must be met. In Brownsville, the ordinance procedures require that the ordinance be passed on two readings on separate days and that a caption of the ordinance is published in a newspaper of general circulation upon final passage. Additionally, no annexation ordinance is effective until 30 days following its final passage (TCA 6-51-102(a) (1)).

Plan of Services

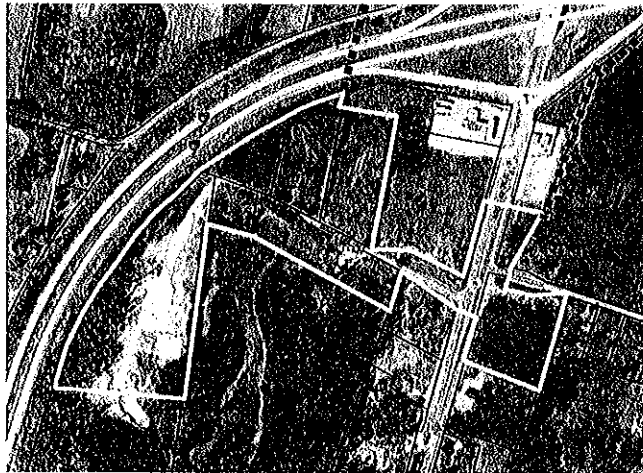
An additional requirement for annexation by ordinance is the adoption of a plan of services detailing the municipality's intent and capacity to provide public services to the annexed territory. It is required to include a reasonable timetable for the delivery of services comparable to those found in other areas of the municipality. The plan must be submitted to the planning commission for review. The final plan of services must be adopted by resolution of the municipal legislative body within sixty days of annexation and reviewed annually by the city board.

Proposed Boundaries, Population, and Land Use of Annexation Area

Annexation Boundary Illustration:

Map 1 shows the area under study.

MAP 1: AREA TO BE ANNEXED



Boundary Description

The boundary of the annexation area is described as:

Beginning at a point, said point being the northwesternmost corner of Tax Map 95 Parcel 35.00, observed on the Tennessee Property View Website on March 26, 2013, said point also being the municipal boundary or the City of Brownsville, thence in a southerly direction following the shared boundary of Tax Map 95 Parcel 35.00 and Tax Map 95 Parcel 33.00 to a point, said point being the southwesternmost corner of Tax Map 95 Parcel 35.00 and the northwesternmost corner of Tax Map 95 Parcel 34.00, thence in an eastern direction along the shared property lines of Tax Map 95 Parcel 35.00 and Tax

Map 95 Parcel 34.00 to a point, said point being the northeasternmost corner of Tax Map 95 Parcel 34.00, thence in a southerly direction along the shared property boundary of Tax Map 95 Parcel 34.00 and Tax Map 95 Parcel 37.00 to a point, said point being the intersection of Tax Map 95 Parcel 34.00, Tax Map 95 Parcel 37.00 and the ROW of Sunny Hill Road, thence in an easterly direction along the shared boundaries of Tax Map 95 Parcel 37.00 and the northern ROW of Sunny Hill Road to a point, said point being the southeastmost corner of Tax Map 95 Parcel 37.00 and the western ROW of Hwy 76, thence in a northerly direction along the shared boundary lines of Tax Map 95 Parcel 37.00 and the western ROW of Hwy 76 to a point, said point being the intersection of said shared boundary line and a projected line extended from the southern property line of Tax Map 95 Parcel 36.00, thence in an easterly direction following said projected line and continuing along the southern boundary of Tax Map 95 Parcel 36.00 to a point, said point being the southeasternmost corner of Tax Map 95 Parcel 36.00, thence in southerly direction to a point, said point being 80' east of the intersection of southwestmost corner of Tax Map 94 Parcel 33.00 and the eastern ROW of Hwy 76, thence in easterly direction along the shared boundary of Tax Map 94 Parcel 33.00 and the northern ROW boundary of Marvin Chapel Road to a point, said point being the intersection of Tax Map 94 Parcel 33.00 and a northerly projected line based on the eastern parcel line of Tax Map 104 Parcel 11.00, thence in a southwesterly direction following said projected line and the eastern boundary of Tax Map 104 Parcel 11.00 to a point, said point being the southeasternmost corner of Tax Map 104 Parcel 11.00 and the northeasternmost boundary of Tax Map 104 Parcel 13.00, thence in a northwesterly direction along the shared boundary lines of Tax Map 104 Parcel 11.00 and Tax Map 104 Parcel 13.00 to a point, said point being the intersection of Tax Map 104 Parcel 11.00, Tax Map 104 Parcel 13.00 and the eastern ROW of Hwy 76, thence in northerly direction to a point, said point being the intersection of Tax Map 104 Parcel 11.00 and a projected line, said line being based on the southern line of the ROW of Sunny Hill Rd and the northern boundary of Tax Map 104 Parcel 9.01, thence in a northwesterly direction following said projected line and the northern parcel line of Tax Map 104 Parcel 9.01 and the southern ROW of Sunny Hill Road to a point, said point being the intersection of Tax Map 104 Parcel 9.01, Tax Map 95 Parcel 38.00 and the southern ROW of Sunny Hill Road, thence in a southerly direction along the shared boundary of Tax Map 104 Parcel 9.01 and Tax Map 95 Parcel 38.00 for a distance of 215', thence in a northwesterly direction running parallel to Sunny Hill Road to a point, said point being the southeast corner of Tax Map 95 Parcel 38.01, thence in a more westerly direction along the shared boundaries of Tax Map 95 Parcel 38.01 and Tax Map 95 Parcel 38.00 to a point, said point being the intersection of Tax Map 95 Parcel 38.01, Tax Map 95 Parcel 38.00 and Tax Map 95 Parcel 31.00, thence in a southerly direction to a point said point being the southeast corner of Tax Map 95 Parcel 31.00, thence in a westerly direction to a point, said point being the intersection of Tax Map 95 Parcel 31.00 and the eastern ROW of Interstate

40, thence following the eastern ROW of Interstate 40 and the shared western boundaries of Tax Map 95 Parcel 31.00 then the northwestern boundary of Tax Map 95 Parcel 32.00, then the northern boundary of Tax Map 95 Parcel 33.00 back to the point of the beginning. Said annexation area is approximately 30 acres.

Population

Population estimate for the annexation area is approximately 6 (six) persons. This is based on the assumption that two people live in each of the identified properties.

Land Use

Existing Land Use for the proposed annexation area is classified as Residential, Agriculture, vacant and Right of Way. An inventory of existing land uses is shown in the following table.

Table 1: Existing Land Use by Acreage	
Type	Acres
Public	2.6
Agriculture	4.0
Single Family Residential (3 properties)	23.4
Total	30.0

Service Requirements

The City of Brownsville and Brownsville Energy Authority currently provides the following services throughout its corporate limits: Police, Fire, Water, Sanitary Sewer, Electricity, Refuse Collection, Public Works, Inspection and Codes Enforcement, Planning and Zoning, Gas, and other miscellaneous services. The following sections detail the service requirements for the proposed annexation areas. Each section contains information on the estimated personnel, equipment, and general administrative expenses associated with servicing the annexation area.

Police - Patrolling, radio responses to calls, and other routine police services, using present personnel and equipment, will be provided on the effective date of annexation in all annexation areas. No additional personnel or facilities are anticipated to accommodate the needs of this area.

Fire - Fire protection by the present personnel and the equipment for the fire fighting force, will be provided on the effective date of annexation. The needs of this

annexation area can be met with the existing personnel and facilities. Additional fire hydrants will be provided as development occurs.

Water Service - The annexation area is not currently served by Brownsville Energy Authority. Brownsville Energy Authority (BEA) estimate cost to provide this service at \$50,000.

Sanitary Sewer Service - The annexation area is not currently served by Brownsville Energy Authority. BEA estimates cost to provide this service at \$70,000.

Electric Service – Southwest Electric currently serves the proposed annexation area with electric service. BEA will need to compensate Southwest Electric for the customer loss. At this time no cost estimate is available for this cost and the cost of additional equipment. No additional utility personnel will be hired to service this area.

Natural Gas - BEA currently provides gas service to the adjacent area. Additional service will be provided to new development according to established City policies. All costs will be assumed by developers in accordance with City policies (construction estimates, excluding engineering, surveying, easements, etc.).

Refuse Collection – The annexation area will be served by the City of Brownsville's immediately upon the effective date of annexation.

Public Works (Streets) - The proposed annexation will require the acceptance of approximately 1.1 acres of Sunny Hill Road right-of-way by the City of Brownsville. No estimates are available at this time for road, street lighting and drainage improvements.

Development Policies - The following policies will be in effect within all annexed areas:

- (1) In all areas, new streets, installation of storm drainage facilities, construction of curbs and gutters, and other such major improvements, will be installed in the area as it develops, according to City policies.

- (2) Emergency maintenance of new streets (repair of hazardous chuckholes, measures necessary for traffic flow, etc.) will begin on the effective date of annexation.
- (3) Routine maintenance on the same basis as in the present City will begin in the all areas on the effective date of annexation.

In all areas, reconstruction and resurfacing of new streets, installation of storm drainage facilities, construction of curbs and gutters, and other such major improvements, as the need is determined by the governing body, will be accomplished under the established policies of the City of Brownsville.

Inspection and Enforcement Services - Any inspection services now provided by the City (building, electrical, plumbing, gas, housing, sanitation, etc.) will begin in the annexation areas on the effective date of annexation. The needs of these areas can be met with existing personnel and facilities.

Planning and Zoning - The planning and zoning jurisdiction of the City will extend to the annexed s on the effective date of annexation. City planning will thereafter encompass the annexed area. Map 1 presents the proposed zoning for the annexation areas; however, the City Board of Mayor and Aldermen must approve any zoning plan prior to it becoming effective.

Miscellaneous - No new street name signs area anticipated. Additional street name signs will be installed as streets are constructed.

Annual Revenues by Source

These lands are in the county and are viable residential uses. The properties are conservatively assessed at \$100, 879.

Table 2: Parcel Details (Ownership, Services, Size and Assessment)								
Name	Water	Sewer	Elect	Gas	Type	Map / Parcel	AC	Appraised Value
LEWIS EVA BLANCHE HART	IND.	IND.-	Y	Y	RES	95 /034.00	3.3	\$32,000
COOPER WILLIE R ET AL	IND.	IND.	Y	Y /N	RES	95 /033.00	3.0	\$15,000
DAVIS MONTELL ET AL	None	None	Y / N	Y / N	RES	95 /032.00	1.9	\$8,600
HUNT DAVID	IND.	IND.	Y	Y / N	RES	95 /031.00	10.0	\$24,000
HAY JAMES ROLAND LEE	IND.	IND.	Y	Y /N	RES	95 /038.01	1.0	\$9,300
HAY OPAL(Partial)	IND.	IND.	Y	Y	AG	95 /038.00	4.0	\$6,870

Mann Walter E Jr. ET AL (partial)	IND.	IND.	Y	Y	RES	94 /33.00	.6	
First South Bank (partial)	IND.	IND.	Y	N / N	RES	104 / 11	3.9	\$14,400
Road Right of Way	-	-	-	-	ROW	--	2.3	
Total							30.0	\$100,879

Bold (local owners), IND. (Individual), None (No system), Y (Public Service – Connected), Y./N (Public Service – Yes/No Connection).

Using the conservative appraised value of \$100,879 and the residential assessment of 25%, the assessment value of the annexation area is \$25,219.19. Based on a tax rate of \$1.80 per \$100 evaluation, the estimate property tax to the city each year is \$453.95. This estimate assumes no additional improvements and land uses remain the same.

Summary

This document represents the findings of the City of Brownsville Municipal Planning Commission regarding the feasibility of annexation into the study areas. The study is not intended as a recommendation in favor of or against any particular annexation proposal; rather, it is meant to serve as a guide for annexation in order to ensure that the timing and quality of development occurring within proposed annexation areas is sufficient to meet the demand of residents. Additional inquiries should be made into potential State and Federal revenue sources to help with capital development costs.

RESOLUTION _____

A RESOLUTION ADOPTING A PLAN OF SERVICE BY THE CITY OF BROWNSVILLE, TENNESSEE FOR APPROXIMATELY 30 ACRES OF ANNEXED PROPERTY SOUTH OF INTERSTATE 40 AND EITHER SIDE OF HIGHWAY 76

WHEREAS, Tennessee Code Annotated 6-51-102 as amended requires that a plan of service be adopted by the governing body of a City prior to passage of an ordinance annexing an area; and,

WHEREAS, the Brownsville Municipal Planning Commission has recommended that the following Plan of Service for the annexation of an area south of Interstate 40 and either side of Highway 76.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF BROWNSVILLE, TENNESSEE:

Section 1. Pursuant to the provisions of Section 6-51-102 Tennessee Code Annotated, there is hereby adopted, for the proposed annexation area, the following Plan of Service:

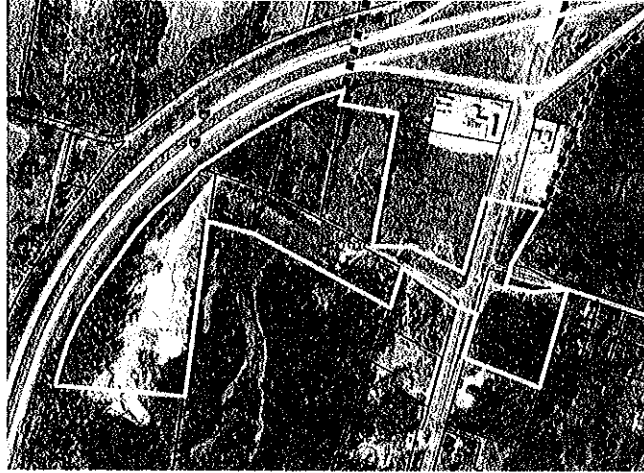
- A. Police
Patrolling, radio responses to calls, and other routine police services, using present personnel and equipment, will be provided on the effective date of annexation. No additional personnel or facilities are required to accommodate the needs of this area.
- B. Fire
Fire protection by the present personnel and the equipment for the fire fighting force, within the limitations of available water, will be provided on the effective date of annexation. The needs of this area can be met with the existing personnel and facilities.
- C. Water Service
The adjacent area is currently served by the City of Brownsville's water facilities. Extension of existing water lines for current development and for future development will be extended by developers at their own expense in accordance with current City policies.
- D. Wastewater Service
The adjacent area is currently served by Brownsville City water facilities. Extension of existing water lines for current development and for future development will be extended by developers at their own expense in accordance with current City policies.
- E. Electric Service
 - (1) The area is currently served by Southwest Electric. Brownsville Energy Authority will install equipment needed for existing and future customers.

- (2) Additional electric service will be extended into the area according to established City policies.
- F. Refuse Collection
The area will be served by the City of Brownsville immediately upon the effective date of annexation.
- G. Streets
- (1) Emergency maintenance of new streets (repair of hazardous chuck holes, measures necessary for traffic flow, etc.) will begin on the effective date of annexation.
 - (2) Routine maintenance on the same basis as in the City of Brownsville will begin in the annexed area on the effective date of annexation.
 - (3) Reconstruction and resurfacing of new streets, installation of storm drainage facilities, construction of curbs and gutters, and other such major improvements, as the need is determined by the governing body, will be accomplished under the established policies of the City.
 - (4) New streets, installation of storm drainage facilities, construction of curbs and gutters, and other such major improvements, will be installed in the area as it develops, according to City policies.
- H. Inspection Services
Any inspection services now provided by the City (building, electrical, plumbing, gas, housing, sanitation, etc.) will begin in the annexation area on the effective date of annexation. The needs of this area can be met with existing personnel and facilities.
- I. Planning and Zoning
The planning and zoning jurisdiction of the City will extend to the annexed area on the effective date of annexation. City planning will thereafter encompass the annexed area.
- J. Street Lighting
- (1) Street lighting will be installed at the developer's expense under the standards currently prevailing in the existing City.
 - (2) Provisions for future lighting will be made in accordance with the established policies of the City as development occurs.
- K. Gas
Brownsville Energy Authority currently provides gas service to the annexation area. Additional service will be provided to new developments according to established City policies.
- L. Recreation
It is anticipated that the annexed area will develop additional recreational areas to be enjoyed by development employees and the citizens of Brownsville. The same standards and policies now used in the present City will be followed in expanding the recreational program and facilities.

M. Miscellaneous

Additional street name signs (e.g. Sunny Hill Road to Sunny Hill Drive if approved by E 911) will be installed as streets actually develop in accordance with established City policies.

Section 2. Map of affected area.



Section 3. This Resolution shall be effective from and after its adoption.

Passed _____

Jo Matherne, Mayor

Attest:

Jessica Frye, City Recorder

ORDINANCE _____

AN ORDINANCE TO ANNEX APPROXIMATELY 30 ACRES OF ANNEXED PROPERTY SOUTH OF INTERSTATE 40 AND EITHER SIDE OF HIGHWAY 76 TO INCORPORATE WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF BROWNSVILLE, TENNESSEE.

WHEREAS, a public hearing before this body was held on _____ the ____ day of _____, 2013, pursuant to a notice thereof published in the Brownsville States Graphic on _____, 2013; and,

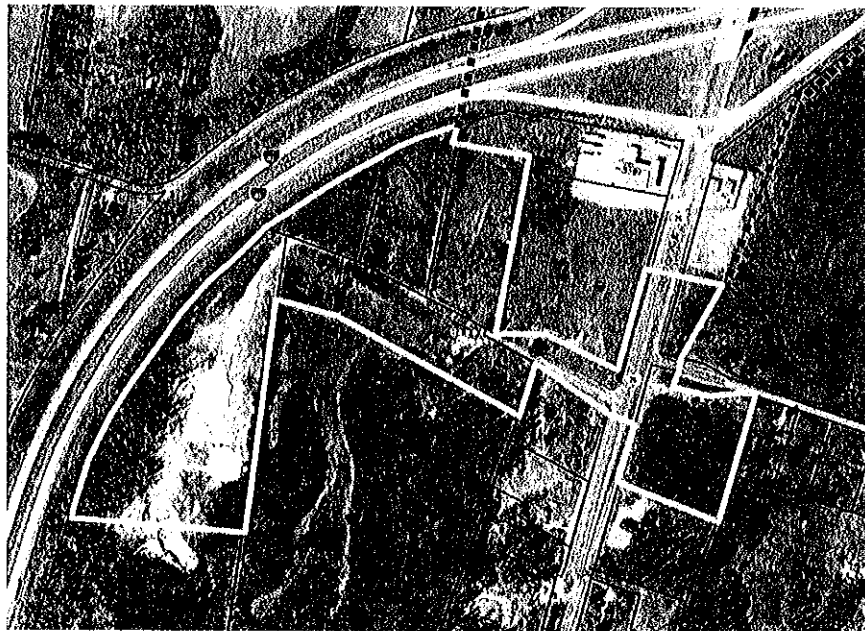
WHEREAS, it now appears that the prosperity of this City and of the territory herein described will be materially retarded and the safety and welfare of the inhabitants and property thereof is endangered if such territory is not annexed; and,

WHEREAS, the annexation of such territory is deemed necessary for the welfare of the residents the property owners thereof and this City as a whole; and,

WHEREAS, a Plan of Service for this area was adopted by resolution on _____, as required by Section 6-5-102, Tennessee Code Annotated and notice thereof published in the Brownsville States Graphic on the ____ day of _____, 2013.

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Alderman of the City of Brownsville, Tennessee:

Section 1. Pursuant to authority conferred by Sections 6-51-101 to 6-51-113, Tennessee Code Annotated, there is hereby annexed to the City of Brownsville, Tennessee and incorporated within the corporate boundaries thereof, the following illustrated territory adjoining the present corporate boundaries:



Said territory also described as:

Beginning at a point, said point being the northwesternmost corner of Tax Map 95 Parcel 35.00, observed on the Tennessee Property View Website on March 26, 2013, said point also being the municipal boundary of the City of Brownsville, thence in a southerly direction following the shared boundary of Tax Map 95 Parcel 35.00 and Tax Map 95 Parcel 33.00 to a point, said point being the southwesternmost corner of Tax Map 95 Parcel 35.00 and the northwesternmost corner of Tax Map 95 Parcel 34.00, thence in an eastern direction along the shared property lines of Tax Map 95 Parcel 35.00 and Tax Map 95 Parcel 34.00 to a point, said point being the northeasternmost corner of Tax Map 95 Parcel 34.00, thence in a southerly direction along the shared property boundary of Tax Map 95 Parcel 34.00 and Tax Map 95 Parcel 37.00 to a point, said point being the intersection of Tax Map 95 Parcel 34.00, Tax Map 95 Parcel 37.00 and the ROW of Sunny Hill Road, thence in an easterly direction along the shared boundaries of Tax Map 95 Parcel 37.00 and the northern ROW of Sunny Hill Road to a point, said point being the southeastmost corner of Tax Map 95 Parcel 37.00 and the western ROW of Hwy 76, thence in a northerly direction along the shared boundary lines of Tax Map 95 Parcel 37.00 and the western ROW of Hwy 76 to a point, said point being the intersection of said shared boundary line and a projected line extended from the southern property line of Tax Map 95 Parcel 36.00, thence in an easterly direction following said projected line and continuing along the southern boundary of Tax Map 95 Parcel 36.00 to a point, said point being the southeasternmost corner of Tax Map 95 Parcel 36.00, thence in southerly direction to a point, said point being 80' east of the intersection of southwestmost corner of Tax Map 94 Parcel 33.00 and the eastern ROW of Hwy 76, thence in easterly direction along the shared boundary of Tax Map 94 Parcel 33.00 and the northern ROW boundary of Marvin Chapel Road to a point, said point being the intersection of Tax Map 94 Parcel 33.00 and a northerly projected line based on the eastern parcel line of Tax Map 104 Parcel 11.00, thence in a southwesterly direction following said projected line and the eastern boundary of Tax Map 104 Parcel 11.00 to a point, said point being the southeasternmost corner of Tax Map 104 Parcel 11.00 and the northeasternmost boundary of Tax Map 104 Parcel 13.00, thence in a northwesterly direction along the shared boundary lines of Tax Map 104 Parcel 11.00 and Tax Map 104 Parcel 13.00 to a point, said point being the intersection of Tax Map 104 Parcel 11.00, Tax Map 104 Parcel 13.00 and the eastern ROW of Hwy 76, thence in northerly direction to a point, said point being the intersection of Tax Map 104 Parcel 11.00 and a projected line, said line being based on the southern line of the ROW of Sunny Hill Rd and the northern boundary of Tax Map 104 Parcel 9.01, thence in a northwesterly direction following said projected line and the northern parcel line of Tax Map 104 Parcel 9.01 and the southern ROW of Sunny Hill Road to a point, said point being the intersection of Tax Map 104 Parcel 9.01, Tax Map 95 Parcel 38.00 and the southern ROW of Sunny Hill Road, thence in a southerly direction along the shared boundary of Tax Map 104 Parcel 9.01 and Tax Map

95 Parcel 38.00 for a distance of 215', thence in a northwesterly direction running parallel to Sunny Hill Road to a point, said point being the southeast corner of Tax Map 95 Parcel 38.01, thence in a more westerly direction along the shared boundaries of Tax Map 95 Parcel 38.01 and Tax Map 95 Parcel 38.00 to a point, said point being the intersection of Tax Map 95 Parcel 38.01, Tax Map 95 Parcel 38.00 and Tax Map 95 Parcel 31.00, thence in a southerly direction to a point said point being the southeast corner of Tax Map 95 Parcel 31.00, thence in a westerly direction to a point, said point being the intersection of Tax Map 95 Parcel 31.00 and the eastern ROW of Interstate 40, thence following the eastern ROW of Interstate 40 and the shared western boundaries of Tax Map 95 Parcel 31.00 then the northwestern boundary of Tax Map 95 Parcel 32.00, then the northern boundary of Tax Map 95 Parcel 33.00 back to the point of the beginning. Said annexation area is approximately 30 acres.

Section 2. This Ordinance shall become effective thirty days from and after its passage since the municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property endangered.

1st Reading _____

Public Hearing _____

2nd Reading _____

Jo Matherne, Mayor

Attest:

Jessica Frye, City Recorder

ORDINANCE _____

AN ORDINANCE TO AMEND THE BROWNSVILLE MUNICIPAL ZONING ORDINANCE AND MAP TO ZONE 30 ACRES OF ANNEXED PROPERTY SOUTH OF INTERSTATE 40 AND EITHER SIDE OF HIGHWAY 76

WHEREAS, Tennessee Code Annotated, Section 13-7-201 and 13-7-204 provides for the adoption and amendment of Municipal Zoning Ordinance; and,

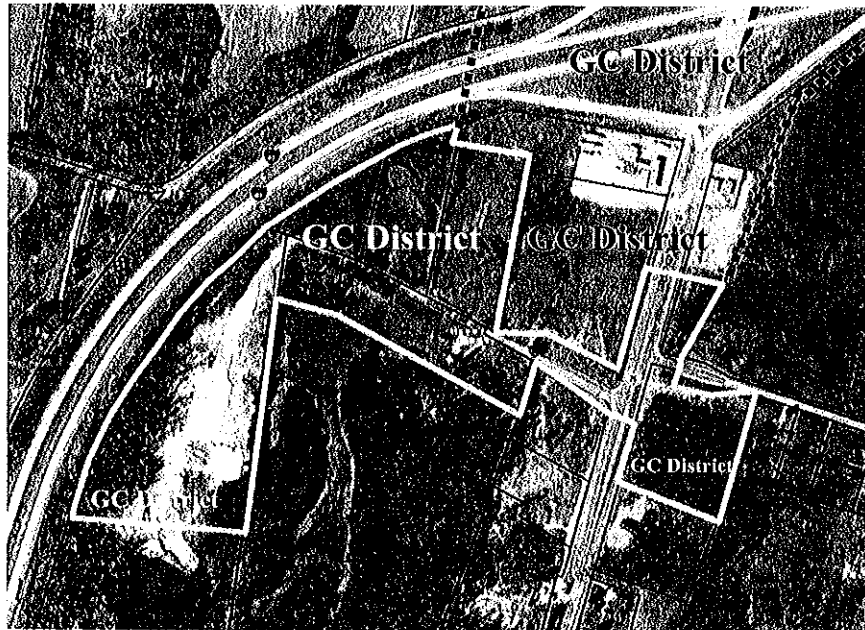
WHEREAS, the City of Brownsville is annexing territory in accordance with the Tennessee Code Annotated Sections 6-51-105; and,

WHEREAS, pursuant to Tennessee Code Annotated, Section 13-7-204, the Brownsville Municipal-Regional Planning Commission has reviewed and recommended the below included amendment to the Brownsville Zoning Ordinance; and,

WHEREAS, the Brownsville Board of Mayor and Aldermen has held a public hearing pursuant to Tennessee Code Annotated, Section 13-7-203 for the purpose of receiving public comment.

NOW, THEREFORE, BE IT ORDAINED that the Brownsville Board of Mayor and Aldermen do hereby adopt the following Ordinance establishing zoning for the annexed territory as follows:

Section I The entire area to be annexed will be zoned G-C (General Commercial):



Section II That this ordinance shall become effective immediately upon its adoption by the City of Brownsville Board of Mayor and Aldermen and the annexation of the areas to be rezoned, the public's health, safety and general welfare requiring it.

Date of the First Reading _____

Date of the Second Reading _____

Date of Public Hearing _____

Jo Matherne, Mayor

Attest:

Jessica Frye, City Recorder

**SUMMARY REPORT TO THE BROWNSVILLE BOARD OF MAYOR
AND ALDERMEN REGARDING THE ANNEXATION OF THE
PROPERTIES ADJACENT TO THE CURRENT CORPORATE LIMITS
SOUTH OF INTERSTATE 40 AND EITHER SIDE OF HIGHWAY 76**

Property Description (not a legal description)

The property in question consists of residential, agricultural / vacant and public property measuring approximately 30 acres adjacent to the current City limits.

Utilities and City Services

The City of Brownsville does provide services to the adjacent parcels. Future water, sewer, electric and gas service extensions will be made at the developer's expense.

All City services, including, but not limited to police and fire protection, garbage and brush collection, and street repairs, can begin immediately upon annexation and can be provided with the current personnel and equipment.

Zoning

The Planning Commission has reviewed the current and anticipated land uses in the annexation area and has determined that the some parcels be zoned G-C (General Commercial) and others be zoned R-1 (Low Density Residential).

Recommendation

Having reviewed the annexation, zoning and Plan of Service, the Brownsville Municipal Planning Commission recommends in favor of annexing the properties and incorporating the same into the City of Brownsville.

David Cook, Planning Commission Chair

Date

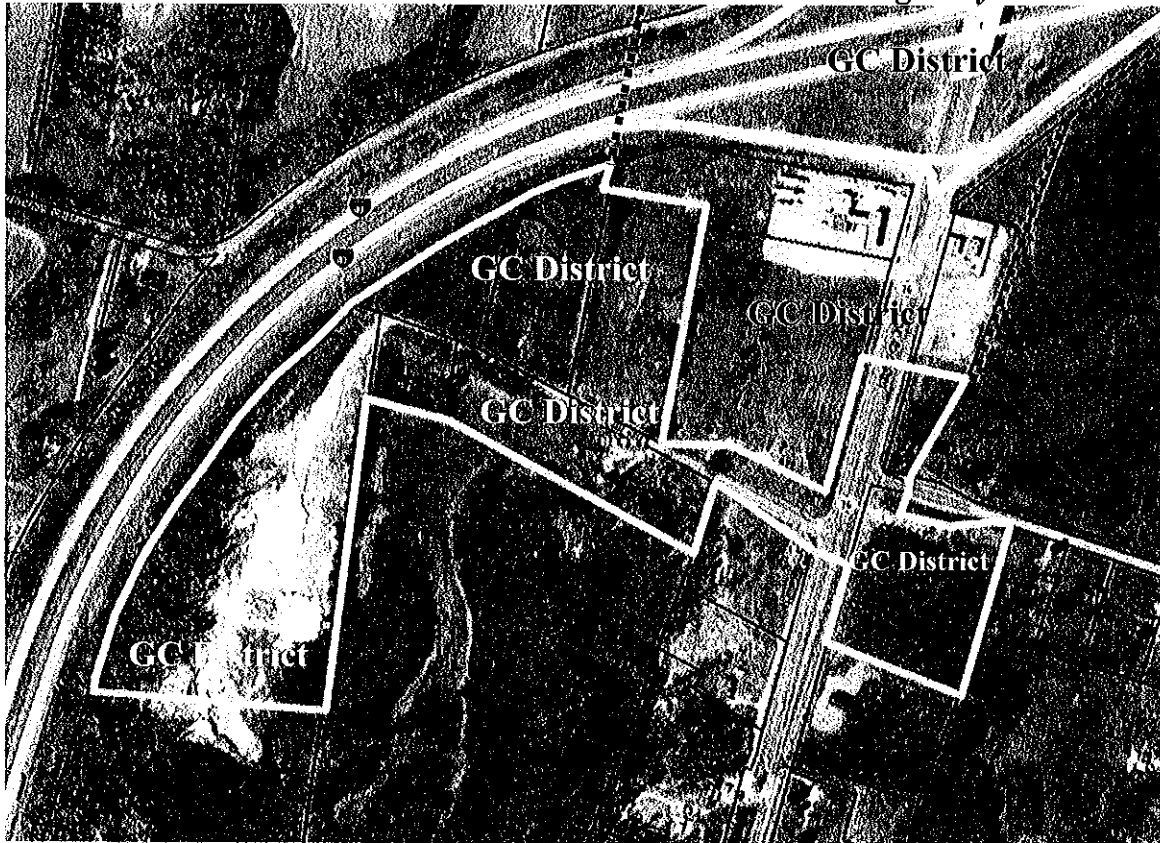
Greg Vanstory, Planning Commission Secretary

Date

NOTICE OF PUBLIC HEARING

Pursuant to Tennessee Code Annotated Section 13-7-203 notice is hereby given of a public hearing to be held by the Board of Mayor and Aldermen of the City of Brownsville on _____, the _____ day of _____, 2013 at _____ PM in the Council Chambers of the Brownsville City Hall. The hearing is to receive public input on annexing the territory illustrated below, zoning the newly annexed territory and providing a Plan of Service.

Annexation Illustration – Area South of I-40 along Hwy 76



The entire annexed area will be zoned G-C (General Commercial) and consists of approximately 30 acres.

A full copy of the annexation report, map of area to be annexed, plan of service and ordinance amending the City of Brownsville's Zoning Map may be viewed at the City Hall, Haywood County Court House and the Brownsville Library during normal business hours. All interested persons are invited to attend and comment.



CITY OF FRANKLIN, TN



ANNEXATION FEASIBILITY STUDY NOVEMBER 2006

ANNEXATION FEASIBILITY STUDY NOVEMBER 2006

CITY OF FRANKLIN
FRANKLIN, TENNESSEE

**Prepared by
Franklin Planning Department**

Franklin Board of Mayor and Aldermen

Tom Miller , Mayor

Ernie Bacon

Beverly Burger

Dan Klatt

Robert Kriebel

Pam Lewis

Dana McLendon

Dennis Phillips

Dodson Randolph

Franklin Municipal Planning Commission

Mike Hathaway, Chair

Carol Croop

Scott Harrision

Roger Lindsey

Alma McLemore

Ann Petersen

Dennis Phillips

Fred Reynolds

Chris Ude

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Candace Connell Administration Department

Russ Truell Finance Department

Steve Sims Finance Department

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Todd Horton Fire Department

Lisa Clayton Parks Department

Chris Gentry Police Department

David Parker Water and Wastewater

David Parker Engineering Department

Don Green Engineering Department

Joe Williams Solid Waste Department

Joe York Streets Department

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STUDY AREA APPENDIX

SOUTHERN BASINS

Five-Mile Creek

Douglass Glen Subdivision
Ellington Park Subdivision
Goose Creek Estates Subdivision
Henpeck Lane East
Leeland Subdivision
Redwing Meadows Subdivision
Spring View Estates Subdivision
Summer Hill Subdivision
Walnut Winds Subdivision
Windsor Park Subdivision

Goose Creek

Green Valley Subdivision

Nolen Cemetery

South Carothers Road

Robinson Lake

Lockwood Property

Donelson Creek

Columbia Pike
Redwing Farms Subdivision
Oak Valley Baptist Church
Oakwood Estates Subdivision
Oakleaf Estates Subdivision

EASTERN BASINS

Mayes Creek

Hooper Property
Wilson Pike East
Wilson Pike West
Balda/Hutcheson

Watson Branch

Breckenridge Subdivision
Clovercroft Road South
Clover Meadows Subdivision
Ivy Glen Subdivision
John Williams Road
Murfreesboro Road North

WESTERN BASINS

Hatcher Spring

Rogers Properties
Whitehall Farms Subdivision
Carters Creek East
Old Carters Creek East
Gentry Properties East

West Harpeth

Gentry Properties West

Polk Creek

Carters Creek West
Old Carters Creek West

NORTHERN BASINS

Monticello West

Bone Robert Carver Subdivision
Monticello Subdivision

Green Hill

Deerfield Estates Subdivision
Spencer Creek Place Subdivision

Spencer Creek

Meadows Property
Franklin Road West
Walnut Hills Subdivision

1.0 INTRODUCTION

Population growth for the City of Franklin has resulted from a combination of immigration, natural growth (births minus deaths), and annexation. Over the past four decades, the City has annexed almost 24,000 acres. In the last two years alone, the City annexed over 4,300 acres, resulting in a total land area of 41.11 square miles (26,310.64 acres)¹. The land within the Franklin Urban Growth Boundary (UGB) totals 79.44 square miles (50,841 acres). The rate at which Franklin expands its corporate limits will depend on several factors—particularly the availability and capacity to extend municipal services. Most of the areas identified in this study are contiguous to Franklin’s current boundary and are in the City’s path for growth, and several of the areas already have water and sewer services.

2.0 PAST AND PRESENT ANNEXATION GROWTH

The Town of Franklin was originally laid out with 192 lots that surrounded the town square. In 1963 Franklin contained 1,200 acres (1.2 square miles). The City of Franklin today accounts for about six percent of Williamson County’s total land area (584 square miles).

Table 1 Annexations

Period	Acres Annexed	Square Miles
1965 - 1969	397	0.62
1970 - 1979	2,389	3.73
1980 - 1989	10,787	16.85
1990 - 1999	3,183	4.97
2000 - 2001	1,528	2.38
2001 - 2002	554	0.86
2002 - 2003	153	0.24
2003 - 2004	590	0.92
2004 - 2005	3,984	6.22
2005 - 2006	359 ¹	0.56
Total	23,924	37.35

Source: Franklin Planning Department

2.1 PROJECTED GROWTH PATTERNS

The population is projected to be at or near 78,000² for the City and the UGB in 2020. In its efforts to plan for future growth, the City in 2004 developed a new

¹ Total acreage as of November 1, 2006.

² City of Franklin *Twenty-Year Urban Growth Boundary Report*, September 2000.

land use plan to manage growth within the city and the Franklin UGB. The City is in the process of updating its Zoning Ordinance to improve development standards and to implement the Land Use Plan recommendations within the corporate limits.

New construction is occurring in areas throughout the city and within the county near the city. Commercial development is on the rise in the northeastern portion of the city near the Cool Springs Interchange and the McEwen Drive interchange currently under construction. The next major growth generator for Franklin is the land around the Goose Creek/I-65 Interchange at the southern edge of the city. New residential development is planned and being constructed on the east, west and south sides of the city.

3.0 PURPOSE OF THE STUDY

The purpose of this study is to determine the feasibility of annexing specific areas within Franklin's UGB by outlining the costs and benefits associated with annexation. The study areas were generally shown by watershed, or drainage basin, and divided by geographic areas. The areas of study included the following subdivisions: Douglass Glen, Ellington Park, Goose Creek Estates, Leeland, Oakwood Estates, Oakleaf Estates, Redwing Meadows, Spring View Estates, Summer Hill, Walnut Winds, Windsor Park, Green Valley, Redwing Farms, Breckenridge, Ivy Glen, Whitehall Farms, Monticello Deerfield Estates, Spencer Creek Place, Walnut Hills and Bone Robert Carver. Also included in the study were areas along South Carothers Road, Henpeck Lane, Columbia Pike, Lewisburg Pike, Wilson Pike, Clovercroft Road, Murfreesboro Road, Del Rio Pike, Carters Creek Pike, Old Carters Creek Pike and Franklin Road (*see Study Area Maps*). The basis for selecting these areas varied. Customarily, a municipality will annex for the following reasons:

- To protect or to enhance the municipal tax base
- To increase size and population
- To ensure unified planning and zoning
- To distribute the cost of services more equitably
- To ensure orderly future growth in accordance with City standards

The City of Franklin shares similar motivations for annexing the areas included in this study. Some of the areas possessed many of the suburban characteristics found in the City, including numerous subdivisions located along both sides of Lewisburg Pike. Other areas were undeveloped and under growth pressure. Annexation would give Franklin an opportunity to influence patterns of development through its zoning, building and stormwater management regulations. In addition, the majority of residents lives within the social

boundaries of the City and already enjoy its benefits and services, such as employment, shopping facilities, and cultural and recreational activities. Through annexation, the City would increase its physical boundary and population, as well as its tax base.

Annexation proves also to benefit property owners being annexed. All would receive more extensive police and fire protection, lower-cost residential solid waste collection and disposal, and the right to participate in the political process at the municipal level. Almost one-third of the residents would receive lower water rates. Some residents would benefit from additional street lighting. The City has an Insurance Services Rating of 3 where water and fire hydrants are available, which is a favorable rating for keeping property insurance premiums low. Solid waste disposal is less expensive for City residents. The City charges \$3.50 per month, while most private services are about \$20 per month. Other benefits include protection of property values through zoning, subdivision and building regulations, which includes eliminating substandard structures. City property taxes can also be used as a deduction when computing federal income tax.

4.0 CURRENT POLICY

The Franklin Land Use Plan identifies policies on growth management. It is the intent of the city to manage growth in such a way as to maximize its benefits and minimize its negative impacts. The city plans to reap the economic benefits of well-planned growth and to protect and enhance the quality of life that is valued by the community. Specifically:

- The city desired to accommodate new growth in a fiscally responsible and environmentally sensitive manner.
- The city will plan for a projected year 2020 population of 78,000 persons in the city and the UGB. This population growth is expected to create a demand for approximately 9,300 new dwelling units.
- The city will plan for a projected employment increase of approximately 40,000 new employees in the UGB.
- A balance of residential and nonresidential land uses and densities will be targeted.
- Sprawling “leapfrog” land-use patterns will be discouraged. New growth will be encouraged next to existing development where infrastructure exists or can be provided efficiently.
- Community character and livability will be promoted through historic preservation, neighborhood preservation, linked open spaces and an emphasis on the pedestrian scale.

- The City of Franklin should have a separate identifiable character from nearby communities. The more intensely developed portions of the community should be surrounded by countryside with development designed to preserve rural character.
- While the city strives to promote high-quality development, the conservation of natural resources and open space, and orderly growth patterns, it recognizes that policies and regulations must be implemented on private property in a fair, predictable and reasonable manner.

5.0 PROPERTY VALUATION

Residential property in Williamson County is assessed at 25 percent of its appraised value. Other land uses, such as commercial uses, are assessed at 40 percent. The City's property tax rate is \$0.434. Properties outside of the City limits, but within the Franklin Special School District (FSSD), pay a combined property tax rate of \$3.14 per \$100 of assessed value, while properties within the City and within the FSSD pay a combined rate of \$3.03. Other areas within Williamson County within the UGB are taxed at a rate of \$2.31 per \$100 of assessed value.

A majority of the study areas are located outside of the Franklin Special School District (FSSD). Breckenridge Subdivision is one of the few in the Watson Branch watershed that is located inside the FSSD. Approximately 500 properties are provided with City of Franklin water, including the Ellington Park, Redwing Meadows, Windsor Park, Leeland, Whitehall Farms, Ivy Glen and Monticello Subdivisions. About 40 properties are served by City of Franklin sewer (part of Monticello Subdivision). The average residential property assessed value for the 1,700 properties in the study was \$295,000, which is about \$50,000 higher than the average for the city residences. Average water usage was assumed for the purposes of the Table 2 on the following page.

Based on the results of Table 2, the findings indicate that the first year pocketbook impact to a homeowner would be \$165 more when the property was not on City water and sewer. The first year impact to the homeowner would be \$220 less than current when the property was on City water and sewer. Both of these change in year two because the \$75 trash can fee would be a one-time cost in year one, so the benefits increase the second year.

Table 2 Costs Comparison: First Year Impacts to Homeowners

	INSIDE FRANKLIN		OUTSIDE FRANKLIN	
	FSSD	Wlm Co Schools	FSSD	Wlm Co Schools
PROPERTY TAX				
⁽¹⁾ APPRAISED VALUE	\$290,651	\$290,651	\$290,651	\$290,651
ASSESSED VALUE (@25%)	\$72,663	\$72,663	\$72,663	\$72,663
WILLIAMSON COUNTY TAX RATE	\$3.03	\$2.20	\$3.14	\$2.31
ESTIMATED PROPERTY TAX - COUNTY	\$2,202	\$1,599	\$2,282	\$1,679
CITY OF FRANKLIN TAX RATE	\$0.434	\$0.434	\$0.000	\$0.000
ESTIMATED PROPERTY TAX - CITY	\$315	\$315	\$0	\$0
TOTAL PROPERTY TAX	\$2,517	\$1,914	\$2,282	\$1,679
WATER (impact only if City of Franklin is the water provider)				
AVERAGE RESIDENTIAL USAGE (7,200 gallons/month)				
RATE (per 1,000 gallons)	\$38.64	\$38.64	\$66.24	\$66.24
ESTIMATED WATER COST	\$278.21	\$278.21	\$476.93	\$476.93
SEWER (impact only if City of Franklin is the sewer provider)				
AVERAGE RESIDENTIAL USAGE (7,200 gallons/month)				
RATE (per 1,000 gallons)	\$36.60	\$36.60	\$62.52	\$62.52
ESTIMATED SEWER COST	\$263.52	\$263.52	\$450.14	\$450.14
SOLID WASTE (impact only if City of Franklin is provider @ \$3.50/month)				
CONTAINER FEE (ONE TIME)	\$75.00	\$75.00	\$0.00	\$0.00
MONTHLY SERVICE	\$42.00	\$42.00	\$240.00	\$240.00
⁽²⁾ ESTIMATED SOLID WASTE COST	\$117.00	\$117.00	\$240.00	\$240.00
STORMWATER (assume impervious area for large residential @ \$4.38/month)				
⁽³⁾ ESTIMATED STORMWATER COST	\$52.56	\$52.56	\$0.00	\$0.00
TOTAL	\$3,228.32	\$2,625.22	\$3,208.68	\$2,845.58

⁽¹⁾ **Appraised Value** is the average residential property value of the total area that potentially could be annexed using the 2006 appraisal values

⁽²⁾ **Solid Waste** is not provided by COF outside the city. Private providers average ~ \$20/month for once/week service

⁽³⁾ **Stormwater** management is for provided for properties inside the city by the City of Franklin

5.1 REVENUES AND EXPENDITURES

Estimated annual revenues and expenditures were depicted in Tables 4 through 11 on the following pages of this report. Please see the tables for specific information. The assumptions that were made in deriving the numbers for revenues and expenditures are as follows:

Revenue assumptions:

1. All future development will be residential. (Residential is taxed at about half the rate of commercial properties.)
2. No sales tax was included.
3. Impact fees and facilities tax were not included because they generally cover capital costs.
4. The state shared revenues were based on FY05 receipts while FY07 expenses were used for forecasting.
5. The Hall income tax revenues included in the state shared forecast excluded the portion retained by the State in FY 03 to be returned to cities in FY07.
6. Population growth was estimated at 3% and has annually been 3-5%.

Expenditure assumptions:

1. Total annexation of all study areas upon passage rather than a phased, incremental annexation of study areas, which would spread the cost across more time.
2. There is no timing delay for expenditures even though there would be a delay in hiring new police, fire and solid waste personnel, and the extension of parks and street services.
3. The expenditures do not include capital expenses that are generally recovered by facilities tax and impact fees.
4. If a subdivision is located within the current response radius of an existing fire station, no incremental cost will be incurred.

General assumptions:

1. Rate of inflation = 2% for both revenues and expenditures.
2. Rate of infill = 3%.
3. Rate of population growth = 3% until year 25. Afterwards, growth = 1%
4. Infill (the rate of increasing population density without raising incremental services) drops in year 16 from 3% to 2%, and from 2% to 1% in year 20, and from 1% to 0% in year 25.

6.0 MUNICIPAL INFRASTRUCTURE

6.1 SEWER AVAILABILITY

The City of Franklin sanitary sewer system extends throughout several areas in this study, including the Ivy Glen Subdivision and part of Monticello Subdivision and Winstead Elementary School. Additionally, there are extensions of the sanitary sewer system underway that will provide service to the Clovercroft Road Area and the Five-Mile Creek Basin. Most of the other study areas, while not connected to City sanitary sewer, are in proximity of existing sewer lines or pump stations that make sewer extension highly possible, although at a greater cost. Current City policy is to require development to extend sanitary sewer service to new developments and for existing subdivisions to pay for sanitary sewer extensions through a special assessment district established for this purpose.

6.2 WATER AVAILABILITY

The City of Franklin's water district extends throughout its City boundary and to areas in Williamson County. Some areas in this study are served by Franklin's water district, although many others that receive water from Mallory Valley Utility District, H. B. & T. S. Utility District, or the Milcrofton Utility District. Each area would continue to be served within its current utility district after annexation.

6.3 TRANSPORTATION AND ACCESS

The study area for the 2004 Major Thoroughfare Plan Update included a study of major roadways throughout the UGB and the potential impacts of development. The Major Thoroughfare Plan recommends specific roadway construction and improvements within the City that will eventually affect areas in this study, particularly the extension of Mack Hatcher Parkway.

6.4 SCHOOLS

No changes to existing boundaries between the FSSD and Williamson County Schools will occur as a result of annexation. The respective school board will establish school assignment boundaries for each district.

7.0 CONCLUSIONS AND RECOMMENDATIONS

This study is intended to provide information by individual study areas to the Franklin Municipal Planning Commission and the Board of Mayor and Aldermen. Based upon this information, recommendations for individual areas can be considered.

Studies for annexation feasibility should continue to ensure the implementation of the future (now draft) City zoning regulations within the city's identified growth area, the Franklin UGB. Hillside and hilltop preservation has been identified as an important community amenity to protect, and annexation is a tool that should be utilized to help control and protect the hillsides surrounding Franklin. The transfer of development rights concept (being studied at the task force level) is another means of controlling and directing growth in certain areas and shifting growth away from others. Annexation is a tool that should be used in order to implement such a program.

Table 3 Summary of Land Uses and Services

AREA	Dwelling Units	Total Acres	Estimated Population	Road LF	Constraints		Services to be expanded and maintained or facilities constructed by the City							
					Flood-Plain	Significant Slopes	Police	Fire	Water	Sewer	Schools	Streets	Streetslights	Refuse Collection
SOUTHERN	500	1,241.35	1,396	59,435	Yes	Yes	Yes	Yes	City, H.B.&T.S	Septic, Private Sanitary	County	Yes	Yes	Yes
	186	249.58	520	21,200	Yes	No	Yes	Yes	H.B.&T.S	Septic	County	Yes	Yes	Yes
	19	231.78	48	5,525	No	Yes	Yes	Yes	Millcrofton	Septic	County	Yes	Yes	Yes
	7	61.11	19	3,125	Yes	Yes	Yes	Yes	Millcrofton	Septic	County	Yes	Yes	Yes
	796	1,543.73	1,320	60,645	Yes	Yes	Yes	Yes	City, H.B.&T.S	City, Septic	County	Yes	Yes	Yes
	TOTAL	1,508	3,327.55	3,303	149,930									
EASTERN	64	893.29	179	17,245	No	Yes	Yes	Yes	Millcrofton	Septic	County	Yes	Yes	Yes
	258	615.45	721	29,583	No	Yes	Yes	Yes	City, Millcrofton	City, Septic	FSSD and County	Yes	Yes	Yes
	TOTAL	322	1,508.74	900	46,828									
WESTERN	157	1,232.06	395	16,597	Yes	Yes	Yes	Yes	City, H.B.&T.S	City, H.B.&T.S, Septic	County	Yes	Yes	Yes
	3	302.61	9	7,850	Yes	No	Yes	Yes	H.B.&T.S.	Septic	County	Yes	Yes	Yes
	33	444.97	83	7,290	No	Yes	Yes	Yes	City, H.B.&T.S	City	County	Yes	Yes	Yes
	TOTAL	193	1,979.64	487	31,737									
NORTHERN	152	160.73	425	17,610	Yes	Yes	Yes	Yes	City, Mallory Valley	City, Septic	County	Yes	Yes	Yes
	47	394.36	131	10,795	No	Yes	Yes	Yes	City, Mallory Valley	Septic	County	Yes	Yes	Yes
	34	221.75	93	1,415	No	Yes	Yes	Yes	City, Mallory Valley	Septic	County	Yes	Yes	Yes
	TOTAL	236	776.84	649	29,820									
GRAND TOTAL	2,256	7,592.77	5,339	258,315										

Table 4 Estimated Annual Revenues by Region

BASIN	NUMBER OF PARCELS	ACRES	2006 RESIDENTIAL MARKET APPRAISAL	2006 RESIDENTIAL ASSESSMENT	2006 COMMERCIAL APPRAISAL	2006 COMMERCIAL ASSESSMENT	PROPERTY TAX REVENUE - RESIDENTIAL	PROPERTY TAX REVENUE - COMMERCIAL	TOTAL BUSINESS TAX REVENUE	STATE SHARED (incl Ball Income)	FRANCHISE FEES	WATER REVENUE (IMPACT ANNUAL)	SEWER REVENUE (IMPACT ANNUAL)	STORM WATER REVENUE (ANNUAL)	SOLID WASTE REVENUE (one-time fee)	SOLID WASTE REVENUE (ANNUAL)	TOTAL
FIVE MILE CREEK	533	1,163.83	\$170,598,600	\$42,649,650	\$2,062,900	\$825,160	\$185,099	\$3,581	\$350	\$177,934	\$25,050	\$4,670	\$0	\$26,838	\$38,250	\$435,604	
GOOSE CREEK	186	224.93	\$40,635,800	\$10,158,950	\$0	\$0	\$44,090	\$0	\$0	\$66,279	\$9,100	\$0	\$0	\$9,566	\$13,650	\$136,679	
NOLEN CEMETARY	19	227.97	\$4,355,000	\$1,088,750	\$0	\$0	\$4,725	\$0	\$0	\$6,118	\$900	\$0	\$0	\$946	\$1,350	\$13,445	
ROBINSON LAKE	6	58.24	\$2,326,900	\$581,725	\$0	\$0	\$2,525	\$0	\$0	\$2,422	\$250	\$0	\$0	\$263	\$375	\$5,669	
DONELSON CREEK	490	987.12	\$135,962,500	\$33,936,825	\$345,200	\$138,080	\$147,287	\$599	\$25	\$168,247	\$23,850	(\$3,362)	(\$389)	\$25,176	\$36,000	\$381,593	
TOTAL - SOUTHERN BASINS	1,234	2,662.09	\$353,878,800	\$88,415,900	\$2,408,100	\$963,240	\$383,726	\$4,180	\$375	\$421,000	\$59,150	(\$8,032)	(\$389)	\$62,789	\$89,625	\$972,990	
MAYES CREEK	80	794.40	\$19,296,800	\$4,841,240	\$300,300	\$120,120	\$21,011	\$521	\$25	\$22,815	\$3,600	\$0	\$0	\$3,732	\$5,325	\$54,686	
WATSON BRANCH	282	574.95	\$84,712,400	\$21,178,100	\$186,200	\$74,480	\$91,913	\$323	\$0	\$91,899	\$13,300	\$0	\$0	\$14,244	\$20,325	\$223,061	
TOTAL - EASTERN BASINS	362	1,369.35	\$104,009,200	\$26,019,340	\$486,500	\$194,600	\$112,924	\$845	\$25	\$114,714	\$16,900	\$0	\$0	\$17,976	\$25,650	\$277,747	
HATCHER SPRING	131	1,084.63	\$39,287,800	\$9,821,950	\$971,700	\$388,680	\$42,628	\$1,687	\$125	\$50,347	\$5,950	(\$1,242)	\$0	\$6,465	\$9,225	\$111,126	
WEST HARPEITH	5	387.72	\$1,436,900	\$359,225	\$0	\$0	\$1,559	\$0	\$0	\$1,147	\$150	\$0	\$0	\$158	\$225	\$3,140	
POLK CREEK	40	477.66	\$4,383,100	\$1,095,775	\$0	\$0	\$4,756	\$0	\$0	\$10,579	\$2,000	\$0	\$0	\$2,050	\$1,638	\$21,023	
TOTAL - WESTERN BASINS	176	1,950.01	\$45,107,800	\$11,276,950	\$971,700	\$388,680	\$48,943	\$1,687	\$125	\$62,073	\$8,100	(\$1,242)	\$0	\$8,673	\$12,375	\$135,289	
MONTICELLO WEST	158	139.08	\$43,111,100	\$10,777,775	\$0	\$0	\$46,776	\$0	\$0	\$54,171	\$7,650	(\$2,534)	(\$642)	\$8,042	\$11,475	\$119,888	
GREEN HILL	57	389.18	\$29,101,100	\$7,275,275	\$0	\$0	\$31,575	\$0	\$0	\$16,697	\$2,650	(\$17)	(\$15)	\$2,681	\$3,825	\$55,713	
SPENCER CREEK	36	254.61	\$8,521,000	\$2,130,250	\$0	\$0	\$9,246	\$318	\$0	\$11,854	\$1,750	\$0	\$0	\$1,893	\$2,700	\$26,573	
TOTAL - NORTHERN BASINS	251	782.87	\$80,733,200	\$20,183,300	\$0	\$0	\$87,596	\$318	\$0	\$82,722	\$12,050	(\$2,550)	(\$657)	\$12,615	\$18,000	\$202,174	
GRAND TOTAL	2,023	6,764.32	\$583,729,000	\$145,895,490	\$3,866,300	\$1,546,520	\$633,189	\$7,030	\$525	\$680,510	\$96,200	(\$11,824)	(\$1,046)	\$102,052	\$81,564	\$1,588,200	

Table 5 Estimated Annual Revenues Southern Summary

BASIN	NAME	NUMBER OF PARCELS	2006 RESIDENTIAL MARKET APPRAISAL	2006 RESIDENTIAL ASSESSMENT	2006 COMMERCIAL APPRAISAL	2006 COMMERCIAL ASSESSMENT	PROPERTY TAX REVENUE - RESIDENTIAL	PROPERTY TAX REVENUE - COMMERCIAL	TOTAL BUSINESS TAX REVENUE	STATE SHARED (Ind Hall Income)	FRANCHISE FEES	WATER REVENUE (ANNUAL)	SEWER REVENUE (ANNUAL)	STORM WATER REVENUE (ANNUAL)	SOLID WASTE REVENUE (ANNUAL)	SOLID WASTE REVENUE (one-time container)	TOTAL
FIVE MILE CREEK	DOUGLASS GLEN	43	\$17,550,900	\$4,337,725	\$0	\$0	\$19,043	\$0	\$0	\$14,276	\$2,100	\$0	\$0	\$2,188	\$1,772	\$3,075	\$39,328
FIVE MILE CREEK	ELLINGTON PARK	123	\$30,985,100	\$7,746,275	\$0	\$0	\$33,619	\$0	\$0	\$42,699	\$6,100	(\$1,004)	\$0	\$6,412	\$5,124	\$9,150	\$92,080
FIVE MILE CREEK	GOOSE CREEK ESTATES	68	\$26,540,700	\$6,635,175	\$0	\$0	\$28,797	\$0	\$0	\$24,317	\$3,400	\$0	\$0	\$3,574	\$2,856	\$5,100	\$62,444
FIVE MILE CREEK	HENPECK LN EAST	31	\$7,293,400	\$1,973,350	\$2,062,900	\$825,160	\$8,564	\$3,581	\$350	\$8,157	\$1,150	(\$66)	\$0	\$1,629	\$1,302	\$2,325	\$24,665
FIVE MILE CREEK	LEELAND	29	\$8,508,300	\$2,127,075	\$0	\$0	\$9,232	\$0	\$0	\$8,922	\$1,250	(\$414)	\$0	\$1,314	\$1,050	\$1,875	\$21,354
FIVE MILE CREEK	REDWING MEADOWS	106	\$28,576,300	\$7,144,075	\$0	\$0	\$31,005	\$0	\$0	\$35,561	\$5,000	(\$1,856)	\$0	\$5,256	\$4,200	\$7,500	\$79,567
FIVE MILE CREEK	SPRING VIEW ESTATES	29	\$5,888,100	\$1,472,025	\$0	\$0	\$6,389	\$0	\$0	\$9,942	\$1,350	\$0	\$0	\$1,472	\$1,176	\$2,100	\$20,328
FIVE MILE CREEK	SUMMER HILL	33	\$15,559,700	\$3,889,925	\$0	\$0	\$16,882	\$0	\$0	\$9,942	\$1,300	\$0	\$0	\$1,419	\$1,134	\$2,025	\$30,677
FIVE MILE CREEK	WALNUT WINDS	33	\$14,671,900	\$3,669,975	\$0	\$0	\$15,919	\$0	\$0	\$11,089	\$1,350	\$0	\$0	\$1,629	\$1,302	\$2,325	\$31,489
FIVE MILE CREEK	WINDSOR PARK	38	\$14,424,200	\$3,606,050	\$0	\$0	\$15,650	\$0	\$0	\$13,128	\$1,850	(\$629)	\$0	\$1,945	\$1,554	\$2,775	\$33,498
FIVE MILE CREEK		533	\$170,598,600	\$42,649,650	\$2,062,900	\$825,160	\$185,099	\$3,581	\$350	\$177,934	\$25,050	(\$4,670)	\$0	\$26,838	\$21,420	\$38,250	\$435,604
GOOSE CREEK	GREEN VALLEY	186	\$40,635,800	\$10,158,950	\$0	\$0	\$44,090	\$0	\$0	\$66,279	\$9,100	\$0	\$0	\$9,566	\$7,644	\$13,650	\$136,679
NOLEN CEMETARY	SOUTH CAROTHERS RD	19	\$4,355,000	\$1,088,750	\$0	\$0	\$4,725	\$0	\$0	\$6,118	\$900	\$0	\$0	\$946	\$756	\$1,350	\$13,445
ROBINSON LAKE	LOCKWOOD PROPERTY	6	\$2,326,900	\$581,725	\$0	\$0	\$2,525	\$0	\$0	\$2,422	\$250	\$0	\$0	\$263	\$210	\$375	\$5,669
DONELSON CREEK	COLUMBIA PIKE	17	\$1,873,800	\$468,450	\$140,800	\$6,320	\$2,083	\$244	\$25	\$4,206	\$650	(\$414)	(\$389)	\$756	\$588	\$1,050	\$7,680
DONELSON CREEK	REDWING FARMS	134	\$39,993,000	\$9,998,250	\$204,400	\$81,760	\$43,392	\$355	\$0	\$47,670	\$6,700	\$0	\$0	\$6,990	\$5,628	\$10,050	\$110,736
DONELSON CREEK	OAKWOOD SUBDIVISION	241	\$66,220,900	\$16,305,225	\$0	\$0	\$70,765	\$0	\$0	\$84,379	\$11,900	(\$2,048)	\$0	\$12,599	\$9,996	\$17,850	\$186,401
DONELSON CREEK	OAKLEAF SUBDIVISION	92	\$27,308,400	\$6,827,100	\$0	\$0	\$29,630	\$0	\$0	\$30,590	\$4,400	\$0	\$0	\$4,625	\$3,696	\$6,600	\$72,941
DONELSON CREEK	OAK VALLEY BAPTIST CHURCH AREA	6	\$1,566,400	\$337,800	\$0	\$0	\$1,466	\$0	\$0	\$1,402	\$200	\$0	\$0	\$315	\$252	\$450	\$3,635
DONELSON CREEK		490	\$135,962,500	\$33,936,825	\$345,200	\$138,080	\$147,267	\$599	\$25	\$168,247	\$23,850	(\$3,362)	(\$589)	\$25,176	\$20,160	\$36,000	\$381,593
TOTAL - SOUTHERN BASINS		1,234	\$353,878,800	\$88,415,900	\$2,408,100	\$963,240	\$383,726	\$4,180	\$375	\$421,000	\$59,150	(\$8,032)	(\$589)	\$62,789	\$50,190	\$89,625	\$972,990

Table 6 Estimated Annual Revenues Eastern Summary

BASIN	NAME	NUMBER OF PARCELS	2006 RESIDENTIAL MARKET APPRAISAL	2006 RESIDENTIAL ASSESSMENT	2006 COMMERCIAL APPRAISAL	2006 COMMERCIAL ASSESSMENT	PROPERTY TAX REVENUE - RESIDENTIAL	PROPERTY TAX REVENUE - COMMERCIAL	TOTAL BUSINESS TAX REVENUE	STATE SHARED (Inc'd Half Income)	FRANCHISE FEES	WATER REVENUE - IMPACT (ANNUAL)	SEWER REVENUE - IMPACT (ANNUAL)	STORM WATER REVENUE (ANNUAL)	SOLID WASTE REVENUE (ANNUAL)	SOLID WASTE REVENUE (One-time contained)	TOTAL
MAYES CREEK	HOOPER PROPERTY	14	\$2,940,500	\$735,125	\$0	\$0	\$3,190	\$0	\$0	\$4,599	\$650	\$0	\$0	\$583	\$546	\$975	\$9,658
MAYES CREEK	WILSON PIKE EAST	13	\$3,707,800	\$926,950	\$0	\$0	\$4,023	\$0	\$0	\$3,951	\$600	\$0	\$0	\$631	\$534	\$900	\$9,709
MAYES CREEK	WILSON PIKE WEST	44	\$10,566,900	\$2,658,765	\$300,300	\$120,120	\$11,539	\$521	\$25	\$11,344	\$2,050	\$0	\$0	\$2,102	\$1,680	\$3,000	\$29,262
MAYES CREEK	BALDA/HUTHESON	9	\$2,081,600	\$520,400	\$0	\$0	\$2,259	\$0	\$0	\$2,932	\$300	\$0	\$0	\$315	\$252	\$450	\$6,057
MAYES CREEK		80	\$19,296,800	\$4,841,240	\$300,300	\$120,120	\$21,011	\$521	\$25	\$22,815	\$3,600	\$0	\$0	\$3,732	\$2,982	\$5,325	\$54,686
WATSON BRANCH	BRECKENRIDGE	79	\$18,746,700	\$4,686,675	\$0	\$0	\$20,340	\$0	\$0	\$23,169	\$3,950	\$0	\$0	\$4,152	\$3,218	\$5,925	\$59,929
WATSON BRANCH	CLOVERCROFT SOUTH	15	\$4,022,000	\$1,005,500	\$0	\$0	\$4,364	\$0	\$0	\$3,187	\$650	\$0	\$0	\$788	\$630	\$1,125	\$9,619
WATSON BRANCH	CLOVER MEADOWS SUBDIVISION	16	\$4,631,200	\$1,157,800	\$0	\$0	\$5,025	\$0	\$0	\$5,736	\$800	\$0	\$0	\$841	\$672	\$1,200	\$13,074
WATSON BRANCH	IVY GLEN SUBDIVISION	131	\$47,592,800	\$11,898,200	\$0	\$0	\$51,638	\$0	\$0	\$43,464	\$6,100	\$0	\$0	\$6,465	\$5,166	\$9,225	\$112,833
WATSON BRANCH	JOHN WILLIAMS ROAD	20	\$5,021,200	\$1,255,300	\$0	\$0	\$5,448	\$0	\$0	\$5,353	\$850	\$0	\$0	\$894	\$714	\$1,275	\$13,259
WATSON BRANCH	MURFREESBORO ROAD NORTH	21	\$4,698,500	\$1,174,625	\$186,200	\$74,480	\$3,096	\$323	\$0	\$5,991	\$950	\$0	\$0	\$1,104	\$882	\$1,575	\$14,347
WATSON BRANCH		282	\$84,712,400	\$21,178,100	\$186,200	\$74,480	\$91,913	\$323	\$0	\$91,899	\$13,300	\$0	\$0	\$14,244	\$11,382	\$20,325	\$223,061
TOTAL - EASTERN BASINS		362	\$104,009,200	\$26,019,340	\$486,500	\$194,600	\$112,924	\$845	\$25	\$114,714	\$16,900	\$0	\$0	\$17,976	\$14,364	\$25,650	\$277,747

Table 7 Estimated Annual Revenues Western Summary

BASIN	NAME	NUMBER OF PARCELS	% OF TOTAL	2006 RESIDENTIAL MARKET APPRAISAL	2006 RESIDENTIAL ASSESSMENT	2006 COMMERCIAL APPRAISAL	2006 COMMERCIAL ASSESSMENT	PROPERTY TAX REVENUE - RESIDENTIAL	PROPERTY TAX REVENUE - COMMERCIAL	TOTAL BUSINESS TAX REVENUE	STATE SHARED (incl. Hall Income)	FRANCHISE FEES	WATER REVENUE (ANNUAL)	SEWER REVENUE (ANNUAL)	SOLID WASTE REVENUE (ANNUAL)	STORM WATER REVENUE (ANNUAL)	SOLID WASTE REVENUE (ANNUAL)	TOTAL
HATCHER SPRING	ROGERS PROPERTIES	3	627.90	\$607,100	\$151,775	\$0	\$0	\$659	\$0	\$0	\$382	\$50	(917)	\$0	\$53	\$42	\$75	\$1,169
HATCHER SPRING	WHITEHALL FARMS	71	89.73	\$31,739,400	\$7,934,850	\$0	\$0	\$34,437	\$0	\$0	\$26,002	\$3,450	(\$1,147)	\$0	\$3,627	\$2,398	\$5,175	\$69,271
HATCHER SPRING	CARTERS CREEK EAST	4	100.05	\$547,200	\$136,800	\$0	\$0	\$594	\$0	\$0	\$1,020	\$150	\$0	\$0	\$158	\$126	\$225	\$2,048
HATCHER SPRING	OLD CARTERS CREEK EAST	48	178.84	\$5,160,400	\$1,290,100	\$971,700	\$388,680	\$5,599	\$1,687	\$125	\$21,923	\$2,150	(\$613)	\$0	\$2,523	\$2,016	\$3,600	\$35,940
HATCHER SPRING	ENTRY PROPERTIES EAST	5	88.11	\$1,233,700	\$308,425	\$0	\$0	\$1,339	\$0	\$0	\$1,020	\$150	\$0	\$0	\$105	\$84	\$150	\$2,697
HATCHER SPRING		131	1,084.63	\$39,287,800	\$9,821,950	\$971,700	\$388,680	\$42,628	\$1,687	\$125	\$50,347	\$5,950	(\$1,242)	\$0	\$6,465	\$5,166	\$9,225	\$111,126
WEST																		
HARPETH PROPERTIES-W		5	387.72	\$1,436,900	\$359,225	\$0	\$0	\$1,559	\$0	\$0	\$1,147	\$150	\$0	\$0	\$158	\$126	\$225	\$3,140
POLK CREEK	CARTERS CREEK WEST	21	331.95	\$2,221,400	\$555,350	\$0	\$0	\$2,410	\$0	\$0	\$3,314	\$1,050	\$0	\$0	\$1,051	\$840	\$1,500	\$8,665
POLK CREEK	OLD CARTERS CREEK WEST	19	145.71	\$2,161,700	\$540,425	\$0	\$0	\$2,345	\$0	\$0	\$7,265	\$950	\$0	\$0	\$999	\$798	\$1,425	\$12,357
POLK CREEK		40	477.66	\$4,383,100	\$1,095,775	\$0	\$0	\$4,756	\$0	\$0	\$10,579	\$2,000	\$0	\$0	\$2,050	\$1,638	\$2,925	\$21,023
TOTAL - WESTERN BASINS		176	1,950.01	\$45,107,800	\$11,276,950	\$971,700	\$388,680	\$48,942	\$1,687	\$125	\$62,073	\$8,100	(\$1,242)	\$0	\$8,673	\$6,930	\$12,375	\$135,288

Table 8 Estimated Annual Revenues Northern Summary

BASIN	NAME	NUMBER OF PARCELS	2006 RESIDENTIAL MARKET APPRAISAL	2006 RESIDENTIAL ASSESSMENT	2006 COMMERCIAL APPRAISAL	2006 COMMERCIAL ASSESSMENT	PROPERTY TAX REVENUE - RESIDENTIAL	PROPERTY TAX REVENUE - COMMERCIAL	TOTAL BUSINESS TAX REVENUE	STATE SHARED (Ind Hall Income)	FRANCHISE FEES	WATER REVENUE IMPACT (ANNUAL)	SEWER REVENUE IMPACT (ANNUAL)	STORM WATER REVENUE (ANNUAL)	SOLID WASTE REVENUE (One-time Fee)	TOTAL
MONTICELLO WEST	BONE ROBERT CARVER	6	\$1,318,800	\$329,700	\$0	\$0	\$1,431	\$0	\$0	\$332	\$50	(\$17)	(\$15)	\$53	\$42	\$1,927
MONTICELLO WEST	MONTICELLO	152	\$41,792,300	\$10,448,075	\$0	\$0	\$45,345	\$0	\$0	\$53,786	\$7,500	(\$2,517)	(\$326)	\$7,989	\$6,384	\$117,961
MONTICELLO WEST	MONTICELLO WEST	158	\$43,111,100	\$10,777,775	\$0	\$0	\$46,776	\$0	\$0	\$54,171	\$7,650	(\$2,534)	(\$642)	\$8,042	\$11,475	\$119,888
GREEN HILL	DEERFIELD	48	\$23,971,100	\$5,992,775	\$0	\$0	\$26,009	\$0	\$0	\$13,893	\$2,250	(\$17)	(\$15)	\$2,208	\$1,764	\$46,092
GREEN HILL	SPENCER CR PLACE	9	\$5,130,000	\$1,282,500	\$0	\$0	\$5,566	\$0	\$0	\$2,804	\$400	\$0	\$0	\$473	\$378	\$9,621
GREEN HILL	GREEN HILL	57	\$29,101,100	\$7,275,275	\$0	\$0	\$31,575	\$0	\$0	\$16,697	\$2,650	(\$17)	(\$15)	\$2,681	\$2,142	\$55,713
SPENCER CREEK	MEADOWS PROPERTY	2	\$761,500	\$190,375	\$0	\$0	\$826	\$0	\$0	\$765	\$50	\$0	\$0	\$105	\$84	\$1,830
SPENCER CREEK	FRANKLIN RD WEST	19	\$4,800,600	\$1,200,150	\$0	\$0	\$5,209	\$0	\$0	\$5,991	\$950	\$0	\$0	\$999	\$798	\$13,947
SPENCER CREEK	WALNUT HILLS	15	\$2,858,900	\$739,725	\$0	\$0	\$3,210	\$318	\$0	\$5,096	\$750	\$0	\$0	\$788	\$630	\$10,795
SPENCER CREEK	SPENCER CREEK	36	\$8,521,000	\$2,130,250	\$0	\$0	\$9,246	\$318	\$0	\$11,854	\$1,750	\$0	\$0	\$1,893	\$1,512	\$26,573
TOTAL - NORTHERN BASINS	TOTAL - NORTHERN BASINS	251	\$80,733,200	\$20,183,300	\$0	\$0	\$87,596	\$318	\$0	\$82,722	\$12,050	(\$2,530)	(\$657)	\$12,615	\$10,080	\$202,173

Revenue Basis and Methodology

Scope - The 2006 Annexation Study scope was to determine the revenue implications for the areas identified by Planning and Administration. All values reflect 2006 dollars and show the annual impact, except for one-time container fees. Future annexations would have different revenue impacts.

Building the file - Coordination with GIS resulted in an excel file for the study area of the specific parcels (map/parcel, address, property owner, acres, appraisal and assessment value). Separate files were established for the four basins (Southern, Eastern, Western and Northern) and worksheets for each study area. These were linked so that changes in one property would roll up.

Commercial vs. Residential - A calculation was made to determine the percent of assessed value to appraised value and allowed me to separate residential and commercial properties (25% for residential and 40% for commercial). This allowed separation and identification of the properties for subsequent calculations (e.g. potential business impacts). There were very few commercial properties and the impact on revenue was considered negligible for purposes of the study.

Property Tax - Revenue was assigned by property based on the assessed values using the 2006 rate (\$0.434/100 assessed value). Properties >10 acres were identified as potential for development. No effort was made to assign development value as revenue consideration should be determined at the point of development potential. This resulted in revenue in 2006 dollars with existing land use. It must be noted that revenue does not accrue in the year of annexation, but the year following (e.g. a property must be annexed as of December 31, 2006 to be on the tax rolls for bills issued October 1, 2007). The rate for 2007/later could be different from 2006 and affect revenue implications.

Business Tax(es) - Consideration was given for revenue from businesses but there were very few commercial properties. Therefore, there would be minimal revenue impact given the current use (e.g. the Henpeck Market also has a beer license and there are some commercial businesses located on Lewisburg just south of Henpeck Lane so an assigned value was made to reflect that some revenue would accrue). No attempt was made to coordinate with the County to determine business taxes paid by the businesses. A value of \$25 was assigned to each commercial property and \$250 for a beer license. Changes would occur as development occurred.

State Shared Tax - This revenue is a function of the amount paid by the State of Tennessee and the number of residents. The estimate was prepared using the current per capita value of \$127.46 experienced in the City and includes: sales tax, beer, petroleum, TVA, fuels, excise, mixed drink and Hall Income. This is consistent with budget planning efforts. The population values were developed by Planning for each study area.

Franchise Fees - This revenue stream from Comcast & Atmos is determined by revenue from providing these services to customers in Franklin and is a function of the rate the City applies and the revenue the provider receives from Franklin customers. The estimate was based on: the existing rates, similar market penetration for the affected area and percentage growth of properties (assumes this to be a function of households and thus growth would correlate). The

City currently has ~19,000 parcels and received \$1.3 million from these fees in FY 06. This equates to \$68/parcel, but was rounded down to \$50 due to multi-resident properties in the current number of properties (i.e. there are no apartment complexes being annexed).

Local Permits – This is to accommodate development and additions to existing properties. Numerically, most of the properties are already developed (however large tracts are being studied and development revenue for each tract should be reflected in that individual evaluation). Based on the value of permits issued for changes to existing residential properties annually, permit fees may only be a few thousand dollars/year. This data column was hidden in the worksheets.

Impact Fees – Consideration was given, but no attempt to add a value. Any future developments would be expected to stand on their own value. This data column was hidden in the worksheets.

Water/sewer service – An evaluation was made (checking individual records in some cases) to identify properties served by the City of Franklin as revenue reductions would occur due to rate reductions for in-the-city service. The impact was calculated using the current July 2006 rate differential for in/out of the city and assumed the average residential consumption (7,200 gallons/month/household). There were no commercial properties affected.

Stormwater – The estimate for stormwater revenue assumed that each improved parcel had some impervious area and thus impacted. For purposes of the study, the rate was assumed to be the large residential rate of \$4.38/month for an annual revenue stream per property of \$52.56. This results in potentially misstating revenue as there would be some properties that were open pasture and some with small homes, but this would be offset by commercial properties. However, this is expected to well within the estimate scope and the margin of error would be small and have minimal revenue impact.

Solid Waste – This estimate consisted of both annual (weekly service) and one time (container) components. It was assumed that each property with a residence/business would have service. The weekly service estimate used the current residential rate of \$3.50/month for an annual estimate of \$42. There was no special consideration given for commercial due to the small number of properties. The one-time residential container drop fee of \$75 was applied to each improved property.

Table 9 Estimated Annual Expenditures

AREA	ESTIMATED POPULATION	POLICE PROTECTION	FIRE PROTECTION	REFUSE COLLECTION/ DISPOSAL	STREET MAINTENANCE	PARKS	TOTAL
SOUTHERN AREA							
FIVE MILE CREEK BASIN							
DOUGLAS GLEN SUBDIVISION	112	\$15,680	\$16,800	\$6,720	\$4,480	\$2,240	\$45,920
ELLINGTON PARK SUBDIVISION	335	\$46,900	\$50,250	\$20,100	\$13,400	\$6,700	\$137,350
GOOSE CREEK ESTATES SUBDIVISION	190	\$26,600	\$28,500	\$11,400	\$7,600	\$3,800	\$77,900
HENPECK LANE AREA EAST	64	\$8,960	\$9,600	\$3,840	\$2,560	\$1,280	\$26,240
LEELAND SUBDIVISION	70	\$9,800	\$10,500	\$4,200	\$2,800	\$1,400	\$28,700
REDWING MEADOWS SUBDIVISION	279	\$39,060	\$41,850	\$16,740	\$11,160	\$5,580	\$114,390
SPRING VIEW ESTATES SUBDIVISION	78	\$10,920	\$11,700	\$4,680	\$3,120	\$1,560	\$31,980
SUMMER HILL SUBDIVISION	78	\$10,920	\$11,700	\$4,680	\$3,120	\$1,560	\$31,980
WALNUT WINDS SUBDIVISION	87	\$12,180	\$13,050	\$5,220	\$3,480	\$1,740	\$35,670
WINDSOR PARK SUBDIVISION	103	\$14,420	\$15,450	\$6,180	\$4,120	\$2,060	\$42,230
TOTAL FIVE MILE CREEK BASIN	1,396	\$198,440	\$209,400	\$83,760	\$55,340	\$27,920	\$572,360
GOOSE CREEK BASIN							
GREEN VALLEY SUBDIVISION	520	\$72,800	\$78,000	\$31,200	\$20,800	\$10,400	\$213,200
TOTAL GOOSE CREEK BASIN	520	\$72,800	\$78,000	\$31,200	\$20,800	\$10,400	\$213,200
NOLEN CEMETERY BASIN							
SOUTHERN CAROTHERS RD AREA	48	\$6,720	\$7,200	\$2,880	\$1,920	\$960	\$19,680
TOTAL NOLEN CEMETERY BASIN	48	\$6,720	\$7,200	\$2,880	\$1,920	\$960	\$19,680
ROBINSON LAKE BASIN							
LOCKWOOD PROPERTY AREA	19	\$2,660	\$2,850	\$1,140	\$760	\$380	\$7,790
TOTAL ROBINSON LAKE BASIN	19	\$2,660	\$2,850	\$1,140	\$760	\$380	\$7,790
DONELSON CREEK BASIN							
COLUMBIA PIKE AREA	33	\$4,620	\$4,950	\$1,980	\$1,320	\$660	\$13,530
OAK VALLEY BAPTIST CHURCH AREA	11	\$1,540	\$1,650	\$660	\$440	\$220	\$4,510
REDWING FARMS	374	\$52,360	\$56,100	\$22,440	\$14,960	\$7,480	\$153,340
OAKWOOD ESTATES SUBDIVISION	662	\$92,680	\$99,300	\$39,720	\$26,480	\$13,240	\$271,420
OAKLEAF ESTATES SUBDIVISION	240	\$33,600	\$36,000	\$14,400	\$9,600	\$4,800	\$98,400
TOTAL DONELSON CREEK BASIN	1,320	\$184,800	\$198,000	\$79,200	\$52,800	\$26,400	\$541,200
TOTAL SOUTHERN AREA	3,303	\$462,420	\$495,450	\$198,180	\$132,120	\$66,060	\$1,354,230
EASTERN AREA							
MAYES CREEK BASIN							
BALDA/HUTCHESON PROPERTIES AREA	23	\$3,220	\$3,450	\$1,380	\$920	\$460	\$9,430
HOOPER PROPERTY AREA	36	\$5,040	\$5,400	\$2,160	\$1,440	\$720	\$14,760
WILSON PIKE EAST AREA	31	\$4,340	\$4,650	\$1,860	\$1,240	\$620	\$12,710
WILSON PIKE WEST AREA	89	\$12,460	\$13,350	\$5,340	\$3,560	\$1,780	\$36,490
TOTAL MAYES CREEK BASIN	179	\$25,060	\$26,850	\$10,740	\$7,160	\$3,580	\$73,390
WATSON BRANCH BASIN							
BRECKENRIDGE SUBDIVISION	221	\$30,940	\$33,150	\$13,260	\$8,840	\$4,420	\$90,610
CLOVER MEADOWS SUBDIVISION	45	\$6,300	\$6,750	\$2,700	\$1,800	\$900	\$18,450
CLOVERCROFT ROAD SOUTH AREA	25	\$3,500	\$3,750	\$1,500	\$1,000	\$500	\$10,250
IVY GLEN SUBDIVISION	341	\$47,740	\$51,150	\$20,460	\$13,640	\$6,820	\$139,810
JOHN WILLIAMS ROAD AREA	42	\$5,880	\$6,300	\$2,520	\$1,680	\$840	\$17,220
MURFREESBORO RD NORTH PROPERTIES	47	\$6,580	\$7,050	\$2,820	\$1,880	\$940	\$19,270
TOTAL WATSON BRANCH BASIN	721	\$100,940	\$108,150	\$43,260	\$28,840	\$14,420	\$295,610
TOTAL EASTERN AREA	900	\$126,000	\$135,000	\$54,000	\$36,000	\$18,000	\$369,000
WESTERN AREA							
HATCHER SPRING BASIN							
CARTERS CREEK EAST	8	\$1,120	\$1,200	\$480	\$320	\$160	\$3,280
GENTRY PROPERTIES EAST AREA	8	\$1,120	\$1,200	\$480	\$320	\$160	\$3,280
OLD CARTERS CREEK EAST	172	\$24,080	\$25,800	\$10,320	\$6,880	\$3,440	\$70,520
ROGERS PROPERTIES	3	\$420	\$450	\$180	\$120	\$60	\$1,230
WHITEHALL SUBDIVISION	204	\$28,560	\$30,600	\$12,240	\$8,160	\$4,080	\$83,640
TOTAL HATCHER SPRING BASIN	395	\$55,300	\$59,250	\$23,700	\$15,800	\$7,900	\$161,950
POLK CREEK BASIN							
CARTERS CREEK WEST	26	\$3,640	\$3,900	\$1,560	\$1,040	\$520	\$10,660
OLD CARTERS CREEK WEST	57	\$7,980	\$8,550	\$3,420	\$2,280	\$1,140	\$23,370
TOTAL POLK CREEK BASIN	83	\$11,620	\$12,450	\$4,980	\$3,320	\$1,660	\$34,030
WEST HARPETH BASIN							
GENTRY PROPERTIES WEST AREA	9	\$1,260	\$1,350	\$540	\$360	\$180	\$3,690
TOTAL WEST HARPETH BASIN	9	\$1,260	\$1,350	\$540	\$360	\$180	\$3,690
TOTAL WESTERN AREA	487	\$68,180	\$73,050	\$29,220	\$19,480	\$9,740	\$199,670
NORTHERN AREA							
GREEN HILL BASIN							
DEERFIELD ESTATES SUBDIVISION	109	\$15,260	\$16,350	\$6,540	\$4,360	\$2,180	\$44,690
SPENCER CREEK PLACE SUBDIVISION	22	\$3,080	\$3,300	\$1,320	\$880	\$440	\$9,020
TOTAL GREEN HILL BASIN	131	\$18,340	\$19,650	\$7,860	\$5,240	\$2,620	\$53,710
MONTICELLO WEST BASIN							
BONE ROBERT CARVER SUBDIVISION	3	\$420	\$450	\$180	\$120	\$60	\$1,230
MONTICELLO SUBDIVISION AREA	422	\$59,080	\$63,300	\$25,320	\$16,880	\$8,440	\$173,020
TOTAL MONTICELLO WEST BASIN	425	\$59,500	\$63,750	\$25,500	\$17,000	\$8,500	\$174,250
SPENCER CREEK BASIN							
FRANKLIN ROAD WEST PROPERTIES	47	\$6,580	\$7,050	\$2,820	\$1,880	\$940	\$19,270
MEADOWS PROPERTY	6	\$840	\$900	\$360	\$240	\$120	\$2,460
WALNUT HILLS SUBDIVISION	40	\$5,600	\$6,000	\$2,400	\$1,600	\$800	\$16,400
TOTAL SPENCER CREEK BASIN	93	\$13,020	\$13,950	\$5,580	\$3,720	\$1,860	\$38,130
TOTAL NORTHERN AREA	649	\$90,860	\$97,350	\$193,320	\$25,960	\$12,980	\$266,090
TOTAL ALL AREAS	5,339	\$747,460	\$800,850	\$474,720	\$213,560	\$106,780	\$2,188,990

NOTE: ANNUAL SERVICE COSTS ESTIMATED FROM DEPARTMENT BUDGETS FOR FISCAL YEAR 2007 PROVIDING SERVICES TO APPROXIMATE POPULATION OF 50,000. SEE TABLE 10 FOR METHODOLOGY.

Table 10 Expenditure Basis and Methodology

SERVICE	2007 BUDGET (EXCLUDING CAPITAL)	LESS: ESTIMATED FIXED COSTS	ESTD VARIABLE COST	DIVIDE BY APPROXIMATE 50,000 POPULATION	ESTD VARIABLE COST PER CITIZEN (ROUNDED)
POLICE	11,511,484	(\$4,604,594)	\$6,906,890	50,000	\$140
FIRE	9,382,740	(\$2,064,203)	\$7,318,537	50,000	\$150
REFUSE COLLECTION/DISPOSAL	4,986,625	(\$1,845,051)	\$3,141,574	50,000	\$60
STREET	2,701,264	(\$540,253)	\$2,161,011	50,000	\$40
PARKS	1,488,854	(\$521,099)	\$967,755	50,000	\$20
TOTAL	30,070,967	(9,575,199)	20,495,768	50,000	\$410

Estimated annual service costs uses as its basis the 2007 departmental operating budgets as the costs needed to provide service to approximately 50,000 current residents. Assuming a factor for fixed costs within the operating budgets that would not increase with additional population, the estimated variable portion of each department's personnel and operations budget was divided by 50,000 to estimate a cost per resident for each service. This cost per resident for each service was multiplied by the estimated populations in the study areas and used as the estimated annual service costs to the City for providing additional residents these services.

The revenues have been conservatively forecasted and the expenditures have been biased towards overestimation to provide a cautious snapshot of the financial impacts of annexation. In developing the snapshot, a number of assumptions were made for both revenues and expenditures.

Revenue assumptions:

1. All future development will be residential. (Residential is taxed at about half the rate of commercial properties.)
2. No sales tax was included.
3. Impact fees and facilities tax were not included because they generally cover capital costs.
4. The state shared revenues were based on FY05 receipts while FY07 expenses were used for forecasting.
5. The Hall income tax revenues included in the state shared forecast excluded the portion retained by the State in FY 03 to be returned to cities in FY07.
6. Population growth was estimated at 3% and has annually been 3-5%.

Expenditure assumptions:

1. Total annexation of all study areas upon passage rather than a phased, incremental annexation of study areas, which would spread the cost across more time.
2. There is no timing delay for expenditures even though there would be a delay in hiring new police, fire and solid waste personnel, and the extension of parks and street services.
3. The expenditures do not include capital expenses that are generally recovered by facilities tax and impact fees.

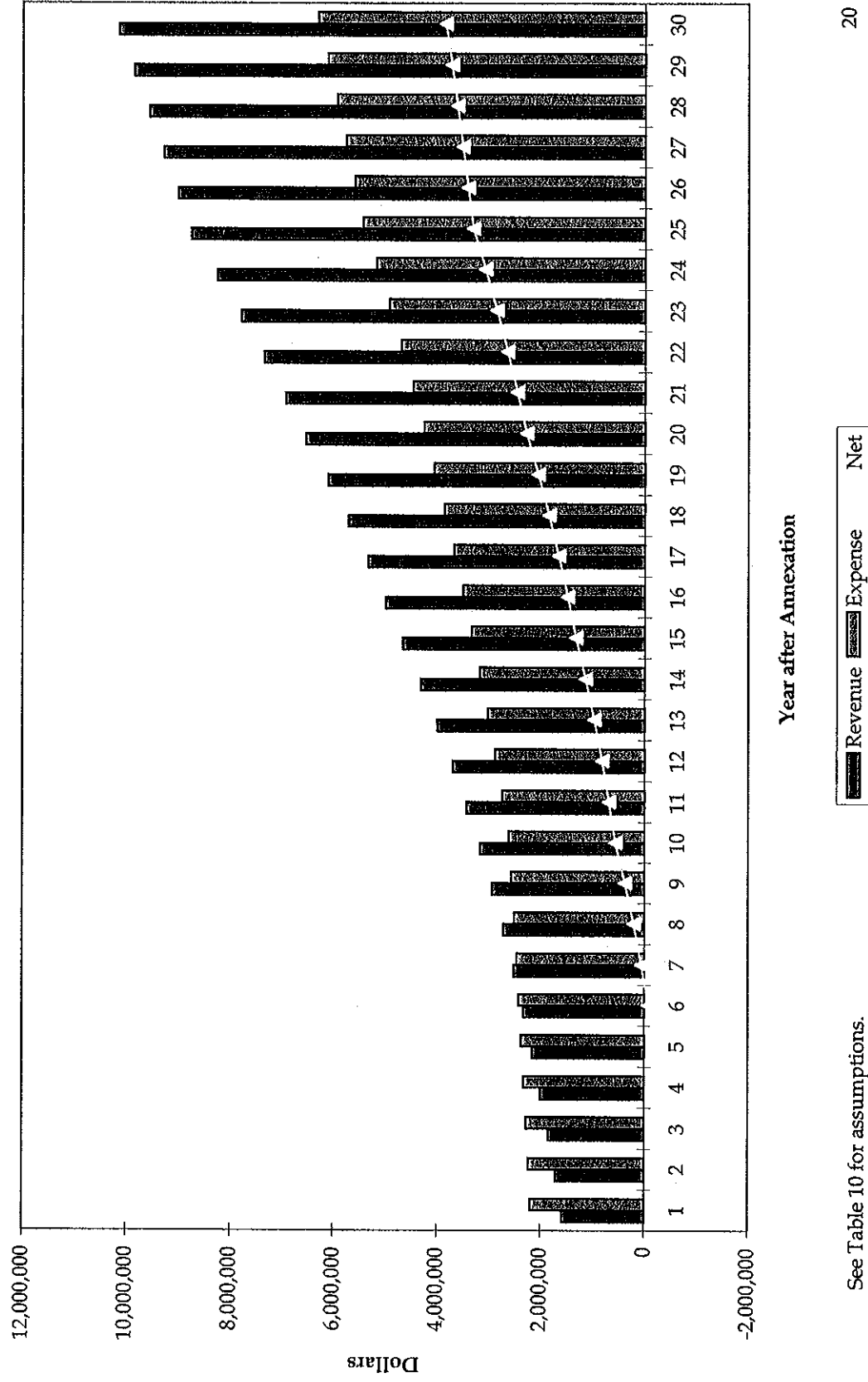
General assumptions:

1. Rate of inflation = 2% for both revenues and expenditures.
2. Rate of infill = 3%.
3. Rate of population growth = 3% until year 25. Afterwards, growth = 1%
4. Infill (the rate of increasing population density without raising incremental services) drops in year 16 from 3% to 2%, and from 2% to 1% in year 20, and from 1% to 0% in year 25.

Table 11 Estimated Annual Revenues and Operating Expenditures Summary

BASIN	NUMBER OF PARCELS	ACRES	ESTIMATED POPULATION	TOTAL REVENUES	TOTAL EXPENDITURES	REVENUES MINUS EXPENDITURES
FIVE MILE CREEK	533	1,163.83	1,396	\$435,604	\$572,360	(\$136,756)
GOOSE CREEK	186	224.93	520	\$136,679	\$213,200	(\$76,521)
NOLEN CEMETARY	19	227.97	48	\$13,445	\$19,680	(\$6,235)
ROBINSON LAKE	6	58.24	19	\$5,669	\$7,790	(\$2,121)
DONELSON CREEK	490	987.12	1,320	\$381,593	\$541,200	(\$159,607)
TOTAL - SOUTHERN BASINS	1,234	2,662.09	3,303	\$972,990	\$1,354,230	(\$381,240)
MAYES CREEK	80	794.40	179	\$54,686	\$73,390	(\$18,704)
WATSON BRANCH	282	574.95	721	\$223,061	\$295,610	(\$72,549)
TOTAL - EASTERN BASINS	362	1,369.35	900	\$277,747	\$369,000	(\$91,253)
HATCHER SPRING	131	1,084.63	395	\$111,126	\$161,950	(\$50,824)
WEST HARPETH	5	387.72	9	\$3,140	\$3,690	(\$550)
POLK CREEK	40	477.66	83	\$21,023	\$34,030	(\$13,007)
TOTAL - WESTERN BASINS	176	1,950.01	487	\$135,289	\$199,670	(\$64,381)
MONTICELLO WEST	158	139.08	425	\$119,888	\$174,250	(\$54,362)
GREEN HILL	57	389.18	131	\$55,713	\$53,710	\$2,003
SPENCER CREEK	36	254.61	93	\$26,573	\$38,130	(\$11,557)
TOTAL - NORTHERN BASINS	251	782.87	649	\$202,174	\$266,090	(\$63,916)
GRAND TOTAL	2,023	6,764.32	5,339	\$1,588,200	\$2,188,990	(\$600,790)
Data compiled from Tables 4 and 9 in this report.						
For vacant parcels when development occurs, such development would pay road impact fees and adequate facilities taxes as appropriate.						
This table is based on the second year after annexation because the \$75 trash can fee is not included.						
Annexation typically takes 7 to 10 years to recover the costs associated with annexation. It is then followed by a net gain to the City because the same marginal cost per person applies, but the fixed costs are spread over more people over more time.						
See Table 10 for Assumptions.						

Table 12 Estimated Revenues vs. Expenditures Over Time



See Table 10 for assumptions.

AMENDING COMPREHENSIVE GROWTH PLANS

David Connor, CTAS Legal Consultant, and Dennis Huffer, MTAS Legal Consultant
May 2005



CTAS

**County Technical
Assistance Service**

*In cooperation with the Tennessee County
Services Association and the County Officials
Association of Tennessee*



MTAS

**Municipal Technical
Advisory Service**

*In cooperation with the
Tennessee Municipal League*

APPENDIX B

Executive Summary

The three-year moratorium during which cities and counties (except for Shelby County and its cities) were prohibited from amending their comprehensive growth plans absent extraordinary circumstances has now passed for most cities and counties. Some communities have amended their growth plans and others are considering amendments. The steps to follow in amending the comprehensive growth plan are summarized below. These issues are discussed in more detail following the executive summary.

1. The city or county wanting to amend the plan must do research and examine factors that are appropriate to the area to be designated, and identify territory suitable for inclusion in the area. The city or county must hold two public hearings for which public notice has been published at least 15 days before the meeting.
2. The city or county proposing the amendment must file notice with the mayors of each municipality in the county and the county mayor or executive.
3. The coordinating committee must be reconvened, most likely upon notice from the county mayor or executive.
4. The coordinating committee must hold two public hearings for which at least 15 days notice is published. The burden is on the party proposing the amendment to show it is reasonable.
5. The coordinating committee must vote on whether to recommend the amendment.
6. The coordinating committee shall submit its recommendations regarding any amendments to the governing body of the county and each city in the county for ratification. Each has 120 days to ratify or reject the amendment. Failure to act signifies ratification.
7. If a city or county rejects the amendment, it must submit its objections to the coordinating committee. The coordinating committee then reconsiders its action.
8. After reconsideration, the coordinating committee may recommend a revised amendment and submit it to the local governments for consideration.
9. If this amendment is rejected, the city or county may declare an impasse and request mediation through the secretary of state's office.
10. Approved amendments must be submitted to the local government planning advisory committee for approval. Locally ratified amendments receive automatic LGPAC approval. In all other cases, LGPAC must examine the plan to ensure that it complies with law. After approval the plan is filed in the register's office.

May 2005

Amending Comprehensive Growth Plans

Amending Comprehensive Growth Plans

INTRODUCTION

When the General Assembly passed Tennessee's Comprehensive Growth Policy Law in 1998, it required cities and counties across Tennessee to work together to develop a comprehensive growth plan. For cities and counties that had a completed plan in place by July 1, 2000, there were incentives and benefits. For cities and counties that did not have an approved plan in place by July 1, 2001, there were penalties. Nearly every community in Tennessee that was required by the law to have a plan met the July 1, 2001, deadline.

For all counties under the act except Shelby County, the law provided that once a growth plan was agreed upon by local governments and was approved by the local government planning advisory committee, it was to remain in effect for not less than three years, absent a showing of extraordinary circumstances (T.C.A. § 6-58-104(d)(1)). [For Shelby County, there was no waiting period and amendments could be proposed immediately. See T.C.A. § 6-58-104(d)(2).] For most cities and counties in Tennessee, this three-year window has now passed. A few communities have amended or begun considering amendments to their comprehensive growth plan. The purpose of this brief memorandum is to outline the steps and procedures that local governments should follow when considering amendments to a comprehensive growth plan.

THE LAW

There was very little content in the comprehensive growth policy law that related

to the process of amending plans in the future. What direction there is may be found in T.C.A. § 6-58-104(d)(1).

(d)(1) After the local government planning advisory committee has approved a growth plan, the plan shall stay in effect for not less than three (3) years absent a showing of extraordinary circumstances. After the expiration of the three-year period, a municipality or county may propose an amendment to the growth plan by filing notice with the county executive and with the mayor of each municipality in the county. Upon receipt of such notice, such officials shall take appropriate action to promptly reconvene or re-establish the coordinating committee. The burden of proving the reasonableness of the proposed amendment shall be upon the party proposing the change. *The procedures for amending the growth plan shall be the same as the procedures in this section for establishing the original plan.* (emphasis added)

The key provision is the last sentence which states that the same procedures apply to amending the growth plan as were used to establish the original plan.

DEVELOPING AND PROPOSING AMENDMENTS

When the original growth plan was developed each city went through a statutory process to develop an urban growth boundary and propose it to the coordinating committee. Likewise, each county developed planned growth and/or rural areas and submitted them to the coordinating

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committee. Since T.C.A. § 6-58-104(d)(1) states that amendments to the growth plan must be adopted in the same manner as the plan was originally established, it is assumed that any city or county proposing an amendment to the plan must follow the same procedures used to originally develop and propose an urban growth boundary, planned growth area, or rural area in developing the proposed amendment. These requirements are found in T.C.A. § 6-58-106(a), (b), and (c). Essentially, they require a city or county to research and examine certain factors that are appropriate to the type of area to be designated, identify the territory suitable to be placed in that area, and conduct two public meetings prior to making recommendations to the coordinating committee. These public meetings must be advertised in a newspaper of general circulation in the municipality or county not less than 15 days before the meeting, with the notice indicating the time, place, and purpose of the public meeting. Cities and counties should follow these same procedures prior to proposing any amendments to the growth plan. According to the attorney general, if one local government is proposing an amendment but another city or the county does not intend to respond formally to the proposed change or propose an alternative amendment to the growth plan of its own, there would be no need for that city or county to go through the research and public hearing process (Op. Tenn. Att'y Gen. 03-154 (December 2, 2003)). In the same opinion the attorney general also opined that a municipality or county may begin the research and public hearing process for developing amendments prior to the termination of the three-year waiting period, but the new coordinating committee may not be formed

or begin considering any proposed amendments until after the three-year period has expired. Even if a city or county does not make a formal proposal to the coordinating committee, nothing would prevent the representative of that local government on the coordinating committee from participating fully in the process and making suggestions or proposals during the deliberations of the coordinating committee.

REQUESTING CONSIDERATION OF AN AMENDMENT

After the three-year waiting period has passed, either the county or any municipality within a county may then propose an amendment to the growth plan. To initiate the process, the local government desiring an amendment must file notice with the mayor of all municipalities in the county and with the county mayor. Upon receipt of that notice, the mayors of the cities and county are directed by law to take action to reconvene or re-constitute the coordinating committee that originally drafted the growth plan for the county.

RECONVENING THE COORDINATING COMMITTEE

If all the original participants in the coordinating committee still hold the same positions or are still amenable to representing the same interests, the committee may be reconvened. If some of the original participants no longer hold the same positions (for example, a mayor who represented a city the first time around is no longer in office), then those positions need to be reappointed by the authorities designated in T.C.A. § 6-58-104(a)(1). While the law requires a party proposing an amendment to provide notice to city and county mayors of the need to

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reconvene the committee, some of the members of the committee represent interests other than cities and counties. For instance, the board of the local education agency with the largest student enrollment has a representative on the committee. When notice is provided to mayors, someone (most likely the county mayor) needs to contact those other entities represented on the coordinating committee to notify them that the committee is being reconvened and give them the opportunity to designate their representative.

CONSIDERATION BY THE COORDINATING COMMITTEE

Once it is reconstituted or reconvened, the committee may begin consideration of any proposed amendments to the growth plan. The law states that the burden of proving the reasonableness of the proposed amendment shall be upon the party proposing the change (T.C.A. § 6-58-104(d)(1)). Before reaching a final decision on proposed amendments, the coordinating committee must also conduct two public hearings (T.C.A. § 6-58-104(a)(3)). The county is required to give at least 15 days notice of the time, place, and purpose of each public hearing by notice published in a newspaper of general circulation throughout the county. After those hearings are held and the coordinating committee has had adequate time for deliberation, it should vote on whether proposed amendments to the growth plan should be adopted. Once the coordinating committee makes its determination, it should submit its decision and any recommended amendments to the growth plan to the county and all cities in the county for consideration and ratification.

LOCAL CONSIDERATION OF THE AMENDMENTS

Once the recommendations of the coordinating committee are received by the governing bodies of the county and municipalities, each governing body has 120 days to ratify or reject any proposed amendments (T.C.A. § 6-58-104(a)(4)). There is no requirement for further public hearings during this phase of the process. Failure to act by a governing body within the 120-day period is deemed to constitute ratification of the recommendation of the coordinating committee. If a city or county rejects the recommendation of the coordinating committee, the law directs it to submit its objections and the reasons therefore to the coordinating committee (T.C.A. § 6-58-104(a)(5)). The coordinating committee then reconsiders its action. After reconsideration, it may recommend a revised amendment and re-submit it to the local governments for consideration.

MEDIATION AND DISPUTE RESOLUTION

If the revised or recommended amendment is rejected, then, as with the original plan, the county or any municipality may declare an impasse and request the secretary of state to provide an alternative method for resolution of disputes. This involves the appointment of a panel of three administrative law judges to mediate the dispute unless the county and all municipalities agree to use a single administrative law judge. The secretary of state certifies the reasonable and necessary costs of the dispute resolution panel. The county and cities are required to reimburse the secretary of state for the costs of dispute resolution on a pro rata basis; provided that, if the panel determines that the process was necessitated or



State of Tennessee

PUBLIC CHAPTER NO. 707

SENATE BILL NO. 2464

By Watson, Crowe, Norris, Kelsey, McNally, Tate, Campfield, Massey, Gardenhire, Beavers,
Bowling, Ketron, Tracy

Substituted for: House Bill No. 2371

By Carter, Joe Carr, Casada, Rogers, Van Huss, Spivey, Shipley, Hall, Matheny, Lynn, Timothy Hill,
Butt, Matlock, Calfee, Mark White, Doss, Faison, Rich, Keisling, Holt, Dunn, Sanderson, Pody,
Durham, Kent Williams, Todd, Sparks, Haynes, Ragan, Shepard, Dean, McCormick, Sexton, Bailey,
Coley, Travis, Kane, Forgety, Alexander, Lollar, Weaver, Matthew Hill, Halford, Hawk, Watson,
Littleton, McManus, Floyd, Lamberth, Odom, Love, Dawn White, Moody, Dennis, Harry Brooks,
John DeBerry, Powers, Kevin Brooks, Farmer, Wornick, Evans, Towns, Sargent

AN ACT to amend Tennessee Code Annotated, Title 6, Chapter 51 and Title 6, Chapter 58, relative
to annexation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 6-51-122, is amended by deleting the
section in its entirety and by substituting instead the following:

(a) Notwithstanding any provision of this part or any other law to the contrary:

(1)(A) From April 15, 2013, through the effective date of Section 1 of this act,
no municipality shall extend its corporate limits by means of annexation by
ordinance upon the municipality's own initiative, pursuant to § 6-51-102, in
order to annex territory being used primarily for residential or agricultural
purposes; and no such ordinance to annex such territory shall become
operative during such period, except as otherwise permitted pursuant to
subdivision (a)(1)(B);

(B) If, prior to April 15, 2013, a municipality formally initiated an
annexation ordinance restricted by subdivision (a)(1)(A); and if the
municipality would suffer substantial and demonstrable financial injury if such
ordinance does not become operative prior to the effective date of Section 1 of
this act; then, upon petition by the municipality submitted prior to the effective
date of Section 1 of this act, the county legislative body may, by a majority
vote of its membership, waive the restrictions imposed on such ordinance by
subdivision (a)(1)(A); and

(2)(A) From the effective date of Section 1 of this act through May 15, 2015,
no municipality shall extend its corporate limits by means of annexation by
ordinance, pursuant to § 6-51-102, or by resolution, pursuant to §§ 6-51-104
and 6-51-105; and no annexation shall become operative during such period,
unless otherwise permitted pursuant to subdivision (a)(1)(B), (a)(2)(B), or
Section 6, or unless the owner or owners of the property give written consent
for the annexation;

(B) If, prior to the effective date of Section 1 of this act, a municipality
formally acted upon an annexation ordinance or resolution restricted by
subdivision (a)(2)(A); and if the municipality would suffer substantial and
demonstrable financial injury if such ordinance or resolution does not become
operative prior to May 15, 2015; then, upon petition by the municipality
submitted prior to May 15, 2015, the county legislative body may, by a
majority vote of its membership, waive the restrictions imposed on such
ordinance or resolution by subdivision (a)(2)(A);

(b) On or before February 15, 2015, the Tennessee advisory commission on
intergovernmental relations (TACIR) shall complete a comprehensive review and evaluation

of the efficacy of state policies set forth within title 6, chapters 51 and 58, and shall submit a written report of findings and recommendations, including any proposed legislation, to the speaker of the senate and the speaker of the house of representatives.

SECTION 2. (a) Tennessee Code Annotated, Section 6-51-102, is amended by deleting subsections (a), (c), and (d).

(b) Subsection (a) of this section prohibits any annexation by ordinance that is not both operative and effective prior to May 16, 2015.

SECTION 3. Tennessee Code Annotated, Section 6-51-102(e), is amended by deleting the language "(a)(1) or".

SECTION 4. Tennessee Code Annotated, Section 6-51-104(a), is amended by deleting the period "." and by substituting instead the following:

; provided, however, no such resolution shall propose annexation of any property being used primarily for agricultural purposes. Notwithstanding any provision of this part or any other law to the contrary, property being used primarily for agricultural purposes shall be annexed only with the written consent of the property owner or owners. A resolution to effectuate annexation of any property, with written consent of the property owner or owners, shall not require a referendum.

SECTION 5. Tennessee Code Annotated, Title 6, Chapter 51, Part 1, is amended by adding the following language as a new, appropriately designated section:

Notwithstanding any provision of this act, this part, or any other law to the contrary, any county having a metropolitan form of government may expand the area of its urban services district using any method authorized by its charter. Such expansion may also be accomplished using any method, identified by charter reference to general annexation law, that was applicable at the time the charter or amendment was approved by referendum held pursuant to Article XI, § 9 of the Tennessee Constitution and Tennessee Code Annotated, § 7-2-106(c) or § 7-2-108(a)(20).

SECTION 6. Tennessee Code Annotated, Title 6, Chapter 58, Part 1, is amended by adding the following language as a new, appropriately designated section:

A municipality may expand its urban growth boundaries to annex a tract of land without reconvening the coordinating committee or approval from the county or any other municipality if:

- (1) The tract is contiguous to a tract of land that has the same owner and has already been annexed by the municipality;
- (2) The tract is being provided water and sewer services; and
- (3) The owner of the tract, by notarized petition, consents to being included within the urban growth boundaries of the municipality.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 8. Sections 2, 3 and 4 of this act shall take effect on May 16, 2015; and all other sections of this act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 2464

PASSED: April 2, 2014

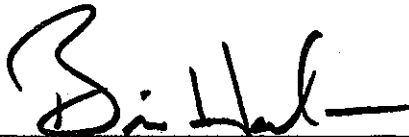


RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 15th day of April 2014



BILL HASLAM, GOVERNOR

APPENDIX D-1

ORDINANCE 14-07

AN ORDINANCE TO ANNEX CERTAIN TERRITORY SOUTHWEST OF CURRENT CORPORATE BOUNDARIES AND INCLUDE THE PARCELS MAP 59, PARCEL 200 (IN PART), PENDING RESULTS OF ANNEXATION REFERENDUM AND TO INCORPORATE SAME WITHIN THE CORPORATE BOUNDARIES OF THE TOWN OF NOLENSVILLE, TENNESSEE

WHEREAS, the Town Of Nolensville has adopted a growth management plan known as the "Urban Growth Boundary and Justification Report" and has adopted an Urban Growth Area; and

WHEREAS, the area to be annexed by this ordinance is adjacent to the Urban Growth Area of the Town of Nolensville, Tennessee, and that the property owners have requested that this area be annexed by the Town Of Nolensville as provided in Tennessee Code Annotated 6-51-105 by referendum of the qualified voters who reside in the territory proposed for annexation described as follows:

A portion of the Scales property referred to as Map 059, Parcel 00200, and including R-O-W of Sam Donald Road abutting the Scales property, Map 059, Parcel 00200, and the Jenkins property, Map 059, Parcel 00900 and the northern half of the Clovercroft Road R-O-W that abuts said Scales property as shown on Exhibit A.

WHEREAS, *Tennessee Code Annotated* Section 6-51-102 as amended requires that a plan of service be adopted by the governing body of a city prior to passage of an annexation ordinance; and that a referendum be held to approve or disapprove the annexation pursuant to Tennessee Code Annotated 6-51-105; and

WHEREAS, the proposed parcel of land being considered for annexation as part of a planned residential development that lies adjacent and contiguous of the corporate limits of the Town of Nolensville, along Sam Donald Road, and is adjacent to the Urban Growth Area; and

WHEREAS, a public hearing before this body was held on _____, 2014, to receive comments on the proposed annexation and the proposed plan of services for the area to be annexed, pursuant to a public notice published in the *Williamson A.M.* section of the *Tennessean* on _____; and

WHEREAS, the proposed plan of services for this area has been endorsed by the Nolensville Planning Commission (Attachment B); and

WHEREAS, it now appears that the prosperity of this town and of the territory herein described will be materially retarded and the safety and welfare of the inhabitants and property therein endangered if such territory is not annexed; and

WHEREAS, the annexation of such territory is deemed necessary for the welfare of the residents and property owners therein and of this town as a whole; and

WHEREAS, the property owners of these said parcels have requested that these properties be so annexed into the corporate boundaries of the Town of Nolensville, Tennessee, pending a majority vote for annexation from qualified voters of this property;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF NOLENSVILLE, TENNESSEE, AS FOLLOWS:

SECTION 1. Pursuant to authority conferred by Section 6-51-102, Section 6-51-104 and Section 6-51-105 Tennessee Code Annotated, there is hereby annexed to the Town of Nolensville, Tennessee, and incorporated within the corporate boundaries thereof, the territory adjoining the present corporate boundaries and more particularly described in Attachment A, and shown on Attachment B hereto, said attachments being made a part of this ordinance by reference; and

SECTION 2. The Town of Nolensville hereby requests that the Williamson County Election Commission hold an election for approval or disapproval of annexation by the qualified voters of the territory referenced as Map 59, Parcel 200, and

SECTION 3. All of the property as described in this ordinance of annexation shall be zoned Suburban Residential (SR) with a maximum density of 1.4 dwelling units per acres effective in accordance with Section 3 below.

SECTION 4. That this ordinance shall take effect 30 days after its final passage, whichever occurs later, the general welfare of the Town Of Nolensville, Williamson County, Tennessee, requiring it.

PASSED: 1st reading _____
2nd reading _____

PLANNING COMMISSION _____

PUBLIC HEARING
Notice published in: Williamson A.M.
Date of publication: _____
Date of hearing: _____

NOTICE OF PASSAGE
Notice published in: _____
Date of publication: _____

EFFECTIVE DATE _____

MAYOR JIMMY ALEXANDER

RECORDER CINDY LANCASTER

APPROVED AS TO FORM:

CITY ATTORNEY Robert J. Notestine, III

DRAFT

ATTACHMENT A

BOUNDARY DESCRIPTION – ANNEXATION AREA TOWN OF NOLENSVILLE, TENNESSEE

A portion of the Scales property referred to as Map 059, Parcel 00200, and including R-O-W of Sam Donald Road abutting the Scales property, Map 059, Parcel 00200, and the Jenkins property, Map 059, Parcel 00900 and the northern half of the Clovercroft Road R-O-W that abuts said Scales property.

APPENDIX D-2

ATTACHMENT B

A RESOLUTION ADOPTING A PLAN OF SERVICE FOR THE ANNEXATION OF MAP 059, PARCEL 00200 AND CERTAIN RIGHT-OF-WAY ON SAM DONALD ROAD AND CLOVERCROFT ROAD; WILLIAMSON COUNTY TAX MAPS BY THE TOWN OF NOLENSVILLE, TENNESSEE

WHEREAS, the Town Of Nolensville has adopted a growth management plan known as the "Urban Growth Boundary and Justification Report" and has adopted an Urban Growth Area; and **WHEREAS**, the area to be annexed by this ordinance is adjacent to the Urban Growth Area of the Town of Nolensville, Tennessee, and that the property owners have requested that this area be annexed by the Town Of Nolensville as provided in Tennessee Code Annotated 6-51-105 by referendum of the qualified voters who reside in the territory proposed for annexation described as follows:

A portion of the Scales property referred to as Map 059, Parcel 00200, and including R-O-W of Sam Donald Road abutting the Scales property, Map 059, Parcel 00200, and the Jenkins property, Map 059, Parcel 00900 as shown on Exhibit A

WHEREAS, *Tennessee Code Annotated* Section 6-51-102 as amended requires that a plan of service be adopted by the governing body of a city prior to passage of an annexation ordinance; and,

WHEREAS, the proposed parcel of land being considered for annexation as part of a planned residential development that lies adjacent and contiguous of the corporate limits of the Town of Nolensville, along Sam Donald Road,

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE TOWN OF NOLENSVILLE, TENNESSEE:

Section 1. Pursuant to the provisions of Tennessee Code Annotated, Section 6-51-102, there is hereby recommended for adoption by the Board of Mayor and Aldermen, for the area bounded as described above, the following plan of service to inform interested residents and property owners in the area.

Location

The proposed annexation area is located southwest of the present corporate limits and is adjacent and contiguous to Sam Donald Road properties within the Corporate Limits of the Town of Nolensville and immediately adjacent the existing Urban Growth Boundary of the Town of Nolensville, Tennessee. The proposed annexed area contains approximately 180 (more or less) acres that is planned for residential development.

Existing Land Use

The annexed area contains two single-family residences and mostly young woodlands.

Provision of Services to the Annexed Area

I. Water Service:

The entire area is located within the Nolensville/College Grove Utility District water service area. The Nolensville/College Grove Utility District has full responsibility for the expansion, operation and maintenance of their utility system; however, due to the proximity of Bent Creek Development which obtains water services through Metro Water and Sewer Services, any future developer of the property will be responsible for obtaining necessary water services from either Nolensville/College Grove Utility District or Metro Water and Sewer and for extending new water lines and installing fire hydrants in conformance with the rules and regulations of the appropriate utility and the Town of Nolensville at the time of construction.

II. Sewer Service:

The entire area is located within the Metro Nashville sewer service area. Metro Nashville has full responsibility for the expansion, operation and maintenance of their utility system. The developers of these properties will be required to work with the Metro Nashville sewer department to coordinate the provision of sewer to this area and install the necessary sewer lines.

III. Police Protection:

This area is currently served by the Williamson County Sheriff's Department. Upon annexation, the Town's existing police force will be required to patrol and respond to this area. Regular patrolling, radio responses to calls and other routine police services, using present personnel and equipment, will be provided on the effective date of annexation and the town will provide a level of service comparable to other developed areas in the Town.

IV. Fire Protection:

This area is currently served by the Nolensville Volunteer Fire Department and will continue to be served upon annexation. Fire protection by the present personnel and the equipment of the firefighting force, within the standard limitations of available water and distances from existing fire stations, will be provided on the effective date of annexation. All residences and property to be served in the annexed area are within 5 miles of the fire station.

V. Emergency Medical Services:

No additional services or cost anticipated.

VI. Parks and Recreation:

This area is currently served by the Williamson County Parks and Recreation Department, as is the current Town corporate limits. No additional park facilities are anticipated due to this area being annexed.

VII. Road Maintenance:

Routine road maintenance service (paving, pot-hole repair, striping, signs, and R-O-W mowing) will begin in the annexed area on the effective date of annexation for all existing roads that are officially accepted and maintained by the Town in a manner consistent with current service delivery in the Town limits pending agreement with Williamson County. Refuse collection will continue to be provided by private haulers in a manner consistent with collection inside the Town limits.

VIII. Planning and Codes Oversight:

All planning, zoning, land development regulations, and building codes of the Town will extend to the annexed area on the effective date of annexation. Existing personnel will handle oversight and enforcement of existing regulations.

IX. Subdivision Plan Approvals & Future Zoning of Area:

The development of public improvements in any new subdivision in the area will occur at developer expense in accordance with the current Town subdivision regulations and construction standards. The final platting of lots, bonding of improvements, and future acceptance of improvements for perpetual maintenance shall be carried out in accordance with Town policies. On the effective date of annexation, the installation of new streets, curb and gutter sections, storm drainage facilities, street lighting, underground electrical service and other public improvements in subdivisions (or new sections thereof) authorized by the Nolensville Planning Commission will be carried out by the developer at his expense using the Town's current subdivision regulations and construction standards. The final platting of lots, bonding of improvements, and future acceptance of improvements for perpetual maintenance shall be carried out in accordance with Town policies.

The subject property shall be zoned SR – Suburban Residential for single-family housing, and the zoning map will be amended as of the effective date of the ordinance approving this annexation.

X. Code Enforcement:

All inspection services now provided by the Town (building, plumbing, mechanical, gas, and other municipal codes and ordinances) will begin in the area for all new structures with permits issued by the Town after the effective date of annexation.

XI. Public Library:

Residents of the annexed area, if any, will have full access to the Williamson County Library located on Oldham Road. The library continues to place a high priority on expanding the number of collection items available to patrons.

XII. Revenues (Taxes and Fees)

The Primary sources of revenues that will be used to pay for the expanded services include property taxes, in addition to commercial building permit, adequate facilities tax and impact fee for new construction. The annual tax bill for a \$300,000 residential structure is estimated to be \$113.00 under the current Town tax rate of \$0.15 per \$100 of assessed value.

XIII. Natural Gas

Gas service within the Town is provided by Atmos Energy under a franchise agreement with the Town. The extension of gas service into the annexed areas, if needed, will be done under the policies established by the gas company, in accordance with the Franchise agreement.

XIV. Electric Service

The area to be annexed will receive electric service from Middle Tennessee Electric Company.

XV. Refuse Collection

The Town currently does not provide refuse service for existing residents and therefore cannot extend these services to the newly annexed areas. Property owners will continue to utilize private hauling services.

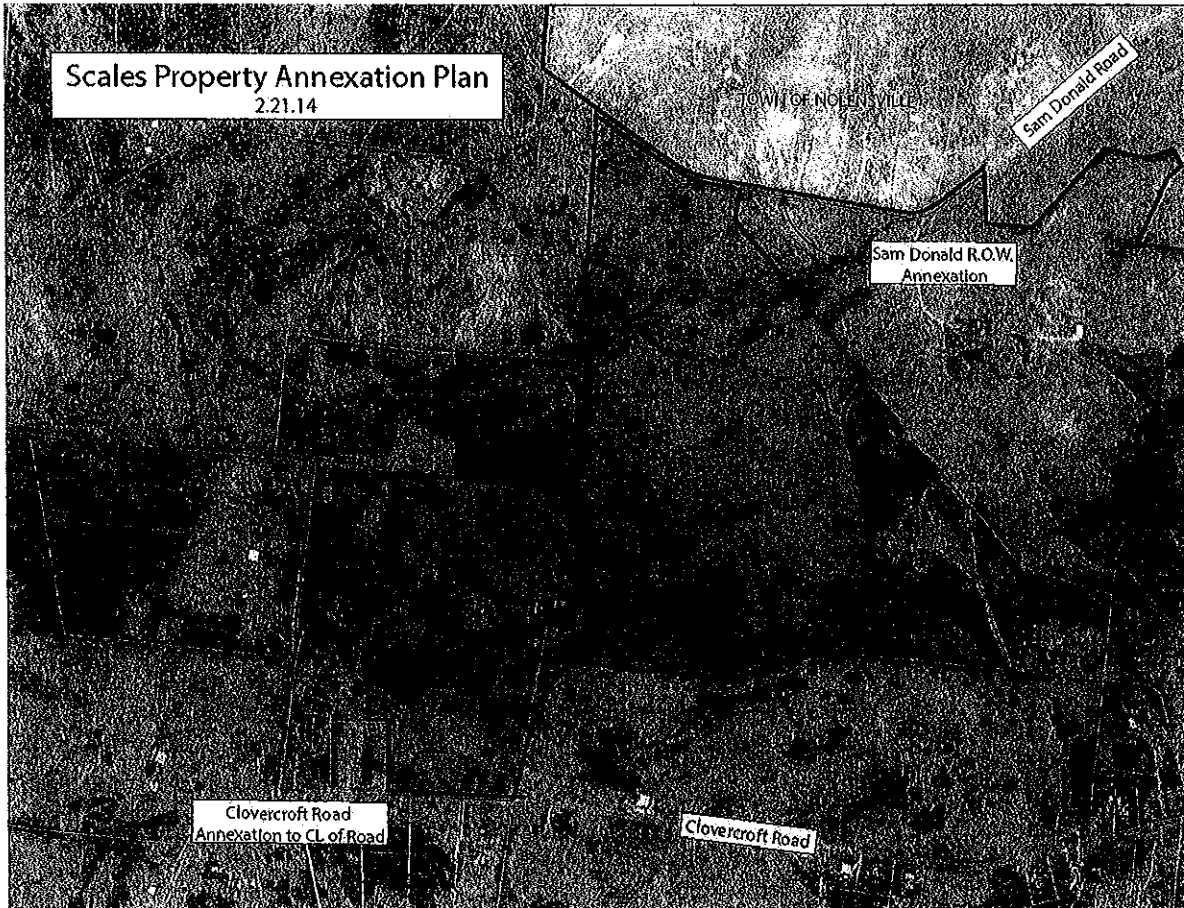
XVI. Street Lighting

In all newly developed areas all street lighting will be in compliance within the existing subdivision regulations and zoning ordinance of the Town Of Nolensville. Street lights for all existing roads will be installed in a manner consistent with current service delivery in the town limits.

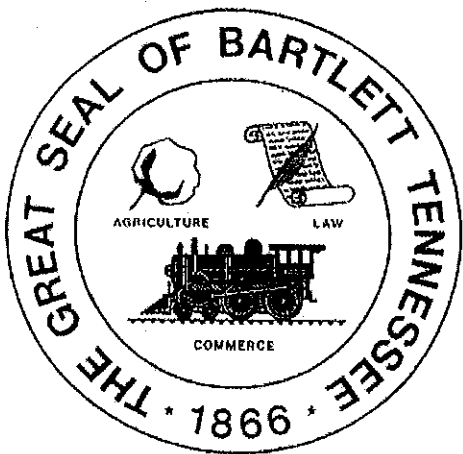
RESOLVED this 11th day of March, 2014

SECRETARY ROBERT HAINES

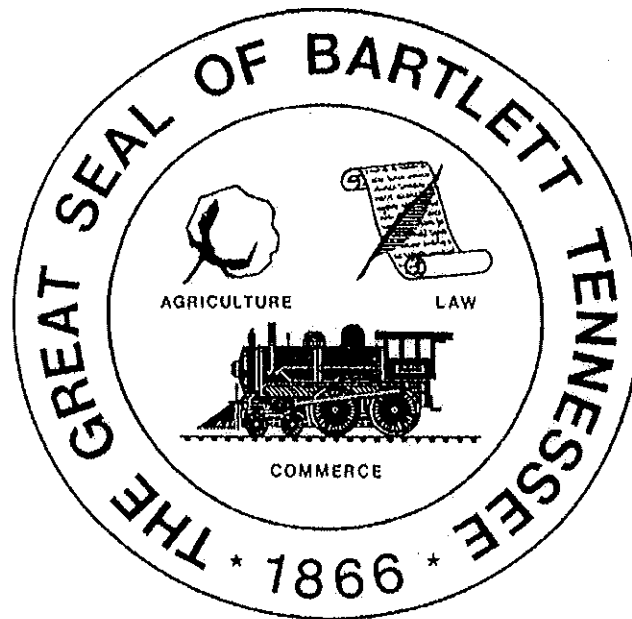
(Attachment B Continued)
Exhibit A of Plan of Services
Parcels to be Annexed



City of Bartlett, Tennessee Annexation Plan of Services



ANNEXATION PLAN OF SERVICES PROPOSAL TO THE PLANNING COMMISSION



Monday, October 1, 2012

Bartlett Board of Mayor and Aldermen

A. Keith McDonald, Mayor

W.C. Pleasant, Alderman Position 1

Emily Elliott, Alderman Position 2

David Parsons, Alderman Position 3

Bobby Simmons, Alderman Position 4

Jack Young, Alderman Position 5

Jay Rainey, Alderman Position 6

Bartlett Municipal Planning Commission

James D. Lamb, Chairman

Russ Abernathy, Vice Chairman

James Caughman III

Sr. Pastor Walter Peggs

John Roberts

Ron Sandlin

Dale Stover

Jack Young

Chief Administrative Officer, Mark Brown

Planning Director, Terry Emerick

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Introduction: The purpose of this agenda item is for the Planning Commission to make a recommendation to the Board of Mayor of Aldermen (BMA) on items associated with the annexation of 3,315+/- acres in Bartlett's Reserve Area. Five (5) study areas are being considered for annexation, with 852 dwellings and an estimated population of 2,287. The annexation of each study area involves three separate components:

1. A resolution for the proposed Plan of Services (POS) for the subject property.
2. An ordinance to incorporate the subject property within the corporate boundaries of the City of Bartlett.
3. An ordinance to designate the zoning of the subject property.

Analysis: The Planning Commission has grounds to recommend to the BMA that annexation study Areas A, B, C, D, and F be annexed into the City, as all are within the Reserve Area and the proposed zoning of the areas is consistent with either the Land Use Plan or approved developments in the area. The City has not exceeded the 25% acreage cap on City-initiated annexations within a two-year period as these areas total 20.4% of the existing area of the city, and services can be provided to the study areas per the Plan of Services. The BMA will consider the fiscal impact of the annexation during its consideration of the annexation ordinances and the Plan of Services.

The study areas are generally shown on the annexation map. The annexation would become effective thirty (30) days after its passage on the third and final reading by the BMA, which is tentatively set for November 13, 2012 with an effective date of December 31, 2012.

Background: Although the Bartlett Reserve Area (described herein) was approved in 2000, there is no formal annexation schedule for annexing certain areas, written policy how/when that should take place or strategy in place for systematic annexation of the entire Reserve Area. Annexation is the process used to expand municipal limits as development occurs and the need for urban services increases. The City of Bartlett has grown significantly over the past four decades through the annexation of developing land.

Discussion: A municipality will annex for many reasons, such as to provide urban services where needed, to increase size and population, to ensure unified planning and zoning, to distribute the cost of services more equitably; and/or to ensure orderly future growth in accordance with City standards.

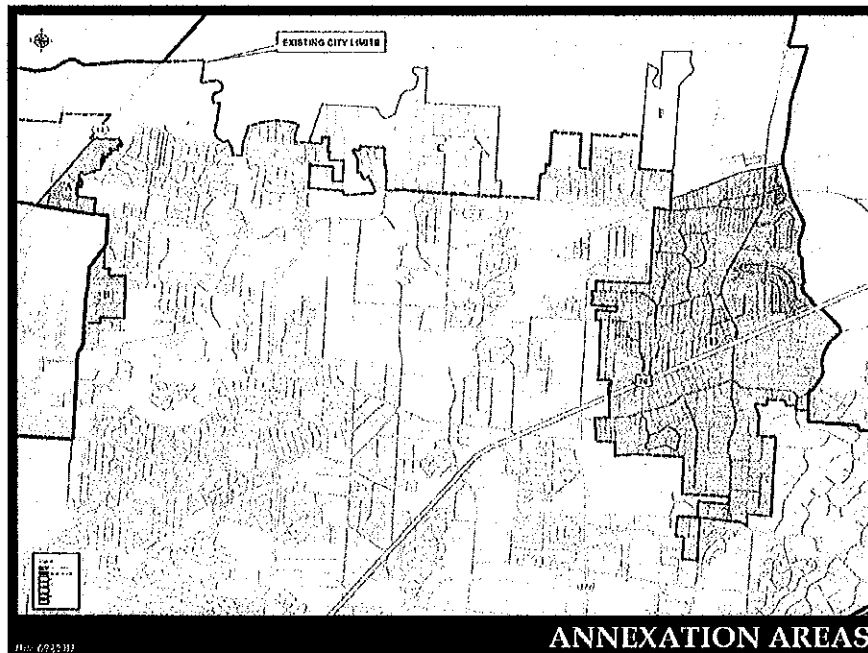
The City of Bartlett shares similar motivations for annexing the five (5) study areas. Some of the areas possess many of the suburban characteristics found in the City, including several residential neighborhoods. Other areas will be under growth pressure as the housing market recovers. Annexation would give Bartlett an opportunity to influence patterns of development through the provision of central utilities, public safety, and its zoning, building, and storm water

management regulations. In addition, the majority of residents in the Bartlett Reserve Area already enjoy many of the City's benefits and services such as employment, shopping facilities, and cultural and recreational activities.

Annexation: In 1998, the Tennessee General Assembly passed Public Chapter 1101 (PC 1101 or the Growth Policy Act). PC 1101 provided that counties and their associated municipalities were to develop countywide growth plans. These plans established Urban Growth Boundaries (UGBs) for municipalities. Bartlett calls the unincorporated land within its UGB the "Bartlett Reserve Area". Each plan had to be approved by each of the municipalities' and the county's governing bodies. Bartlett's Reserve Area was approved in 2000.

All five (5) of the study areas are located within Bartlett's Reserve Area. The specific property is not subject to annexation by another municipality. Study Areas A, B, C, D, and F are contiguous with land currently within Bartlett and therefore may be annexed by the City without being considered a corridor annexation. The proposed annexation ordinances for each study area will be considered by the BMA at a public hearing.

Zoning: As part of the annexation process, a zoning classification must be designated for the property. The proposed zoning classifications are either consistent with the Land Use Plan, or match existing (or approved) development patterns. The proposed ordinance to zone each study area will be considered by the BMA at a public hearing on annexation.



Plan of Services (POS): State law TCA 6-51-102 requires all annexations include a Plan of Services (POS). The POS outlines those services that will be made available to the land being annexed and the timeframe within which services and/or amenities will be provided.

The principal purpose for a POS is to provide the Administration with an analysis of the financial impact involved in an annexation, as well as information useful in incorporating the required public improvements into the City's Capital Improvements Program.

The POS must meet the State's requirements regarding municipal annexation of any territory by the City. A proposed POS for each of the five (5) study areas can be found in this report. This document will be formally considered by the BMA via resolution and a public hearing.

City departments have prepared cost estimates for the delivery of service to each study area. The BMA will consider the fiscal impacts (cost compared to revenue, phasing plan) of the plans of service as it considers the annexations.

Summarized Plan of Services

PLAN OF SERVICE	TIMEFRAME	ADDITIONAL PERSONNEL	OPERATING	CIP
<u>Police Protection</u> - Police Coverage will be provided at service levels currently provided in the city.	Upon Effective Date of Annexation	Four (4) additional officers. Two (2) positions included in FY 2013 Budget.	\$230,840/year	\$244,800/ Cars and equipment in year one.
<u>Fire and Emergency Response</u> - Coverage will be provided by the City's Fire Department.	Upon Effective Date of Annexation	Included in FY 2013 Budget	Operating with current personnel	N/A
<u>Solid Waste & Trash Collection</u> - Residential households will receive weekly curbside trash collection. - Weekly pick-up information will be provided when the containers are delivered. - Curb side leaf collection will be provided during the fall season.	Upon Effective Date of Annexation	Four (4) drivers and Three (3) Contract Laborers	\$362,960/year	\$588,000/ Packers Boom Truck
<u>Parks</u> - Freeman Smith Park in area D has been maintained by Bartlett Parks and Recreation Department. - Blue Lagoon Park and city owned property will be annexed in area F.	Currently Maintained	None	Operating with current personnel	N/A

<u>Animal Control</u> - Animal control and safety will be provided to ensure health, safety, and welfare of animals. - Residents will have access to Bartlett Animal Shelter services. - Will respond to rabies control, bite calls, animal attacks, cruelty and neglect investigations, injured animal rescues, animal placement/adoption, and disaster rescue.	Upon Effective Date of Annexation	Contract Laborers	\$31,600/ year contract labor, \$11,950/ equipment	N/A
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Summarized Plan of Services Continued

PLAN OF SERVICE	TIMEFRAME	ADDITIONAL PERSONNEL	OPERATING	CIP
<u>Street Maintenance</u> - City will assume responsibility for repair, sweeping and maintenance of all paved public streets within the annexed area. - Street name and traffic regulation signs will also be maintained and/or installed where appropriate. - Streets constructed after annexation date will be in accordance with City standards and will incorporate thoroughfare routes and interconnectivity as outlined in the City's Major Road Plan. - Street Lights will be installed according to city policies and subdivision contracts.	Upon Effective Date of Annexation	N/A	N/A	As determined to be included in the city's annual paving program.
<u>Water and Sewer</u> - The city currently maintains public water and sewer lines in areas C and D. - Residents will be notified in advance of any changes in billing for services received from MLGW or Memphis. - If property is serviced by an on-site septic system, it shall remain until sewer is available. - Extensions of water or sanitary sewer system would be in accordance with City policy and procedures and as development occurs.	Upon Effective Date of Annexation	None	N/A	\$400,000
<u>Management of Storm Water Drainage System/ Ditch</u> - City will manage storm water drainage if there is public runoff water into a ditch or other drainage way (i.e. from public roads or other public land areas). - City will provide technical advice if the runoff originates solely from private property.	Upon Effective Date of Annexation	None	N/A	N/A

STUDY AREAS APPENDIX

Five Year Financial Summary of Annexation Areas

	EXPENDITURES	REVENUE
Area A	36,250	58,360
Area B	11,800	68,794
Area C	57,300	415,204
Area D	5,512,370	5,562,138
Area F	-	-
TOTAL	5,617,720	6,104,496

Annexation during the 2012 calendar year has no effect on school district boundaries. Bartlett and its entire Reserve Area are served by the Shelby County School District. In October 2011, Bartlett hired a consultant to study the feasibility of a municipal school district. The study was completed and made available in January 2012. If the City creates its own school system, properties within the City limits would be part of that system.

Building and Code inspection services will be provided by the City on the effective date of annexation. If a new resident/property/business owner has an active building permit at the time of annexation, he or she should contact the issuing agency.

City property taxes will become effective as of January 1st the year following annexation. Bills would be mailed to the owner of record as of January 1. In November, new citizens are responsible for coordinating with their mortgage company to ensure the escrow reflects this change.

As part of the annexation process, property annexed into Bartlett falls under the City of Bartlett Zoning Ordinance and must be classified accordingly. To change from the current Shelby County Zoning classification to Bartlett Zoning districts several factors are considered. These include the Bartlett Comprehensive Land Use Plan, existing development and lot sizes, existing and future road network, and other infrastructure.

Area A is currently zoned A-G (Agricultural) and RS-10 along Highway 14 and is in single family residential use zoning. It is recommended to annex Area A in the RS-15 zoning district.

Area B, on the east side of Billy Maher Road, is currently in the A-G (Agricultural) District and is mostly single family residential in use. It is recommended to come into the city in the RS-18 zoning district, consistent with Bartlett zoning to the north and east.

Area C, north of Old Brownsville Road, is currently in the A-G (Agricultural) District and is developed in single family residential use on large lots. It is recommended to be zoned to the RS-18 district upon annexation.

Area D is the largest and most complex of the areas and is currently zoned by Shelby County with the following districts: A-G (Agricultural), RS-10 (Single family residential), I-L (Light Industrial) and C-L (Local Commercial). Most of this area is zoned A-G and recommended to be changed to the R-E District. Most of the existing RS-10 zoning will change to RS-15. The areas currently zoned C-L will remain as such. Areas near the railroad tracks zoned I-L will be changed to OR-1. A small area between Baylor Road and Old Brownsville Road is recommended for I-P to accommodate an existing use.

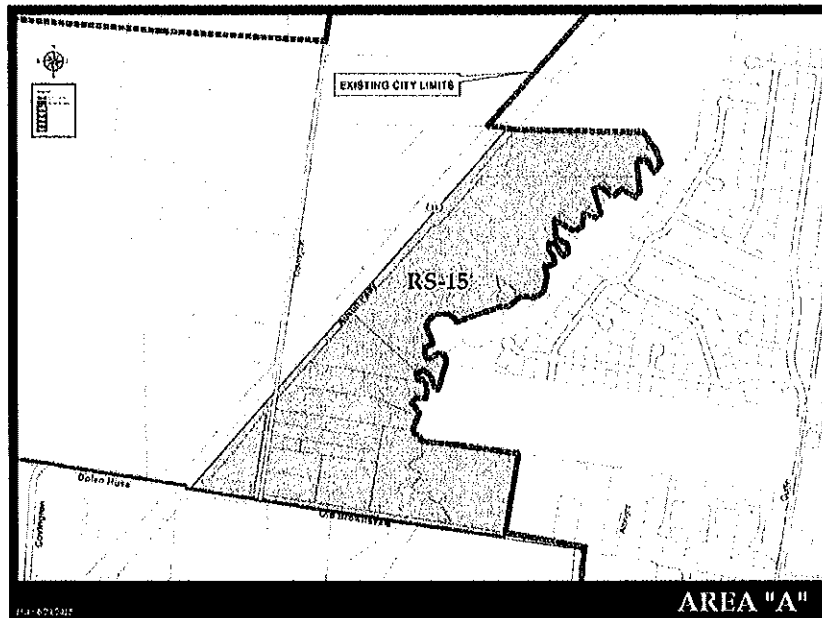
Area F is the city owned parcel containing Blue Lagoon Park and is currently zoned A-G (Agricultural) and is recommended to be changed to POS (Public Open Space) under Bartlett Zoning.

The recommended zoning is indicated on zoning maps for each of the five areas to be annexed and will be included as part of the annexation ordinance

Area A Annexation Plan of Services

Area A is generally bounded by the existing city limits on the east and north and Highway 14 (Austin Peay Highway) on the west. The area consists of 99 acres in 14 parcels. Most of the land is residential. There are 10 houses on large lots off of Old Covington Pike with a 2010 Census count of 29 persons. Austin Peay Highway on the west and Old Brownsville Rd. provide access to the area.

The county zoning for this area is AG (Agricultural) except for a strip of RS-10 along either side of Austin Peay Highway. It is recommended the area be rezoned to the RS-15 zoning district upon annexation.



Proposed Services

A) Sewer Service

It is recommended that the extension of sewer service be provided as development occurs and/or when economically feasible. Properties not served by municipal sewer service will remain private until the city determines the need to extend sewer service into the area. Properties will then be required to connect to the extended sewer system according to the City Sewer Ordinance.

B) Water Service

Municipal water service falls into two types; water consumption and fire protection. There would be an initial cost of \$25,000, included in the Capital Improvements Budget to change out meters for these customers. Bartlett would purchase water from MLGW but meter the usage with Bartlett water rates. Existing water services in this area is adequate and water main extension costs for fire protection and residential users will be borne by the developers through the subdivision/contract process.

C) Emergency Services

Fire Protection and Ambulance

The Bartlett Fire Department would provide fire and ambulance services from existing stations. The city has included additional fire personnel in the fiscal year 2013 budget.

Police Protection

The Bartlett Police Department projects their need to service all of the annexation reserve areas south of the Loosahatchie River would require four (4) additional police officers and this is reflected in the cost for Area D. Two (2) additional officers were included in the fiscal year 2013 budget to help serve all proposed annexed areas.

D) Solid Waste

Area A does not have a large number of homes and may be serviced without added personnel or equipment. At a cost of \$50 per garbage cart with one per household, cost is estimated at \$500.

E) Street Lighting

Street lights will be installed according to city policies and subdivision contracts.

F) Street Maintenance

There are no improved streets (curb, gutter, and sidewalk) in Area A; these would be installed as future development occurs. Paving needs over the next five years will be analyzed, established, and included in the annual paving program. Grass cutting along street R.O.W. can be absorbed by existing crews. The 0.62 miles of additional roadway will add to the periodic need for storm response and winter de-icing.

G) Drainage

Storm water drainage is largely handled through the natural drainage system and roadside swales. Drainage improvements will be required for new development.

H) Parks

This area is currently served by existing parks, therefore it is not anticipated that any additional parks expenses will occur as a result of annexation.

Revenues

The primary sources of revenue in this area will be in the form of State share and property taxes. Additional revenues will come from garbage fees, city service fees, and auto registration.

A) State Share Taxes

Based on 2010 Census Reports, there are 29 people living in Area A at \$106.30 per capita, which would generate \$3,082.70.

B) Property Taxes

Property assessments in Area A are \$484,825 and an additional \$27,700 of assessed value under the state Greenbelt provisions. Together these values would produce \$7,637 in revenue based on the current tax of \$1.49 per \$100 of assessed value.

C) Solid Waste Fees

The current garbage fee is \$22.00 per household per month. The 10 houses in Area A would generate \$2,640 per year.

D) City Service Fee

There is a city service fee of \$2.50 per month per household. This fee will generate \$300 per year.

E) Auto Registration

Based on an average of 2 cars per house, this will generate \$500 per year.

F) Building Permits

Due to economic conditions and the limited potential for future development, there will be no projection of building permit fees for Area A.

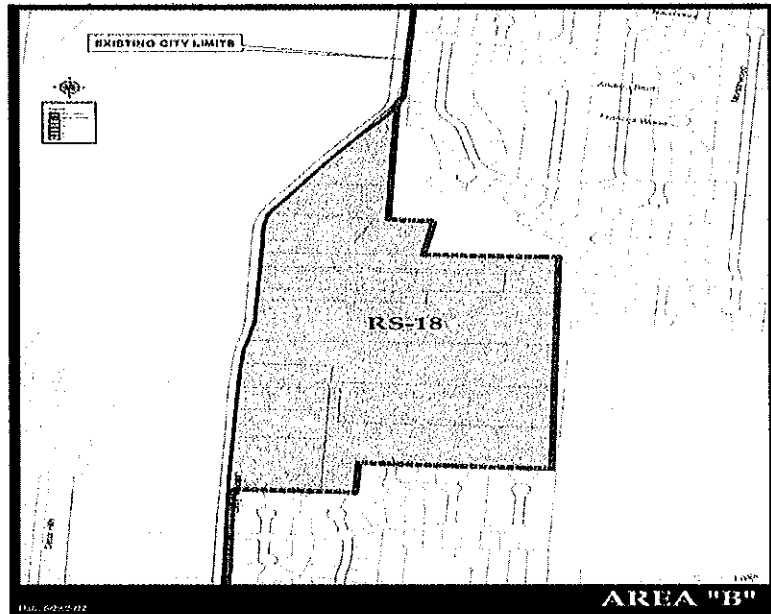
Proposed Budget

Table 1: Operating Funds Analysis Area A

<u>REVENUES</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>5 YEAR</u>
State Share Taxes	-	-	-	-	-	-
State Sales, Beer Tax	-	1,983	1,983	1,983	1,983	7,931
TVA In-Lieu	-	297	297	297	297	1,187
State Street Aid	-	803	803	803	803	3,213
Property Taxes	-	7,637	7,637	7,637	7,637	30,548
Solid Waste	1,320	2,640	2,640	2,640	2,640	11,880
City Service Fee	150	300	300	300	300	1,350
Auto Registration	250	500	500	500	500	2,250
Building Permits	-	-	-	-	-	-
TOTALS	1,720	14,160	14,160	14,160	14,160	58,360
<u>EXPENDITURES</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>5 YEAR</u>
Fire and Ambulance	-	-	-	-	-	-
Police	-	-	-	-	-	-
Solid Waste	2,000	3,500	3,500	3,500	3,500	16,000
General Maintenance	500	1,000	1,000	1,000	1,000	4,500
Grounds Maintenance	1,750	3,500	3,500	3,500	3,500	15,750
Street Paving	-	-	-	-	-	-
Street Lights	-	-	-	-	-	-
Parks	-	-	-	-	-	-
TOTALS	4,250	8,000	8,000	8,000	8,000	36,250

Area B Annexation Plan of Services

Area B is a small area on the west side of Bartlett, east of Billy Maher Road. It consists of 85 acres with 11 houses on large lots and with a 2010 Census count of 27 persons. Under Shelby County zoning it is in the AG (Agricultural) zoning district. It is recommended the area be rezoned to the RS-18 zoning district upon annexation.



Proposed Services

A) Sewer Service

It is recommended that the extension of sewer service be provided as development occurs and/or when economically feasible. Properties not served by municipal sewer service will remain private until the city determines the need to extend sewer service into the area. Properties will then be required to connect to the extended sewer system according to the City Sewer Ordinance.

B) Water Service

Municipal water service falls into two types; water consumption and fire protection. There would be an initial cost of \$20,000, included in the Capital Improvements Budget, to change out meters for these customers. Bartlett would purchase water from MLGW but meter the usage with Bartlett water rates. Existing water services in this area is adequate and water main extension costs for fire protection and residential users will be borne by the developers through the subdivision/contract process.

C) Emergency Services

Fire Protection and Ambulance

The Bartlett Fire Department would provide fire and ambulance services from existing stations. The city has included additional fire personnel in the fiscal year 2013 budget.

Police Protection

The Bartlett Police Department projects their need to service all of the annexation reserve areas south of the Loosahatchie River would require four (4) additional police officers and this is reflected in the cost for Area D. Two (2) additional police officers were included in the fiscal year 2013 budget. See area A.

D) Solid Waste

Area B does not have a large number of homes and may be serviced without added personnel or equipment. At a cost of \$50 per garbage cart with one per household, cost is estimated at \$550.

E) Street Lighting

Area B has 0.86 miles for Billy Maher Road frontage but it is proposed to not annex this street right-of-way and therefore street lights will not be installed.

F) Street Maintenance

Due to the city limits running east of the right-of-way, street maintenance of this area would remain the responsibility of Shelby County.

G) Drainage

There is a small drainage way through the middle of Area B and a larger drainage ditch along the east side. Drainage development will be required for new development.

H) Parks

This area is currently served by existing parks, therefore it is not anticipated that any additional parks expenses will occur as a result of annexation.

Revenues

The primary sources of revenue in this area will be in the form of state share and property taxes. Additional revenues will come from garbage fees, city service fees, auto registration, and building permit fees.

A) State Share Taxes

Based on 2010 Census Reports, there are 27 people living in Area B at \$106.30 per capita, which would generate \$2,870.10.

B) Property Taxes

Area B shows an assessed value of \$676,750 which would yield city property tax of \$10,084.

C) Solid Waste Fees

The current garbage fee is \$22.00 per household per month. The 11 houses in Area A would generate \$2,904 per year.

D) City Service Fee

There is a city service fee of \$2.50 per month per household. This fee will generate \$330 per year.

E) Auto Registration

Based on an average of 2 cars per house, this will generate \$550 per year.

F) Building Permits

Due to economic conditions and some drainage costs, there will be no projection of building permit fees for Area B.

Proposed Budget

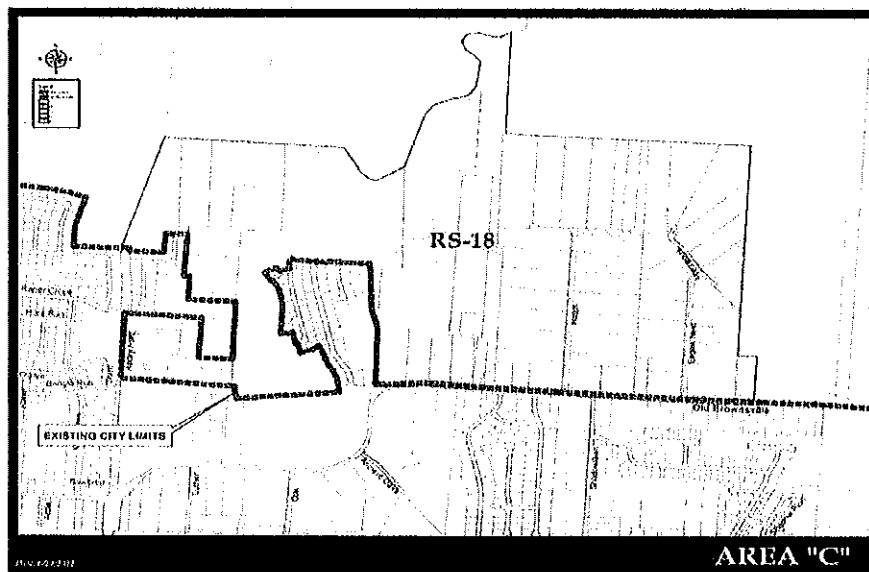
Table 1: Operating Funds Analysis Area B

<u>REVENUES</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>5 YEAR</u>
State Share Taxes	-	-	-	-	-	-
State Sales, Beer Tax	-	1,846	1,846	1,846	1,846	7,384
TVA In-Lieu	-	276	276	276	276	1,105
State Street Aid	-	748	748	748	748	2,992
Property Taxes	-	10,084	10,084	10,084	10,084	40,336
Solid Waste	1,452	2,904	2,904	2,904	2,904	13,068
City Service Fee	165	330	330	330	330	1,485
Auto Registration	225	550	550	550	550	2,425
Building Permits	-	-	-	-	-	-
TOTALS	1,842	16,738	16,738	16,738	16,738	68,794
<u>EXPENDITURES</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>5 YEAR</u>
Fire and Ambulance	-	-	-	-	-	-
Police	-	-	-	-	-	-
Solid Waste	1,550	2,000	2,000	2,000	2,000	9,550
General Maintenance	250	500	500	500	500	2,250
Grounds Maintenance	-	-	-	-	-	-
Street Paving	-	-	-	-	-	-
Street Lights	-	-	-	-	-	-
Parks	-	-	-	-	-	-
TOTALS	1,800	2,500	2,500	2,500	2,500	11,800

Area C Annexation Plan of Services

Area C is generally north of Old Brownsville Road and south of the Loosahatchie River. It is characterized by 2 large lot subdivisions off of Hatch Road and Eagles Nest. The area consists of 629 acres and 72 parcels. The 2010 Census indicates that this area has 66 housing units and a population of 182.

It is currently in the A-G (Agricultural) District and is developed in single family residential use on large lots. It is recommended the area be rezoned to the RS-18 zoning district upon annexation.



Proposed Services

A) Sewer Service

It is recommended that the extension of sewer service be provided as development occurs and/or when economically feasible. Properties not served by municipal sewer service will remain private until the city determines the need to extend sewer service into the area. Properties will then be required to connect to the extended sewer system according to the City Sewer Ordinance.

B) Water Service

City water service is provided by a 12" main in Old Brownsville Road and along 6' lines along Hatch Road and Eagles Nest. A water line extension along the east side of Rockyford Road will serve the area and cost approximately \$150,000 and is included in the Capital Improvements Budget.

C) Emergency Services

Fire Protection and Ambulance

The Bartlett Fire Department would provide fire and ambulance services from existing stations. The city has included additional fire personnel in the fiscal year 2013 budget.

Police Protection

The Bartlett Police Department projects their need to service all of the annexation reserve areas south of the Loosahatchie River would require four (4) additional police officers and this is reflected in the cost for Area D. Two (2) additional police officers were included in the fiscal year 2013 budget. See area A.

D) Solid Waste

Areas C does not have a large number of homes and may be serviced without added personnel or equipment. At a cost of \$50 per garbage cart with one per household, cost is estimated at \$3,300.

E) Street Lighting

Street lights will be installed according to city policies and subdivision contracts.

F) Street Maintenance

There are no improved streets (curb, gutter, and sidewalks) in the 1.3 street miles in Area C. These would be installed as future development occurs. Paving needs over the next five years will be analyzed, established, and included in the annual paving program.

G) Drainage

Storm water drainage is largely handled through the natural drainage system and roadside swales or ditches. Drainage improvements will be required for new development.

H) Parks

This area is currently served by existing parks, therefore it is not anticipated that any additional parks expenses will occur as a result of annexation.

Revenues

The primary sources of revenue in this area will be in the form of State share and property taxes. Additional revenues will come from garbage fees, city service fees, auto registration, and building permit fees.

A) State Share Taxes

With a population of 182, Area C would generate \$19,346.60 based on \$106.30 per capita.

B) Property Taxes

Property assessment in this area is \$3,954,350. This value would yield \$58,920 in property tax.

C) Solid Waste Fees

The current garbage fee is \$22.00 per household per month. The 66 houses in Area C would generate \$17,424 per year.

D) City Service Fee

There is a city service fee of \$2.50 per month per household. This fee will generate \$1,980 per year.

E) Auto Registration

Based on an average of 2 cars per house, this will generate \$3,300 per year.

F) Building Permits

Due to economic conditions, there will be no projection of building permit fees for Area C.

Proposed Budget

Table 1: Operating Funds Analysis Area C

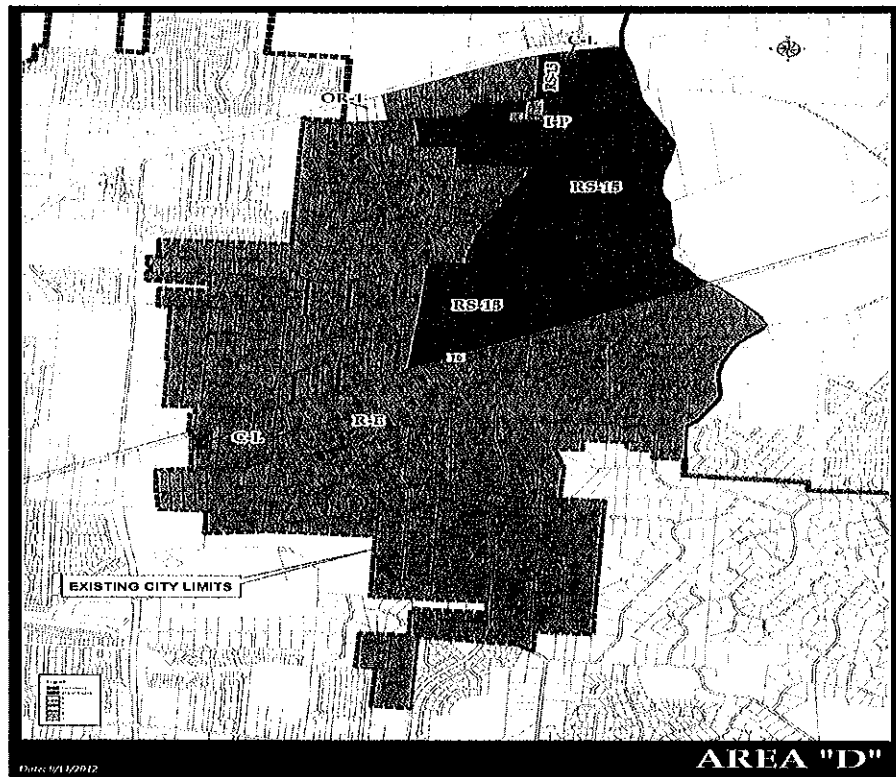
<u>REVENUES</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>5 YEAR</u>
State Share Taxes	-	-	-	-	-	-
State Sales, Beer Tax	-	12,443	12,443	12,443	12,443	49,773
TVA In-Lieu	-	1,862	1,862	1,862	1,862	7,447
State Street Aid	-	5,041	5,041	5,041	5,041	20,166
Property Taxes	-	58,920	58,920	58,920	58,920	235,680
Solid Waste	8,712	17,424	17,424	17,424	17,424	78,408
City Service Fee	960	1,980	1,980	1,980	1,980	8,880
Auto Registration	1,650	3,300	3,300	3,300	3,300	14,850
Building Permits	-	-	-	-	-	-
TOTALS	11,322	100,971	100,971	100,971	100,971	415,204
<u>EXPENDITURES</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>5 YEAR</u>
Fire and Ambulance	-	-	-	-	-	-
Police	-	-	-	-	-	-
Solid Waste	7,800	9,000	9,000	9,000	9,000	43,800
General Maintenance	750	1,500	1,500	1,500	1,500	6,750
Grounds Maintenance	750	1,500	1,500	1,500	1,500	6,750
Street Paving	-	-	-	-	-	-
Street Lights	-	-	-	-	-	-
Water Operating	-	-	-	-	-	-
Parks	-	-	-	-	-	-
TOTALS	9,300	12,000	12,000	12,000	12,000	57,300

Area D Annexation Plan of Services

Area D is the large annexation reserve area on the east between the existing city limits and the Lakeland city limits. It contains 2,338 acres, 765 homes and has a population of 2,049. The northern portion is traversed by the railroad tracks and the southern portion is crossed by Highway 70. Brunswick Road is the only north/south road through Area D.

Much of the area is developed in large estate lots of 5 acres or greater, but higher density subdivisions such as Brunswick Farms are also evident. The large lots are on septic systems, while the smaller lot subdivisions are on Bartlett water and sewer. The area south of Highway 70 is developed in large estate lots, and there are several large undeveloped parcels.

The area is currently zoned by Shelby County with the following districts: A-G (Agricultural), RS-10 (Single family residential), I-L (Light Industrial) and C-L (Local Commercial). Most of this area is zoned A-G and recommended to be rezoned to the R-E District upon annexation. Most of the existing RS-10 zoning is recommended to be rezoned to RS-15. The areas currently zoned C-L will remain as such. Areas near the railroad tracks zoned I-L are recommended to be rezoned to OR-1 upon annexation. A small area between Baylor Road and Old Brownsville Road is recommended to be rezoned to I-P zoning district to accommodate an existing use upon annexation.



Proposed Services

A) Sewer Service

It is recommended that the extension of sewer service be provided as development occurs and/or when economically feasible. Properties not served by municipal sewer service will remain private until the city determines the need to extend sewer service into the area. Properties will then be required to connect to the extended sewer system according to the City Sewer Ordinance.

B) Water Service

Municipal water service falls into two types; water consumption and fire protection. Existing water services in this area are adequate and water main extension costs for fire protection and residential users will be borne by the developers through the subdivision/contract process, with the exception of a waterline upgrade on Brunswick from Old Brownsville to the railroad track. This upgrade is estimated to cost \$205,000 and is included in the CIP.

C) Emergency Services

Fire Protection and Ambulance

The Bartlett Fire Department would provide fire and ambulance services from existing stations. The city has included additional fire personnel in the fiscal year 2013 budget.

Police Protection

The Bartlett Police Department projects their need to service all of the annexation reserve areas south of the Loosahatchie River would require four (4) additional police officers at an estimated cost of \$230,840 annually. Equipment costs of \$244,800 are for vehicles and other equipment.

D) Solid Waste

The 765 homes in Area D will require the addition of 2 routes. This would generate the need for an additional crew consisting of 4 drivers and 3 contract laborers plus equipment. The addition of this crew will help with other routes in the city. The annual operating cost of the additional crew is estimated to be \$362,960. Equipment costs of \$588,000 are included. At a cost of \$50 per garbage cart with one per household, the cost of garbage carts is estimated at \$38,250.

E) Street Lighting

Street lights will be installed according to city policies and subdivision contracts.

F) Street Maintenance

Of the 21.6 miles of streets in Area D there are many that should be repaved over the next several years. North of Highway 70 there are approximately 6.5 miles of street and south of Highway 70 about 2.9 miles of street paving to consider. Costs for street repairs are included in the general maintenance costs of area D. Paving needs over the next five years will be analyzed, established, and included in the annual paving program.

G) Drainage

In the areas characterized by large estate lots, drainage is mostly handled by natural drainage ways and roadside ditches. Where smaller lot subdivisions have developed curb, gutter and drainage pipes have been installed by developers. There have been reports of some drainage/flooding issues in a portion of Brunswick Farms near Oliver Creek. Drainage improvements will be required for new development.

H) Parks

This area is currently served by existing parks, therefore it is not anticipated that any additional parks expenses will occur as a result of annexation.

I) General Maintenance

Public Works operating costs for Area D are projected at \$95,215 annually. Equipment costs of \$252,000 are included.

J) Grounds Maintenance

Public Works estimates personnel and operations costs for Area D at \$204,185 annually. Equipment costs of \$187,000 are included.

K) Animal Control

Annexation of the 3.65 square miles of Area D will warrant the need to expand current animal control capacity. Public Works estimates additional personnel and equipment costs at \$31,600 annually and first year equipment costs of \$11,950.

Revenues

The primary sources of revenue in this area will be in the form of State share and property taxes. Additional revenues will come from garbage fees, city service fees, auto registration, water tap fees, and building permit fees.

A) State Share Taxes

A portion of the sales tax revenue collected by the State is returned to municipalities on a per capita basis. Currently \$106.30 is returned to Bartlett per citizen. With a 2010 Census count of 2,049 people, \$217,809 annually should result, with some growth projected.

B) Property Taxes

The assessed value of Area D is \$52,845,600, with an additional \$914,660 in green assessed value. At \$1.49 per \$100 of assessed value the annual property tax revenue should be \$801,028. This area should show some building activity, so property tax is projected to grow.

C) Solid Waste Fees

The current garbage fee is \$22.00 per household per month. The 765 houses in Area D would generate \$201,960 per year.

D) City Service Fee

There is a city service fee of \$2.50 per month per household. This fee will generate \$22,950 per year.

E) Auto Registration

Based on an average of 2 cars per house, this will generate \$38,250 per year.

F) Building Permits

Growth projections for Area D are 20 houses each for years 1 and 2, 30 each for years 3 and 4, and 35 for year 5 with an average value of \$200,000.

G) Water Tap Fees

Annual water tap fees are estimated at \$20,000 based on projected connections to the system.

Proposed Budget

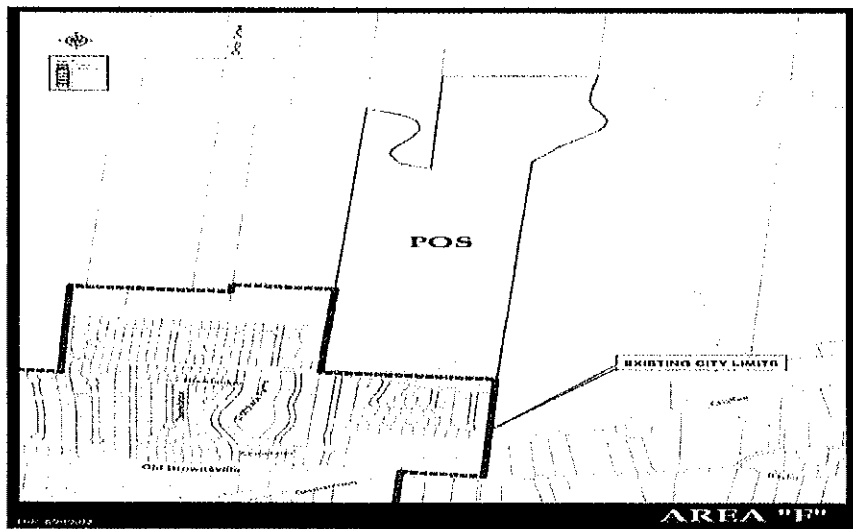
Table 1: Operating Funds Analysis Area D

<u>REVENUES</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>5 YEAR</u>
State Share Taxes						
State Sales, Beer Tax	-	140,090	140,090	140,090	140,090	560,361
TVA In-Lieu	-	20,961	20,961	20,961	20,961	83,845
State Street Aid	-	56,757	56,757	56,757	56,757	227,029
Property Taxes	-	801,028	821,855	843,223	865,147	3,331,252
Solid Waste	100,980	201,960	209,616	217,272	224,928	954,756
City Service Fee	11,475	22,950	23,820	24,690	25,560	108,495
Auto Registration	19,125	38,250	39,600	41,050	42,500	180,525
Building Permits	1,500	2,500	3,750	3,750	4,375	15,875
Water Tap Fees	20,000	20,000	20,000	20,000	20,000	100,000
TOTALS	153,080	1,304,497	1,336,449	1,367,794	1,400,318	5,562,138
<u>EXPENDITURES</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>5 YEAR</u>
Fire/EMT	-	-	-	-	-	-
Police	390,790	230,840	230,840	230,840	230,840	1,314,150
Public Works	-	-	-	-	-	-
General Maintenance	299,605	95,215	95,215	95,215	95,215	680,465
Grounds Maintenance	289,095	204,185	204,185	204,185	204,185	1,105,835
Animal Control	27,750	31,600	31,600	31,600	31,600	154,150
Water/Waste Water	-	-	-	-	-	-
Solid Waste	805,930	362,960	362,960	362,960	362,960	2,257,770
Street Paving	-	-	-	-	-	-
Street Lights	-	-	-	-	-	-
Parks	-	-	-	-	-	-
TOTALS	1,813,170	924,800	924,800	924,800	924,800	5,512,370

Area F Annexation Plan of Services

Area F consists of 164 acres of city owned parcel (D013900293) running north of the Delaney Square subdivision adjacent to the northeast corner of the city and extends to the Loosahatchie River.

This property was acquired a few years ago and contains the Blue Lagoon Park and a large amount of floodplain and land in a natural state, much of it wooded. No private development is contemplated and it is recommended the area be rezoned as POS (Public Open Space) upon annexation.



Proposed Services

TCA 6-51-102 requires a Plan of Services for each area to be annexed. Since Area F is a single, city owned park and public open space property, the required Plan of Services can be summarized as follows:

A) Water and Sewer Service

Existing city lines are available at the southwest corner of the property.

B) Emergency Services

Existing police, fire, and EMT resources will service this property.

C) Solid Waste

Existing service will extend to the park area.

D) Parks

Bartlett Parks and Recreation Department is currently responsible for Blue Lagoon Park.

Revenues

As City Park land, there will be no revenue generated from this area.

Proposed Budget

No revenue or expenses will be incurred.

APPENDIX E-2

ORDINANCE 2014-16

**TO BE ENTITLED, "AN ORDINANCE TO
ANNEX A PORTION OF THE INGRAHAM
PROPERTY, CONSISTING OF 61.01 ACRES,
LOCATED ON THE PROPERTY AT 4101
CLOVERCROFT ROAD."**

WHEREAS, the City of Franklin, Tennessee, has determined that it would be in the best interests of the City to annex 61.01 acres located south of Clovercroft Road, on a portion of the property at 4101 Clovercroft Road, Franklin City Limits border the site to the north only, and;

WHEREAS, this annexation will result in a residential development the site, and;

WHEREAS, there is a Plan of Services, an agreement regarding services and responsible parties to be considered with this annexation request, therefore:

PREMISES CONSIDERED

SECTION I: BE IT ORDAINED by the Board of Mayor and Aldermen of the City of Franklin, Tennessee, that the following described property shall be, and is hereby, annexed in and to the corporate limits of the City of Franklin, Tennessee:

Beginning at an iron rod set on the southerly line of the property conveyed to Pulte Home Corporation of record in Book 6028, Page 944 at the Register's Office for Williamson County, Tennessee also being proposed Amelia Park subdivision, to be recorded.

Thence with the southerly line of proposed Amelia Park Subdivision for the following two calls.

1. North 87 deg 37 min 38 sec East, 408.35 feet to an existing iron rod,
2. North 88 deg 02 min 09 sec East, 1557.57 feet to an existing iron rod at a corner common with the property conveyed to the Life Estate of Joan Herbert in Book 3162, Page 516;

Thence along a common line with said Joan Herbert for the following two calls.

1. South 00 degrees 39 minutes 49 sec West, 22.50 feet to an iron rod set,
2. South 89 deg 54 min 40 sec East, 410.40 feet to an existing iron rod on the westerly line of the property conveyed to Herbert Family #1, I.P. of record in Book 1777, Page 605;

Thence with the westerly line of the property conveyed to the above mentioned Herbert Family #1, L.P., South 07 deg 50 min 55 sec West, 147.88 feet to an iron rod set at a corner common with the property conveyed to Leah Anita Van Driest of record in Book 2190, page 229;

Thence with the westerly line of said Leah Anita Ban Driest, South 07 deg 22 min 00 sec West, 387.53 feet to an existing iron rod at a corner common with the property conveyed to Leah Anita Van Driest of record in Book 5589, Page 350;

Thence with the westerly line of Leah Anita Ban Driest of record in Book 5589, Page 350, South 07 deg 24 min 17 sec West, 970.68 feet to an existing iron rod on the northerly line of the property conveyed to John Walker Osborne and Lorene Osborne of record in Book 464, Page 749;

Thence with the northerly line of said John Walker and Lorene Osborne, North 83 deg. 04 min 26 sec West, 106.63 feet to an existing iron rod at a corner common with the Final Plat, Section Five, Watkins Creek Subdivision of record in Plat Book 56, Page 54;

Thence with the northerly line of Watkins Creek Subdivision for the following two calls:

1. North 82 deg 36 min 46 sec West, 445.98 feet to an existing iron rod,
2. North 83 deg 43 min 31 sec West, 867.97 feet to an iron rod set,

Thence with a severance line through the property conveyed to Ingraham Partners, L.P. of record in Book 1477, Page 267 for the following thirteen calls.

1. North 32 deg 11 min 47 sec West, 218.55 feet to an iron rod set,
2. North 49 deg 56 min 12 sec West, 102.08 feet to an iron rod set,
3. North 26 deg 53 min 29 sec West, 88.73 feet to an iron rod set,
4. North 28 deg 13 min 26 sec West, 186.51 feet to an iron rod set,
5. North 24 deg 22 min 29 sec West, 106.75 feet to an iron rod set,
6. North 24 deg 22 min 29 sec West, 92.19 feet to an iron rod set,
7. North 41 deg 46 min 47 sec West, 103.13 feet to an iron rod set,
8. North 30 deg 51 min 44 sec West, 48.17 feet to an iron rod set,
9. With a curve to the left having a radius of 365.50 feet, a curve length of 122.98 feet and a chord bearing and distance of North 00 deg 41 min 32 sec East, 122.40 feet to an iron rod set,
10. South 81 deg 00 min 14 sec West, 78.00 feet to an iron rod set,
11. With a curve to the left having a radius of 387.50 feet, a curve length of 139.37 feet and a chord bearing and distance of North 22 deg 49 min 16 sec West, 138.01 feet to an iron rod set,
12. North 36 deg 42 min 33 sec West, 123.52 feet to an iron rod set,
13. With a curve to the right having a radius of 378.50 feet, a curve length of 166.94 feet and a chord bearing and distance of North 24 deg 04 min 25 sec West, 165.59 feet to the point of beginning; containing 2,657,689 square feet or 61.01 acres more or less.

Thence the following lands shall be annexed:

Map-Parcel	Acres
Part of 080--04401	61.01
Total	61.01

3

SECTION III: BE IT FURTHER ORDAINED by the Board of Mayor and Aldermen of the City of Franklin, Tennessee, that the annexed property shall become part of Aldermanic Ward One.

SECTION IV: BE IT FINALLY ORDAINED by the Board of Mayor and Aldermen of the City of Franklin, Tennessee, that this Ordinance shall take effect from and after its passage on third and final reading, the health, safety, and welfare of the citizens requiring it.

ATTEST:

CITY OF FRANKLIN, TENNESSEE

BY: _____
ERIC S. STUCKEY
CITY ADMINISTRATOR/RECORDER

BY: _____
DR. KEN MOORE
MAYOR

PLANNING COMMISSION RECOMMENDED DEFFERAL:

PLANNING COMMISSION RECOMMENDED APPROVAL:

PASSED FIRST READING:

PUBLIC HEARING HELD:

PASSED SECOND READING:

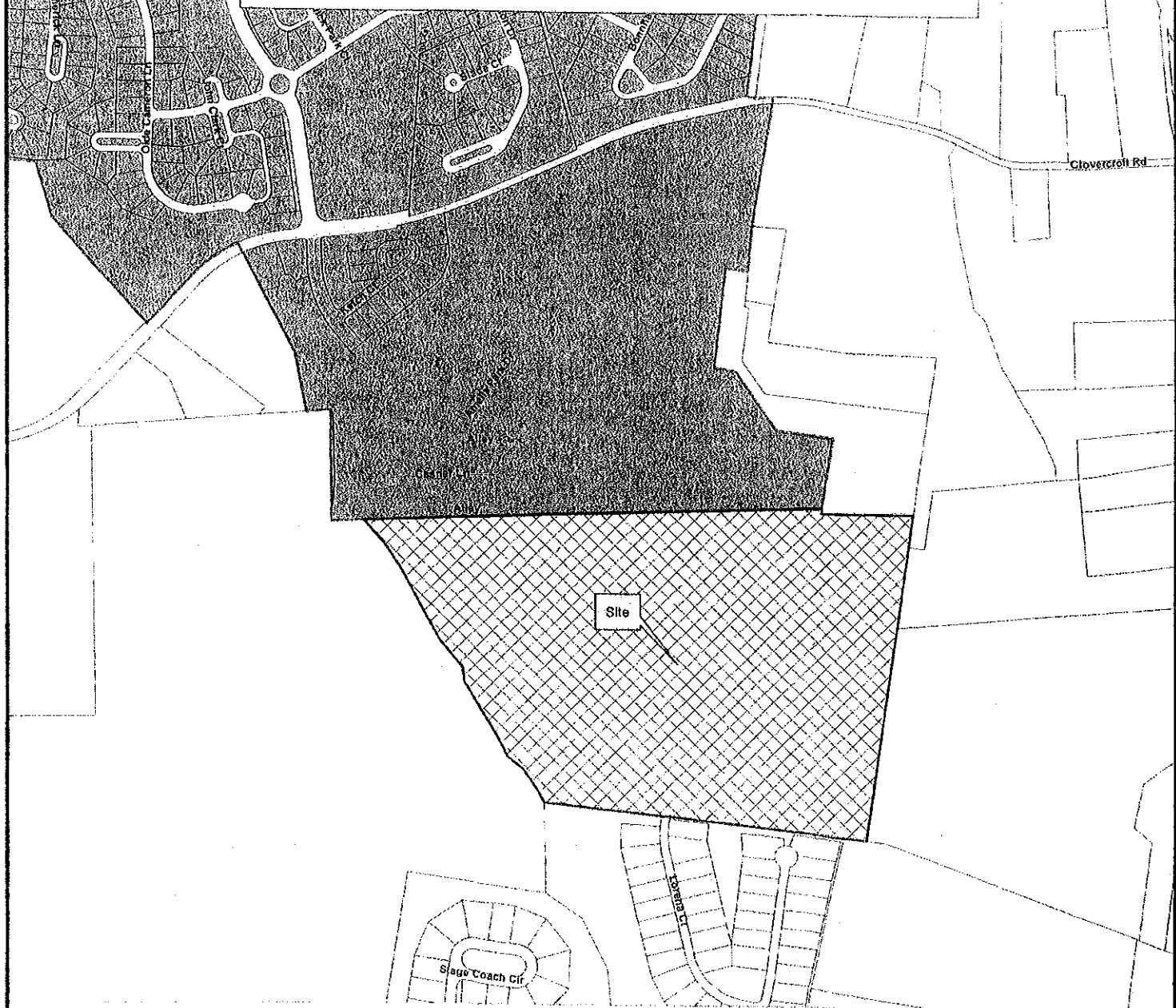
PASSED THIRD AND FINAL READING:

7/9/14 8:01 AM

Ord. 2014-16 Annex portion of
4101 Clovercroft Road (Tap Root Hills)

4

ORDINANCE 2014-16
ANNEXATION OF 61.01 ACRES OF THE INGRAHAM PROPERTY
LOCATED AT 4101 CLOVERCROFT ROAD
(TAP ROOT HILLS PUD SUBDIVISION)
FRANKLIN MUNICIPAL PLANNING COMMISSION
7/24/14



Legend

Tap Root Hills PUD

Zoning

AG Agricultural District

ER Estate Residential

R-1 Residential District

R-2 Residential District

R-3 Residential District

Historic Core Residential District

RX Residential Variety

OR Office Residential District

GO General Office District

CC Central Commercial District

NC Neighborhood Commercial District

GC General Commercial District

MN Neighborhood Mixed-Use District

ML Local Mixed-Use District

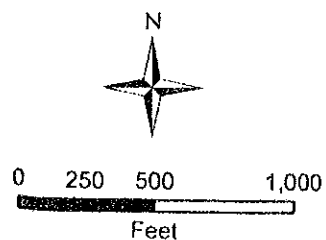
MX Regional Mixed-Use District

LI Light Industrial District

HI Heavy Industrial District

CI Civic and Institutional District

This map was created by the Franklin Planning Department.
It was compiled from the most authentic information available.
The City is not responsible for any errors or omissions contained hereon.
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5

ORDINANCE NO. 2006-7

AN ORDINANCE ADOPTING A PLAN OF SERVICES AND EXTENDING THE CORPORATE LIMITS OF THE TOWN OF SIGNAL MOUNTAIN, TENNESSEE, TO ANNEX CERTAIN TERRITORY CONTIGUOUS TO THE PRESENT CORPORATE LIMITS OF THE TOWN, BEING SIX PARCELS OF REAL PROPERTY IN THE CONNER CREEK AREA ADJACENT TO SHACKLEFORD RIDGE ROAD IN HAMILTON COUNTY, TENNESSEE, AS SHOWN BY THE ATTACHED MAP.

WHEREAS, the Acting Town Recorder has been authorized to provide notice of a public hearing on June 12, 2006, with reference to the herein described annexation territory, to be held on June 12, 2006, at 7:00 p.m., which notice shall have been published in the daily newspaper of Chattanooga, Tennessee more than fifteen (15) days before June 12, 2006; and

WHEREAS, pursuant to T.C.A. § 6-51-102, as amended by Public Chapter 1101 of 1998, it is necessary to submit a plan of services to the Signal Mountain Planning Commission; and

WHEREAS, the Plan of Services which is attached to this Ordinance was approved by the Signal Mountain Planning Commission on April 27, 2006, as required by Tennessee law; and

WHEREAS, after a public hearing and investigation by the Town Council, it now appears that the prosperity of the Town and of the territory herein described and as described in said notice will be materially retarded, and the safety and welfare of the inhabitants and property of the Town and the herein described territory endangered if such territory is not annexed; and

WHEREAS, the plan of services is adopted and the annexation of the hereinafter described territory is deemed necessary for the health, welfare and safety of the residents and property owners thereof, as well as of the Town of Signal Mountain as a whole;

AREA 2
Property Adjacent
North of Corner Creek



NOW, THEREFORE,

Section 1. BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SIGNAL MOUNTAIN, TENNESSEE, That under the authority conferred by Chapter 113, Public Acts of 1955, and the amendments thereto (T.C.A. § 6-51-101, et seq.), that there be and hereby is annexed to the Town of Signal Mountain, Tennessee, and included within the corporate boundaries of said Town an area adjacent to Shackleford Ridge Road, in Hamilton County, contiguous to the corporate boundaries of said Town which is more fully described as follows:

All real property contained within the following six (6) maps and parcels of real property which are north of Conner Creek and contiguous to the current northern boundary of the Town, specifically including the property within:

Hamilton County Tax Map No. 088 001.01;

Hamilton County Tax Map No. 088 001.13;

Hamilton County Tax Map No. 088 001;

Hamilton County Tax Map No. 088 011;

Hamilton County Tax Map No. 088 021; and

Hamilton County Tax Map No. 089 003.02.

SUBJECT TO Governmental zoning and subdivision ordinances or regulations in effect thereon.

Section 2. BE IT FURTHER ORDAINED, That residents of and persons owning property in the above-described territory shall be entitled to all the rights and privileges of citizenship in accordance with the provisions of the Charter of the Town of Signal Mountain, Tennessee, immediately upon annexation as though the above-described territory annexed has always been part of said Town of Signal Mountain, Tennessee.

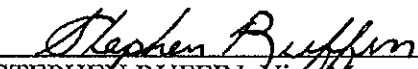
Section 3. BE IT FURTHER ORDAINED, That the Plan of Services attached hereto which was approved by the Signal Mountain Planning Commission on April 27, 2006, pursuant to T.C.A. § 6-51-102, and is adopted as the Plan of Services for this annexation area shall be implemented in accordance with the terms and methods of services contained therein.

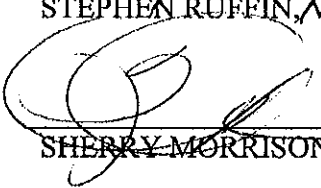
Section 4. BE IT FURTHER ORDAINED, That this Ordinance shall become operative thirty (30) days from and after its passage, or as otherwise provided by the provisions of T.C.A. § 6-51-102(a).

Section 5. BE IT FURTHER ORDAINED, That this Ordinance shall take effect, as distinguished from becoming operative, immediately from and after its passage, the public welfare requiring it.

Passed First Reading 5-08, 2006

Passed Second Reading 6-12, 2006


STEPHEN RUFFIN, Vice Mayor


SHERRY MORRISON, Acting Town Recorder

**PROPOSED PLAN OF SERVICES
IN ACCORDANCE WITH
TENNESSEE CODE ANNOTATED § 6-51-102
MARCH, 2006**

The Town Council of the Town of Signal Mountain, Tennessee hereby proposes the following Plan for Provision of Services for certain property in the Shackleford Ridge Road area which is shown on the attached map for certain properties lying contiguous to the present corporate limits of the Town of Signal Mountain, Tennessee, which are described as follows:

Including all property within the following maps and parcels:

All real property contained within the following six (6) maps and parcels of real property which are north of Conner Creek and contiguous to the current northern boundary of the Town, specifically including the property within:

Hamilton County Tax Map No. 088 001.01;

Hamilton County Tax Map No. 088 001.13;

Hamilton County Tax Map No. 088 001;

Hamilton County Tax Map No. 088 011;

Hamilton County Tax Map No. 088 021; and

Hamilton County Tax Map No. 089 003.02.

A. POLICE

Patrolling, radio directed response to calls for assistance, crime prevention services, traffic control and accident prevention services and other police protection and support using present personnel and equipment will be provided on the effective date of annexation.

B. TRAFFIC ENGINEERING

Traffic Engineering and installation of signs and other traffic control devices to be installed as required throughout the annexation area, will be provided when the need is established by appropriate traffic studies.

C. FIRE

1. Fire protection by present personnel and the equipment of the fire fighting force within the limitations of available water and distance from fire stations will be provided on the effective date of annexation.

2. Additional fire services such as those made available through the Town's fire prevention staff and arson investigation will be made available on the effective date of annexation.

3. Within six (6) months after annexation, the location of fire hydrants shall be determined and installed in those areas where water mains of adequate size are available. Placement of hydrants will be on the basis of nationally-accepted standards defined by the National Fire Underwriters' Association. As additional water lines are extended into the annexation area by Walden's Ridge Utility Service, if not presently served, fire hydrants shall be installed as required by the above-mentioned standard when the population density or need for hydrant services is sufficient to cost effectively extend hydrant services into the annexed property as determined in the discretion of the Town Manager and the Town Council.

4. Within six (6) months after annexation, a study will be completed to determine the need for construction of a fire substation to provide services to the annexed area on property owned by the Town and to assure the continued compliance with standards established by the

National Fire Underwriters appropriate to maintain the existing fire insurance rating for all citizens within the Town.

D. REFUSE COLLECTION

The same regular refuse collection now provided by the Town will be extended to the annexed area on the effective date of annexation.

E. ROAD AND STREET CONSTRUCTION AND REPAIR; SIGNS AND LIGHTING, AND STORMWAYTER AND DRAINAGE

1. Emergency maintenance of streets (repair of hazardous chuck holes, measures necessary to maintain normal traffic flow), removal of snow and/or sanding of streets during icing conditions will be provided to the annexed area on the effective date of annexation.

2. Routine maintenance, on the same basis as is provided within the present Town limits, will be provided to the annexed area on the effective date of annexation.

3. Within six (6) months of annexation, street name signs will be installed as needed in all substantially developed areas of the annexed area.

4. Street lights will be installed within the annexed area under the same standards as now prevail in the present Town limits as needed.

5. Stormwater and drainage services for all streets within the annexed area will be studied within six months after the effective date of annexation. Erosion and drainage services which are currently provided to all existing streets within the present Town limits shall be provided to the annexed area on the effective date of annexation.

F. PLANNING AND ZONING

The planning and zoning jurisdiction of the Town will be extended to the annexed area on the effective date of annexation. Town Planning services and zoning regulations will

thereafter encompass the annexed area. Pending a review of the present zoning classifications within the annexed area by the Town of Signal Mountain Planning Commission and the Town Council within six (6) months of the effective date of annexation, the property within the annexed area shall be reclassified to a temporary classification of R-E Residential Estate District and shall be entitled to any use allowed pursuant to Article 614 of the Town's Zoning Ordinance.

G. RECREATION AND OTHER TOWN PROGRAMS

1. All recreational areas accessibility and programs which are provided for present Town residents will be made available to the residents of the annexed area upon the effective date of annexation in the same manner as such programs are available to current Town residents.

2. All current recreation programs such as swimming, summer camps, baseball, flag football, basketball, tennis will be made available to residents of the annexed area upon the effective date of annexation in the same manner as such programs are available to current Town residents.

3. Access to the Town Library and the Mountain Arts Community Center facilities shall be made available to the residents of the annexed area upon the effective date of annexation in the same manner as such accessibility and programs are provided to current Town residents.

H. WATER SYSTEM

Water for all annexed properties will continue to be provided within the annexed area in the same manner as water service is currently provided by the Walden's Ridge Utility District.

I. ELECTRICAL SERVICE

Electricity will continue to be provided within the annexed area in the same manner as electric service is currently provided by the Electric Power Board of Chattanooga.

J. SEWER SYSTEM

Sewer services for any properties within the annexed area will continue to be provided in the same manner as such sewer services are currently provided by the Hamilton County Water and Wastewater Authority to the extent that sewer lines are constructed and available within the annexed area. The construction of new sewer lines within the annexed area will occur when the density of development makes new sewer lines feasible and funds for the construction of necessary sewer lines are made available as determined by the Hamilton County Water and Wastewater Authority and its board.

K. INSPECTION/CODE ENFORCEMENT

The Town of Signal Mountain currently provides inspection and code enforcement services (building, electrical, plumbing, gas, and unsafe building services) to all areas within the Town limits. These same inspection and code enforcement services will be provided to the newly annexed area upon the effective date of annexation.

L. ANIMAL CONTROL

The Humane Educational Society currently provides the services of animal control and enforces the Town's leash laws and other animal control ordinances to all areas within the Town limits. These same services will be provided to the newly annexed area upon the effective date of annexation.

APPENDIX F

REPORT ON PLAN OF SERVICES PROVIDED FOR AREA 3A AND NOTICE OF PUBLIC HEARING IN ACCORDANCE WITH T.C.A. § 6-51-108(b)

The City of Chattanooga, Tennessee, hereby reports on the progress to fulfill its Plan of Services for certain properties annexed into the present corporate limits of the City of Chattanooga, Tennessee, on June 28, 2010, which is adjacent to Textile Lane and Cummings Highway near Lookout Creek at the base of Lookout Mountain, located in Hamilton County, Tennessee. Area 3A includes Tax Parcel Nos. 154D-B-003, 154D-B-004, 154D-B-004.017, and 154D-B-004.01, and shown on the attached map for Area 3A. The Chattanooga City Council shall hold a public hearing on the progress of annexation services in this area on Tuesday, December 4, 2012, at 6:00 p.m. in the City Council Assembly Room located at 1000 Lindsay Street, Chattanooga, TN 37402.

A. POLICE - Patrolling, radio directed response to calls for assistance, crime prevention services, traffic control and accident prevention services and other police protection and support using existing police personnel and equipment has been provided since June 28, 2010.

B. TRAFFIC ENGINEERING - Traffic Engineering and installation of signs and other traffic control devices have been installed as required throughout this annexation area since June 28, 2010, as determined by appropriate planning studies.

C. FIRE

1. Fire protection has been provided to this annexed area by existing personnel and equipment since June 28, 2010. A new fire station (Station 3) opened to provide services to the annexed area in February 2012. A Quint (combination ladder and pumper truck) was placed in service at that station when it opened. The City has provided emergency medical

technicians on every piece of equipment that has served this annexation area as first responders since June 28, 2010. An Urban Search and Rescue Team is located at Station 20 within this annexation area.

2. The City studied the need for additional fire hydrants in this area and determined that no additional hydrants were needed. A copy of a fire hydrant map for this area is attached to this report.

D. REFUSE COLLECTION - Refuse collection has been provided by existing personnel since June 28, 2010. No garbage cans have been needed in this area, and the City has received no calls related to refuse collection, recycling, trash flash, and other general maintenance matters since June 28, 2010.

E. ROAD AND STREET CONSTRUCTION AND REPAIR; SIGNS AND LIGHTING, AND STORMWATER AND DRAINAGE

1. Emergency maintenance of streets (repair of hazardous pot holes, measures necessary to maintain normal traffic flow), removal of snow and/or sanding of streets during icing conditions has been provided by existing personnel since June 28, 2010.

2. Street name signs were installed as needed in all substantially developed areas.

3. Street lights have been installed as needed under the same standards as now prevail in the City of Chattanooga. A study was conducted within six (6) months of the effective date of annexation to consider the need for any additional street lights within the annexed area and such additional street lights are being installed as required by city standards.

4. Stormwater and drainage services for all streets within the annexed area was studied within six (6) months of the effective date of annexation, and the City is currently

providing additional stormwater and drainage services in accordance with the study. A map showing existing stormwater structures is attached.

5. Erosion and drainage services for the Water Quality Program have been provided to all streets within this annexed area since June 28, 2010.

F. PLANNING AND ZONING - Planning and zoning for this annexation area was established by Ordinance No. 12308, adopted October 27, 2009.

G. RECREATION FACILITIES AND PROGRAMS

1. All of the recreational areas and programs of the City were made available immediately to all residents of this annexed area on June 28, 2010.

2. Recreation programs such as swimming, summer camps, baseball, flag football, basketball, tennis have been available to all residents of this annexed area since June 28, 2010. The specific facilities and programs available in the immediate area include John A. Patten Multi-Purpose Complex at 3202 Kelly's Ferry Road, tennis courts at Lookout Valley High School, and Lookout Valley Youth Sports Complex at 370 Warren Place.

3. Recent recreation improvements in the immediate area include a PlayCore playground which was dedicated on November 21, 2009 and five new scoreboards, new sod on two fields, and a new water system at the Sports Complex.

H. WATER SYSTEM - Water for all annexed properties continues to be provided in this annexed area by Tennessee American Water Company. Extensions of water services to new development within this annexation area shall be provided by the Tennessee American Water Company within the City.

I. ELECTRICAL SERVICE - Electricity continues to be provided to all residents of this annexed area by the Electric Power Board of Chattanooga.

J. SEWER SYSTEM - The City of Chattanooga will not provide sewer services to the annexed area because the Hamilton County Water and Wastewater Treatment Authority (hereinafter "WWTA") did not cede this service area to the City within thirty (30) days of the date of annexation as provided in Paragraph 6(C) of the Master Interlocal Agreement approved by the City of Chattanooga dated May 23, 2001. A map showing existing sewer services for this annexed area is attached to this report. Sewer services will be provided to the residents of this area by the WWTA to the extent that lines are available within the annexed area and density of development makes new sewer lines feasible and funds for construction of necessary sewer lines are available as determined by the WWTA Board. The City of Chattanooga is currently engaged in litigation with the WWTA Board to determine sewer responsibilities for this annexed area.

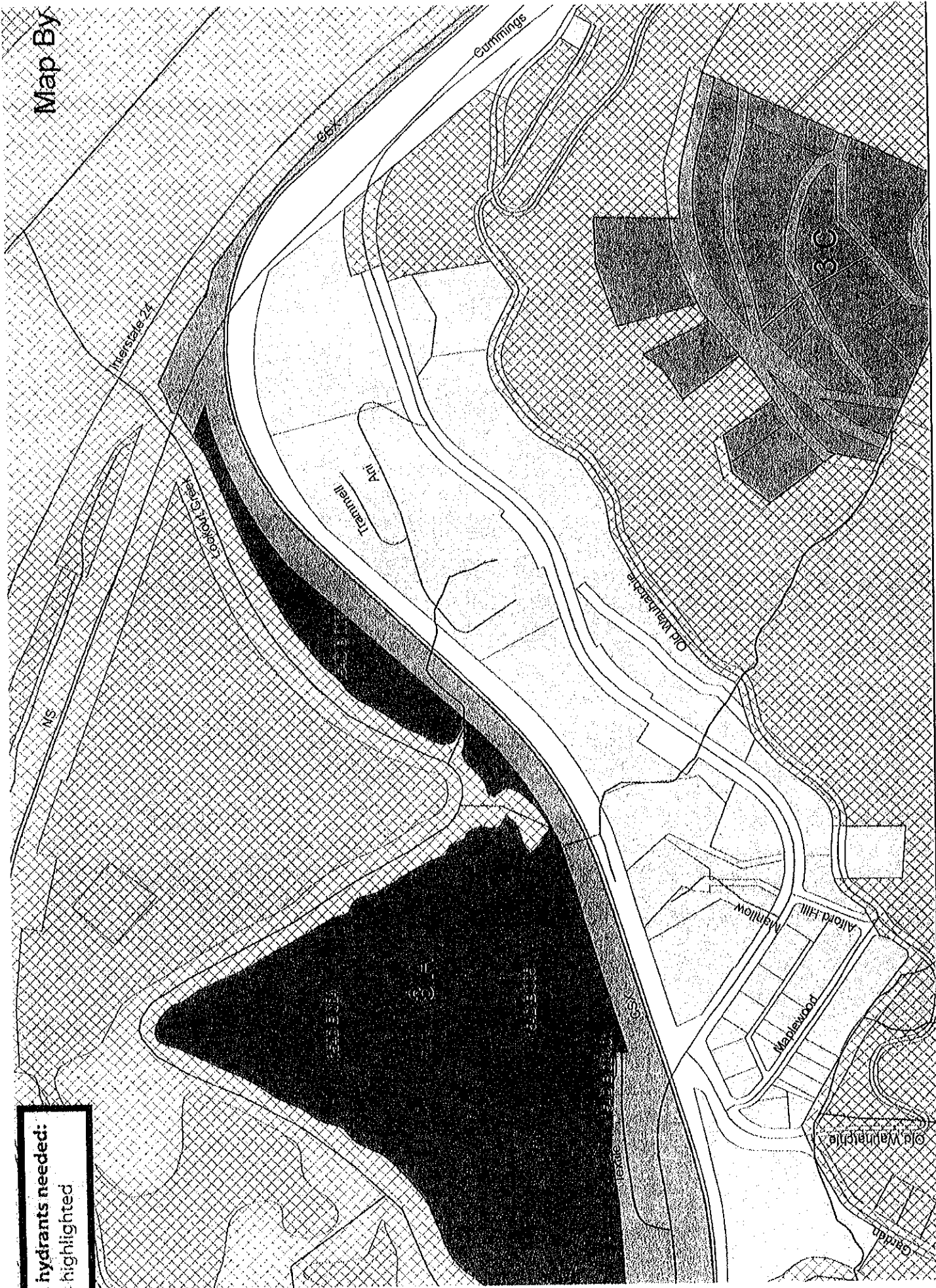
K. INSPECTION/CODE ENFORCEMENT

1. The Public Works Department has provided plans review services, inspection, and code enforcement services (building, electrical, plumbing, gas, and unsafe building reviews, land use [zoning], and development services, including flood plain NFIP/FEMA requirements) for this annexed area since June 28, 2010.

2. Neighborhood Services and Community Development has provided code enforcement services for sub-standard housing, litter, overgrowth, and illegal dumping for this annexed area since June 28, 2010. No complaint calls have been received within this annexation area by Neighborhood Services, and there have been no permits issued for construction since June 28, 2010.

L. ANIMAL CONTROL - The McKamey Animal Care and Adoption Center has provided the services of animal control by contract with the City and has enforced the City's leash laws and other animal control ordinances in this annexation area since June 28, 2010.

hydrants needed:
highlighted



Rail—

Waterways

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Annexation Zone 3 A

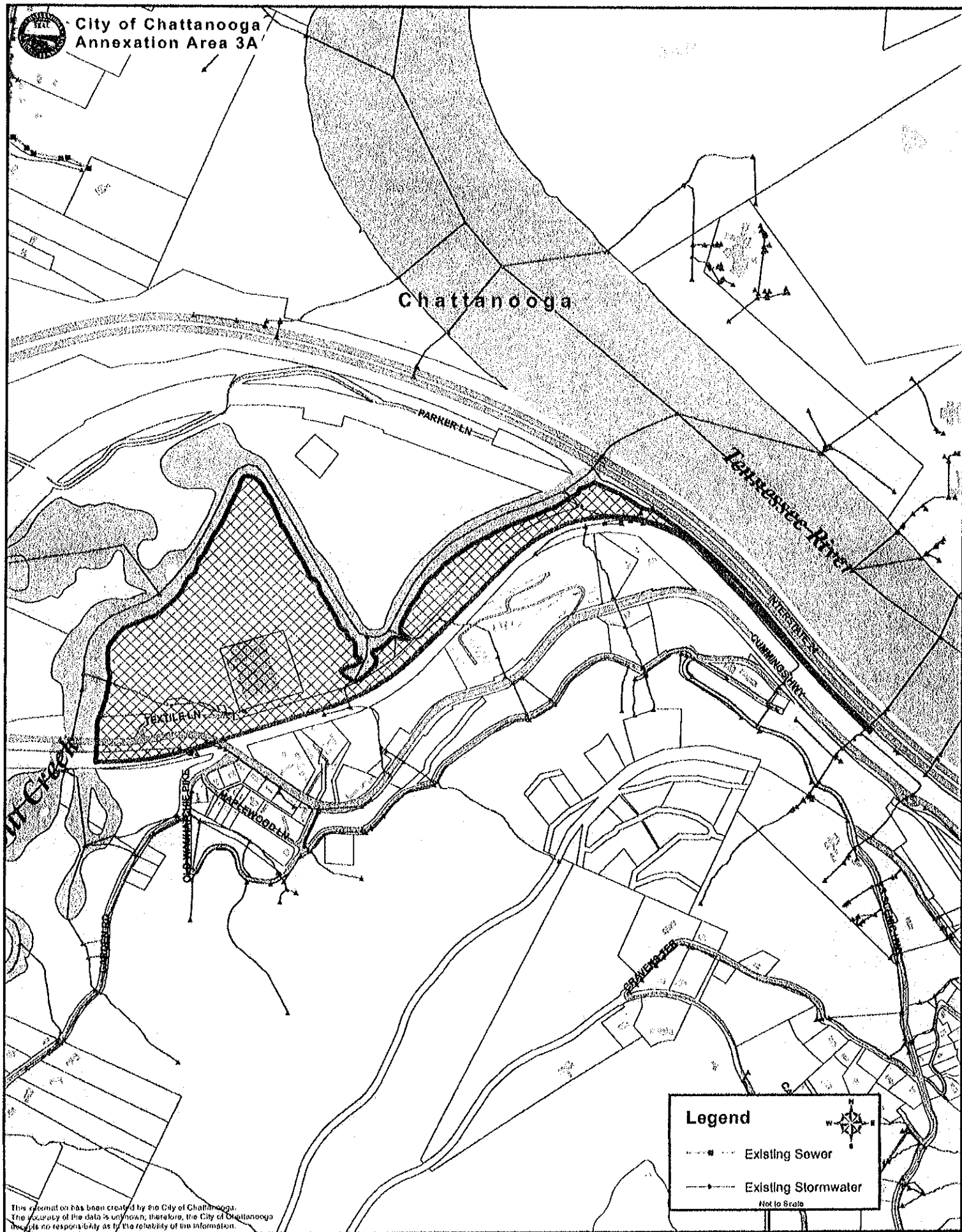
525

525

1.5;



City of Chattanooga
Annexation Area 3A



Legend

Existing Sewer

Existing Stormwater

Not to Scale

This information has been created by the City of Chattanooga.
The accuracy of the data is unknown, therefore, the City of Chattanooga
accepts no responsibility as to the reliability of the information.

APPENDIX G-1

City of Jackson Resolution to Acquire Jackson Suburban Utility District

WHEREAS, Jackson Suburban Utility District of Madison County, Tennessee, has been and is now furnishing water to the residents in certain territory of which a part was recently annexed by the City of Jackson, Tennessee, under the authority of Tennessee Code Annotated, sections 6-308 to 6-319, inclusive; and,

WHEREAS, The City of Jackson has as the result of negotiations with Jackson Suburban Utility District of Madison County, Tennessee, as authorized and required by Tennessee Code Annotated, section 6-318, reached a mutually satisfactory and acceptable agreement whereby the City of Jackson shall purchase* all the assets and properties of said District, and assume and operate only a part of said water system now owned by the District; and,

WHEREAS, the Commissioners of said Jackson Suburban Utility District of Madison County, Tennessee, have agreed to transfer all the assets of said District, real and personal, and otherwise, to the City of Jackson, Tennessee, on condition that the City agree to operate the entire utility system of said district, and to assume the payment of outstanding bonds of said District in accordance with their terms, and to pay all other obligations of said District outstanding as of the effective date of transfer of the assets, and subject to the further understanding and agreement that of the cash on hand of the District and its investments in U.S. Government Bonds which are to be transferred to the City, there shall be earmarked or set aside in a reserve account a sum equal to such cash on hand and investments in bonds, after deducting therefrom a sum equal to the requirements for the payments of interest due August 1, 1961, on the outstanding bonds of the District and both principal and interest due February 1, 1962, and a further deduction in an amount equal to any outstanding liability for customers deposits and current accounts payable or other liabilities (except bond indebtedness) of the district, including any unpaid water accounts payable to the City of Jackson, as of the effective date of the transfer of the assets; and that such reserve funds (as adjusted), or at least the cash equivalent thereof, shall be used for an elevated water storage tank designed for use in the area presently served by the District, or for such other equipment or facilities, and at such time or times, as may be deemed feasible within the best judgment and discretion of the City, or its representatives, to provide adequate water service to areas; and

*Although the word "purchase" is used here, a careful reading of the resolution will disclose that this was not a purchase transaction. It was a transfer of functions, assets, and liabilities from one governmental unit to another governmental unit. A formal agreement between two such units could closely parallel the language of this resolution.

WHEREAS, it appears advisable and in the best interests of The City of Jackson, Tennessee, to enter into said agreement and thereby acquire the assets of said District, assume the obligations thereof and take over the operation of its entire water system.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, AS FOLLOWS:

1. That, in consideration of the transfer to the City of Jackson Suburban Utility District of Madison County, Tennessee, of all of its assets, real and personal, the same being described and set forth in Schedule No. 1, annexed hereto, and made a part hereof, The City of Jackson shall assume and take over the management and operation of the entire utility or water system of Jackson Suburban and Utility District of Madison County, Tennessee, and accept title thereto.
2. That The City of Jackson hereby assumes and agrees to pay from the revenues of its water and sewerage departments all outstanding bonds and other obligations of the Jackson Suburban Utility District of Madison County, Tennessee, as such bonds and obligations may mature, and in accordance with their terms, and to otherwise perform all covenants contained in the bonds required of the District, said bonds being described and set forth in Schedule No. 2, annexed hereto, and made a part hereof; said bonded indebtedness consisting of an issue of water works revenue bonds of said District in the original total amount of \$75,000.00, dated February 1, 1951, in the denomination of \$100.00 each, bearing interest at three and one-half percent (3-1/2%), payable semi-annually on August 1st, and February 1st, of each year commencing August 1, 1951, maturing serially in numerical order, without option of prior redemption, on February 1st of each year from February 1, 1953, to February 1, 1970, inclusive; and provided further, that the City agrees, as a consideration for the transfer of all assets of said District, to earmark or set aside in a reserve account all of the cash on hand and the cash equivalent of the present redemption value of U.S. Government Bonds in the face sum of \$10,000.00 which are being transferred by the District to the City, after having deducted therefrom a sum equal to the requirements for the payment of interest on the outstanding bonds issued by the District due August 1, 1961, and both interest and principal due February 1, 1962, and a further deduction in an amount equal to outstanding customers' deposits and current accounts payable or otherwise liabilities (except bond indebtedness) of the district as of the effective date of the transfer of assets, and to use said reserve fund, or at least the cash equivalent thereof, for the purposes

hereinabove set forth at such time or times as may be deemed feasible within the best judgment and discretion of the City or its representatives.

3. That this Resolution be effective June 1, 1961, upon delivery to the City of Jackson of deeds, bills of sale, and other instruments of writing necessary to transfer all assets of the Jackson Suburban Utility District of Madison County, Tennessee, to The City of Jackson, Tennessee, and to vest title to same in The City of Jackson.

NOTICE

The foregoing resolution was introduced, read and approved by the Board of Commissioners of the City of Jackson, Tennessee, the 27th day of June, 1961, and will be considered for adoption at the regular meeting of said board to be held June 30, 1961, in the Board Room of the City Hall, Jackson, Madison County, Tennessee at 10 A.M. at which time any and all suggestions pertaining to the adoption of said resolution will be considered.

Published by the order of the Board of Commissioners of the City of Jackson, Tennessee, this 27 day of June, 1961.

ATTEST: B. F. Graves
 City Recorder

Schedule No. 1 To Resolution For Transfer Of Jackson Suburban Utility District Of Madison County, Tennessee

Assets of Described to be transferred to the City of Jackson, Tennessee.

FIXED ASSETS

Real Estate, consisting of a parcel of land and building together with all other improvements thereon described in deed from Jackson Suburban Utility District to The City of Jackson, Tennessee, dated June 1, 1961.

All Machinery and Equipment, Meters, Underground Lines, together with all other personal property, including the entire water distribution system, mains, services and meter connections, valves, hydrants, supplies, accessories and inventory on hand as of effective date of this transfer as per resolutions.

CURRENT ASSETS

All cash on hand and in banks; including cash in the National Bank of Commerce of Jackson, Tennessee, as of effective date of this transfer as per resolutions, consisting

of the following accounts:

Operating Account	\$25,417.25
Customer Account.....	- 0 -
Construction Account	<u>209.82</u>
Total	\$25,627.07

All accounts receivable, including current and unbilled customer water accounts.

Accrued interest receivable.

Investments – U.S. Government Bonds (or redemption value or cash realized therefrom as, if and when redeemed, same now being in face amount of \$10,000.00).

Any unexpired insurance premiums.

All permits and licenses from The State of Tennessee, Madison County, Tennessee, and any others now held or enjoyed by said District.

Together with, and including, any and all other assets of said District, real or personal, tangible or intangible, which are on hand and to the extent of the District's interest therein as of the effective date of this transfer as per resolutions and agreements in reference thereto.

Provided, however, of the cash on hand and investments in U.S. Government Bonds (or cash equivalent at redemption), there shall be established by The City of Jackson a reserve account for use to improve the water system in the area presently served by said District as provided in resolutions in reference to this transfer.

Schedule No. 2 To Resolution For Transfer Of Jackson Suburban Utility District Of Madison County, Tennessee

Liabilities and Obligations of Jackson Suburban Utility District of Madison County, Tennessee, Assumed by The City of Jackson, Tennessee.

Bonds Payable, dated February 1, 1951, of issue in original principal amount of \$75,000.00, bearing interest at three and one-half percent (3-1/2%) per annum, payable semi-annually on August 1st and February 1st of each year, of which the principal amount of \$26,000.00 has been paid together with interest due February 1, 1961, thereby leaving an outstanding principal amount of \$49,000.00 due and payable on February 1st of each year as follows:

<u>Year</u>	<u>Amount</u>	<u>Bond Numbers</u>
1962	\$4,000	27 to 30, inc.
1963	5,000	31 to 35, inc.
1964	5,000	36 to 40, inc.
1965	5,000	41 to 45, inc.
1966	5,000	46 to 50, inc.
1967	6,000	51 to 56, inc.
1968	6,000	57 to 62, inc.
1969	6,000	63 to 68, inc.
1970	7,000	69 to 75, inc.

Together with all unpaid accrued interest and the interest hereafter due and payable on said bonds; and to duly and punctually perform all covenants of said bond issue remaining unpaid and to protect all contract rights vested in the holders of said outstanding bonds.

Customers' deposits to secure payment of customers' obligations for water bills.

All outstanding unpaid accounts, bills and other obligations at the District, including final water bill due The City of Jackson, Central Service for billing customers and Arnold & Badgett for final audit.

An existing contract dated March 9, 1951, between the District and The City of Jackson for furnishing water to the District; said contractual obligations to be assumed or else rendered void and of no further force and effect.

AN ORDINANCE ESTABLISHING WATER RATES FOR WATER SERVICE SUPPLY FROM DISTRIBUTION SYSTEM OF JACKSON SUBURBAN UTILITY DISTRICT OF MADISON COUNTY, TENNESSEE OUTSIDE AND INSIDE THE CORPORATE LIMITS OF THE CITY OF JACKSON, TENNESSEE.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE:

Section 1. That water rates of the Jackson Utility Division for water service from the Jackson Suburban Utility District of Madison County, Tennessee, inside the corporate limits of the City of Jackson, Tennessee, be the same rates charged all other consumers inside the corporate limits of the City of Jackson, Tennessee.

Section 2. That water rates of the Jackson Utility Division for water service from the Jackson Utility District of Madison County, Tennessee, outside the corporate limits of the City of Jackson, Tennessee, be and remain the same rates as are now being charged by the Jackson Suburban Utility District of Madison County, Tennessee

Section 3. That this ordinance take effect June 1, 1961, upon its adoption, the Public Welfare requiring it.

NOTICE

The foregoing ordinance was introduced, read and approved by the Board of Commissioners of the City of Jackson, Tennessee, the 27th day of June, 1961, and will be considered for adoption at the regular meeting of said board to be held June 30, 1961, in the Board Room of the City Hall, Jackson, Madison County, Tennessee, at 10 A.M. at which time any and all suggestions pertaining to the adoption of said ordinances will be considered.

APPENDIX G-2

Contract Of Sale* For Acquisition Of Memphis Suburban Utility District

THIS AGREEMENT, made and entered into this 30th day of April, 1957 by and between THE MEMPHIS SUBURBAN UTILITY DISTRICT OF SHELBY COUNTY, TENNESSEE, a public corporation of the State of Tennessee (hereinafter called "District") and the MEMPHIS LIGHT, GAS AND WATER DIVISION OF THE CITY OF MEMPHIS, a Division of Government of the City of Memphis, (hereinafter called "Division")

WITNESSETH:

WHEREAS, the District now owns, operates and maintains a water supply and distribution system, fire protection facilities and sanitary sewer system within the territorial limits of said District as shown on the plat annexed hereto as Exhibit "A"; and

WHEREAS, in order to finance said water supply and distribution system and said fire protection facilities and to refund certain obligations of the District issued for the foregoing purpose, the District has issued and sold and now has outstanding \$1,572,000.00 Utility Revenue Refunding Bonds, dated April 1, 1957, represented by Interim Receipts therefor, as described in a resolution adopted by the District on April 29, 1957, annexed hereto as Exhibit "B"; and

WHEREAS, in anticipation of the annexation to the City of Memphis of the territorial area of the District and the practical necessity for combining the water system of the Division, the District and the Division, duly authorized by the Board of Commissioners of the City, have conducted negotiations for the acquisition by the Division of the water supply and distribution system of the Division, and the parties hereto, for valuable considerations, the receipt and sufficiency whereof being acknowledged, have agreed and do hereby agree and bind themselves as follows:

1. The District hereby agrees to transfer and deliver to the Division and the Division hereby agrees to accept and take over from the district, on the terms and conditions and on or before the time herein set forth, all of the water supply and distribution system and priorities relating thereto now or hereafter owned by the District, together with all of the real estate belonging to the District, and the District agrees to convey to the City of Memphis for the use and benefit of the Division by good and valid conveyances, with the usual covenants of warranty and quiet possession, the real estate described in Exhibit "C" annexed hereto, and all of the personal property of every kind and character owned and used by the District

*Actually, no "sale" occurred. The contract simply provided for a transfer of functions, assets and liabilities to the Memphis Light, Gas and Water Division.

in the operation of said water supply and distribution system at the date of closing under this contract, including all easements, wells, pumping plants, water treatment works, water storage facilities, water lines and mains, meters, contracts, accounts receivable and bank deposits and cash on hand except the sum of \$10,000.00 which is hereby determined by the parties hereto to be the sum that will be required by the District for the operation of its fire protection system until the annexation of the territorial area of the District by the City of Memphis and said sum shall be retained by the district for such purpose.

The District and the division agree that consummation of the transactions provided for above in this paragraph 1 will take place on or before January 1, 1958. The actual date of consummation of such transactions is herein referred to as the "Closing Date."

Upon annexation of the territorial area of the district by the City of Memphis, the District, for the consideration herein set forth, agrees to transfer and convey to the City of Memphis all of its property, both real and personal constituting, and used in connection with, its fire protection system, including all money on deposit to banks and on hand, which shall be paid over to the Division.

2. The Division agrees to assume and pay, from and after the Closing Date, all obligations of the District, secured and unsecured, relating to or incurred in connection with the ownership and operation by the District of its water supply and distribution system, including the Utility Revenue Refunding Bonds described in Exhibit "B"; provided, however, that the obligation of the Division aforesaid shall be conditioned upon the financial condition of the District as of the Closing Date being as favorable as the financial condition of the District evidenced by the Accountant's Report of Balch, Pratt, Priddy & Co., dated as of May 31, 1956. The District agrees to furnish the Division, not later than June 25, 1957, with an Accountant's Report of its financial condition as of May 31, 1957, and covering its preceding fiscal year prepared by a firm of certified public accountants acceptable to the Division and to furnish on the Closing Date a supplemental report of such accountants showing the true financial condition of the district as of the Closing Date. The Division reserves the right to waive any or all of the foregoing requirements.
3. The Division binds itself to operate said water supply and distribution system in an efficient manner, to make all necessary additions and extensions as may be needed from time to time, and to charge water rates in accordance with its applicable rate schedules for customers in like circumstances as such schedules

may be amended from time to time; all in accordance with the Rules and Regulations of the Division as they presently exist, or may be hereafter amended.

4. The Division agrees and binds itself to assume the obligations of all executory contracts entered into by the District with subdivision developers and other property owners covering the installation and maintenance of water services, and to pay such refunds as may be required under the terms of said contracts.
5. The Division further agrees and binds itself to carry out the terms of the contract of the District with International Harvester Company, as set forth in Exhibit "D" hereto, until such time as the Division and said International Harvester Company may enter into superseding contracts covering water services to be furnished said Company.
6. The Division agrees to employ such of the personnel now employed by the District as may desire employment by the Division and as may be equipped to perform the duties required of them by the Division; and the Division agrees to accept into the Retirement & Pension System for Employees of Memphis Light, Gas & Water Division, City of Memphis, all such employees who desire to participate therein and make the payments hereinafter referred to, with full rights in said employees to retirement benefits beginning with the dates of their respective employments by the district, provided, the District pays the cost as an operating expense account on or before the Closing Date to said retirement and pension fund of the Division the sum set out in Exhibit "E" hereto for those employees who elect to enter said retirement system and who personally pay to said retirement and pension fund of the Division, as the employees contribution, 4% of the total compensation of such employee from the District from the time of his employment to January 1, 1956, and 5% of his total compensation from the District or the Division after January 1, 1956, such payments by the employee and application for participation in said retirement and pension fund of the Division to be made within six months from their employment by the Division.
7. The Division further agrees to bill the charges made by the District for sewer services furnished to the present District customers, as certified by the District to the Division, provided the customers so certified are being billed for electric, gas or water service by the Division. The Division shall remit to the district monthly the sewer rentals paid to the Division as above provided until the area so

served sewer service is annexed to the City of Memphis, or until the City of Memphis shall take over the operation of the sewer systems now operated by the District.

8. Each party shall cooperate and take such action as may be reasonably requested by the other in order to carry out the provisions and purposes of this agreement; and the district shall continue in existence for the operation of the fire protection system and sewer systems now under its jurisdiction until annexation of the territorial area of the District by the City of Memphis.
9. The Division hereby consents and agrees that this contract may be assigned or pledged by the District in such form or manner as the District may provide.
10. This contract is contingent upon approval thereof by the board of commissioners of the City of Memphis, as required by law.

IN WITNESS WHEREOF, the parties hereto duly authorized and by their lawfully authorized officers and agents, have executed this agreement on the day and in the month and year first hereinabove written.

Tennessee The Memphis Suburban Utility District of Shelby County,

By _____

Memphis Light, Gas and Water Division of the City of Memphis,
Tennessee

By _____

RESOLUTION

IT IS HEREBY RESOLVED by the Mayor and Board of Commissioners of the City of Memphis that the action taken by the Board of Light, Gas & Water Commissioners on April 25, 1957, as evidenced by the attached excerpts from that meeting authorizing the execution of contract of sale with Memphis Suburban Utility District, be and is hereby ratified and approved.

APPENDIX G-3

Resolution For Acquisition Of North Johnson City Utility District

On motion of Commissioner Floyd Bolton, seconded by Commissioner P. J. Humphries, the following resolution was presented for adoption. The motion was carried by a vote of 3 to 0.

WHEREAS, the City of Johnson City, Tennessee, heretofore has annexed certain territory on the westerly side of said City, commonly known as "West Hills," which territory at the time of its annexation was being served by the North Johnson City Utility District of Washington County, Tennessee; and

WHEREAS, the City of Johnson City, Tennessee, has elected to exercise its right under section 6-318 of the Tennessee Code Annotated, to assume the operation of the entire Utility system and to pay all outstanding bonds and other obligations of said North Johnson City Utility District of Washington County, Tennessee, in accordance with their terms;

NOW, THEREFORE, be it resolved by the Commissioners of the North Johnson City Utility District of Washington County, Tennessee as follows:

That all of the assets of the North Johnson City Utility District of Washington County, Tennessee, be, and they hereby are, transferred to the City of Johnson City, Tennessee, and title thereto vested in said City in consideration of said City's agreement to pay all outstanding obligations of the North Johnson City Utility District of Washington County, Tennessee, in accordance with the terms and to protect the contract rights vested in the holders of all outstanding bonds and other obligations of the District.

RESOLUTION

On Motion of Commissioner McDowell, seconded by Commissioner Spears, the following resolution was presented for adoption. The motion was carried by a vote of 4 to 1.

WHEREAS, the North Johnson City Utility District of Washington County, Tennessee, is and has been furnishing water to certain inhabitants of the territory commonly known as "West Hills," which was recently annexed by the City of Johnson City, Tennessee; and

WHEREAS, the City of Johnson City, Tennessee, has entered into negotiations with the said North Johnson City Utility District of Washington County, Tennessee, as required by section 6-318 of the Tennessee Code Annotated and as a result of said

negotiations it appears that it will be to the advantage of the City of Johnson City to assume the operation of the entire Utility system of said North Johnson City Utility District of Washington County, Tennessee, rather than to purchase a part thereof;

NOW, THEREFORE, be it resolved by the Board of Commissioners of the City of Johnson City, Tennessee, as follows:

Section 1. That the City of Johnson City, Tennessee, hereby assumes the operation of the entire Utility system of the North Johnson City Utility District of Washington County, Tennessee, and accepts title thereto.

Section 2. That the City of Johnson City, Tennessee, hereby assumes and will pay all outstanding bonds and other obligations of said North Johnson City Utility District of Washington County, Tennessee, in accordance with their terms. Said indebtedness consisting of 1952 series bonds of \$985,000.00; 1956 series bonds in the amount of \$265,000.00; 1958 Certifications of Indebtedness in the amount of \$550,000.00; East Tennessee Water Corporation bonds in the amount of \$160,000.00, totaling \$1,960,000, all payable from revenues of said system.

APPENDIX G-4

JEMc111386

CONTRACT DESIGNATING AGENT TO OPERATE SYSTEM
AND FOR LATER TRANSFER OF SYSTEM

THIS CONTRACT entered into as of the 13th day of November, 1986, by and between THE FIRST UTILITY DISTRICT OF ANDERSON COUNTY (hereinafter sometimes referred to as "FUD"), a public corporation organized pursuant to the provisions of The Utility District Law of 1937, the TOWN OF CLINTON (hereinafter sometimes referred to as "Clinton"), a municipal corporation organized and existing under the laws of the State of Tennessee, and the CLINTON UTILITIES BOARD (hereinafter sometimes referred to as "CUB").

W I T N E S S E T H:

WHEREAS, Clinton for many years has operated municipally-owned water, sewer and electric systems which serve customers located within and without the corporate limits of Clinton; and

WHEREAS, CUB is the agency of Clinton that is responsible for the management and operation of Clinton's water, sewer and electric systems; and

WHEREAS, for more than 20 years, FUD as a non-profit utility district, has operated a water system in a portion of Anderson County that includes South Clinton and the Claxton areas (which areas are hereinafter sometimes referred to as the "FUD Service Area"), and also now operates a sewer system in a small part of the FUD Service Area (which water and sewer systems are hereinafter sometimes collectively referred to as the "FUD System"); and

WHEREAS, Clinton has annexed part of South Clinton (hereinafter sometimes referred to as the "Annexed Area"), which Annexed Area includes approximately one-third of FUD's water customers; and

WHEREAS, Clinton already provides electric service in the FUD Service Area; and

WHEREAS, representatives of the parties hereto have been negotiating for more than two years in an effort to resolve their differences about the matters dealt with in this Contract; and

WHEREAS, by two letters, one of which is dated September 15, 1986 and the other dated October 6, 1986 (a copy of each of which letters is attached hereto marked collectively as "Exhibit A" and made a part of this Contract as fully as if copied herein above the signatures of the officials who execute this Contract), Clinton submitted a proposal for CUB to assume the operations of the FUD System and for Clinton to acquire said system, which proposal has been accepted by FUD; and

WHEREAS, FUD cannot immediately transfer the FUD System to Clinton without possibly violating covenants contained in outstanding FUD bonds, some of which are not subject to redemption until May 1, 1989; and

WHEREAS, this Contract is being executed to formalize and supplement the accepted proposal contained in Exhibit A; and

WHEREAS, the parties hereto believe that it is proper and to the mutual advantage of the customers of the FUD System and of the Clinton systems for the parties hereto to execute this Contract and to comply with the provisions contained herein; and

WHEREAS, the parties hereto are authorized to execute this Contract by the statutes of the State of Tennessee, including particularly T.C.A. §§6-51-111, 7-82-304(11) and 7-82-308(b).

NOW, THEREFORE, in consideration of the premises and the agreements of the parties herein contained, the parties hereto agree to follows:

1. AGENCY ARRANGEMENT. FUD (as authorized by T.C.A. §7-82-308(b) to delegate to one or more of its agents such powers and duties as it may be deem proper) hereby appoints CUB (the "Agent") its agent (with authority to act through the General Manager and the Commissioners of CUB, or any of them) to exercise all of the powers and perform all of the duties of FUD in connection with the operation of the FUD System. This appointment and transfer of management (hereinafter sometimes called the "Agency Arrangement") shall become effective on the first day of the calendar month next following the date when this Contract has been executed and acknowledged by all three parties hereto. This date is hereinafter sometimes called the "Transfer Date". The Agency Arrangement shall continue in effect until (1) all of the FUD System is conveyed to Clinton, or (2) December 31, 1989, whichever is the earlier. During the Agency Arrangement, the Agent shall do nothing that is prohibited for Clinton and CUB or either of them to do, by the provisions of Exhibit A. During the continuance of the Agency Arrangement, the FUD System shall be operated as an entity separate from the Clinton systems; but nothing contained herein shall prevent the Agent from engaging in joint activities for FUD with CUB (such as joint meter reading, billing and collecting, or having employees of one system perform services for the other) whenever such action is economically beneficial to FUD. The charges or costs of any such services shall be fairly and equitably allocated between the two systems. Nothing contained herein shall prevent CUB from hiring an FUD past, present, or future employee during the Agency Arrangement if the FUD employee wants to become an employee of CUB on terms satisfactory to both the employee and CUB.

2. CONVEYANCE OF FUD SYSTEM. Clinton and CUB agree to use all reasonable efforts (including without limitation, the purchase at reasonable prices of outstanding FUD bonds, providing funds for the redemption of bonds that cannot be purchased at reasonable prices but are callable, and reasonable efforts to get FUD bondholders to consent to the transfer of the FUD System to Clinton) to arrange for the conveyance of the FUD System to Clinton as soon as is reasonably practical, without violating any contractual obligations of FUD; and FUD agrees to cooperate fully in all such efforts. Whenever requested to do so by CUB, FUD agrees to convey the FUD System to Clinton in return for Clinton's assumption of all of FUD's obligations at the time of the conveyance (the "Conveyance Date"). To complete such conveyance, FUD agrees to execute, acknowledge and deliver to CUB any and all deeds, bills of sale or other instruments that are reasonably requested by CUB. No FUD Commissioner who executes any such transfer instrument shall be subject to any personal liability by reason of executing any such instrument.

3. INDEMNITY OF FUD COMMISSIONERS. Clinton and CUB agree to indemnify and save harmless any and all of the FUD commissioners from any and all judgments, costs, expenses of defense, and similar expenses by reason of (1) their negotiation, authorization, approval and execution of this Contract, (2) FUD's performance of any or all obligations under this Contract, (3) any action by FUD or by any of its commissioners done pursuant to the request of the Agent, and (4) any act of Clinton or CUB as agent of FUD. The Agency Arrangement and Conveyance of the FUD

System is without any warranties, express or implied, and Clinton and CUB releases FUD and its Commissioners from any and all claims concerning said FUD System. The foregoing provisions shall protect not only the present FUD Commissioners but also any former or any future FUD Commissioners. *ML*

4. FUD EMPLOYEES. FUD employees will not become employees of CUB until the Conveyance Date, at which time such employees then employed by FUD will be entitled to become employees of CUB with the rights and subject to the conditions stated for them in Exhibit A. Thereafter, their right to continue as employees of CUB shall be no less and no greater than prior employees of CUB holding similar positions.

5. FUD RATES. As soon as reasonably practical after the execution of this Contract, FUD will take the necessary action to put into effect the water and sewer rates prescribed in Exhibit A; and the twelve-month period mentioned in Exhibit A shall begin to run when such rates become effective.

6. AGENCY ARRANGEMENT OPERATIONS. During the Agency Arrangement, FUD agrees that the FUD Board of Commissioners will take any action concerning FUD operations which action is reasonably requested by the Agent, and the FUD Board of Commissioners will take no action concerning FUD operations to which action the Agent reasonably objects. Clinton and CUB will maintain the integrity of the FUD sinking fund for bond payments until the bonds are paid in full.

7. PARTIES IN INTEREST. This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; and FUD, Clinton and CUB expressly reserve the authority to amend or change any of the provisions of this Contract by a written agreement signed by all three of them, without obtaining the consent or approval of any other party.

8. NOTICES. Notices hereunder shall be deemed sufficient when personally delivered to an officer hereafter designated, or if sent to the address hereafter stated by registered or certified mail with return receipt requested:

- (a) Notices to FUD, if personally delivered to any Commissioner of FUD, or if mailed to The First Utility District of Anderson County, Highway 25-W, Route 6, Clinton, Tennessee 37716.
- (b) Notices to Clinton, if personally delivered to the Mayor or the Administrator of Clinton, or if mailed to the Town of Clinton, Clinton, Tennessee 37716.
- (c) Notices to CUB, if personally delivered to any Commissioner of CUB or to the General Manager of CUB, or if mailed to Clinton Utilities Board, P.O. Box 296, Clinton, Tennessee 37716.

If any party to this agreement shall notify the other parties in writing of a change of the mailing address stated herein, such changed mailing address shall thereafter be used in lieu of that stated herein.

9. FURTHER INSTRUMENTS. Each party hereto shall, at the request of either of the others, execute, acknowledge the execution of, and deliver such additional instrument or instruments as may be reasonably required or requested in order to accomplish the intent and purposes of this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract in multiple counterparts, each party hereto retaining an executed copy hereof.

THE FIRST UTILITY DISTRICT OF
ANDERSON COUNTY

By Tommy Brooks
Tommy Brooks, Chairman

Signed this 17th day of November, 1986.

TOWN OF CLINTON

By Cathy Brown
Cathy Brown, Mayor

Signed this 17th day of November, 1986.

CLINTON UTILITIES BOARD

By J. E. Jones
J. E. Jones, Chairman

Signed this 17th day of November, 1986.

STATE OF TENNESSEE

COUNTY OF ANDERSON

Before me, Patsy A. Meredith, a Notary Public of the State and County aforesaid, personally appeared TOMMY BROOKS, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Chairman of THE FIRST UTILITY DISTRICT OF ANDERSON COUNTY, one of the within named bargainors, a public corporation, and that he as such Chairman, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the public corporation by himself as such Chairman.

WITNESS my hand and seal at office this 17 day of November, 1986.

Patsy A. Meredith
Notary Public

My Commission expires: 1-27-90

STATE OF TENNESSEE

COUNTY OF ANDERSON

Before me, Patsy A. Meredith, a Notary Public of the State and County aforesaid, personally appeared CATHY BROWN, with whom I am personally acquainted, and who, upon oath, acknowledged herself to be Mayor of the TOWN OF CLINTON, one of the within named bargainors, a municipal corporation, and that she as such Mayor, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said municipal corporation by herself as such Mayor.

WITNESS my hand and seal at office this 17 day of November, 1986.

Patsy A. Meredith
Notary Public

My commission expires: 1-27-90

STATE OF TENNESSEE

COUNTY OF ANDERSON

Before me, Patsy A. Meredith, a Notary Public of the State and County aforesaid, personally appeared J. E. JONES, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Chairman of the CLINTON UTILITIES BOARD, one of the within named bargainors, a municipal board, and that he as such Chairman, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the Clinton Utilities Board by himself as such Chairman.

WITNESS my hand and seal at office this 17 day of November, 1986.

Patsy A. Meredith
Notary Public

My commission expires: 1-27-90

WWK:gl/0059K

TOWN OF CLINTON

CLINTON, TENNESSEE

37716

September 15, 1986

Mr. Steve Pemberton
General Manager
First Utility District
Clinton, TN 37716

Dear Mr. Pemberton:

Thank you for meeting with me to discuss the service area of First Utility District and Clinton Utilities Board. This letter is to advise you that the Clinton Utilities Board and the Board of Mayor and Aldermen have authorized me to negotiate an equitable solution to solving the overlapping boundaries of the service area of First Utility District and the Clinton Utilities Board. I herewith propose the following to you for consideration of which I will seek authorization from the appropriate boards should you concur:

1. Clinton Utilities Board will assume responsibility for operation of the entire First Utility District.
2. Clinton Utilities Board will accept all assets and liabilities of the First Utility District. We will either continue the payment of outstanding bonds or retire the debt immediately, whichever is preferred. *The Town will immediately pay the bonds in accordance with law and will hold harmless 1st Utility Commission.*
3. Clinton Utilities Board will retain all present employees of the First Utility District. *Cathy Brown Mayor*

This solution will enable the Town of Clinton to pursue federal grants for water and sewer improvements for the First Utility District outside the corporate limits as it presently does for the Town of Clinton. Thank you for your cooperation and if I may be of assistance, please let me know.

Very truly yours,

Charles G. Seivers
Charles G. Seivers
Administrator

Cathy Brown
Mayor

CGS/pm

TOWN OF CLINTON

CLINTON, TENNESSEE

37716

October 6, 1986

Mr. Tommy Brooks, Chairman
First Utility District
Route 6
Clinton, Tennessee 37716

Dear Mr. Brooks:

Mayor Brown and I appreciate you and commissioners Butler and Stair meeting with us Friday morning, September 26th, to discuss the service area of First Utility District and Clinton Utilities Board. We think the meeting was very productive and we see no reason, the few questions raised, cannot be resolved to the benefit of those concerned.

Those items of concern and our response is:

1. Salaries

Those personnel (which were mentioned in earlier correspondence) whose salaries may be higher than those of CUB employees in the same job classification, would continue to be considered for increases on an annual basis. Our search of records reveal all your employees are paid no more than their counterparts at CUB, which leaves them in position of the same consideration as employees at CUB for annual increases.

2. Retirement

All employees will be eligible to join the retirement system in accordance with the policies of CUB and the administration of the retirement plan. We would recommend, providing the employee pays all the cost, employees be allowed to purchase a portion, or up to the maximum number of years of creditable service with

First Utility District. We have been told there should be no problem with this provision providing the employee pays full cost of the back time purchased. In any event, they will be eligible for the retirement system when the change takes place.

3. Fringe Benefits

Vacation, Personal leave, bonuses, insurance, and all benefits that CUB employees now receive, will be made available to FUD employees.

4. Rates *OUTSIDE THE TOWN OF CLINTON, THE BASE RATE FOR 12 MONTHS WILL BE 200 PER MO ON WATER AND 200 PER 1000 GPD AFTER BASE, INSIDE THE TOWN WILL BE THE SAME AS THE PRESENT TOWN'S RATES. SEWER RATES WILL BE 7.00 BASE \$4.2.00 PER THOUSAND.*
We have asked Mr. Hale, General Manager at Clinton Utilities Board, *Cathy Blum, Town of Clinton, Ill* to review the rate structure for the customers of the First Utility District and the cost of operation for the district. We have asked Mr. Hale to give the rate, which he plans to recommend, so that we will have the information before or no later than October 17, 1986 for our meeting.

In closing, I must reiterate our position in the event you find this agreement unacceptable. We will proceed immediately to instruct legal counsel to begin legal action necessary to enable the Town of Clinton to provide service to customers located in the corporate city limits. This would mean, as I am sure you are aware, that:

1. The First Utility District sinking fund was set up for the entire debt. We would be entitled to a portion of the assets including the sinking fund, cash, and other assets, if we only acquire part of the system.
2. All offers concerning the First Utility District employees would no longer exist.
3. The rate structure would be looked at differently.
4. First Utility District customers outside the corporate limits would not be included in any program included in Clinton under any Federal or State Program.

Again, we appreciate you meeting with us. We hope this information will clear any questions you might have. We look forward to seeing you on the 17th and hope we can bring the matter to a satisfactory conclusion. I believe that, if we agree, the appropriate date for this transition will be ^{NOV}January 1, 1987. ^{OR AS SOON AS PRACTICAL} This will give Clinton Utilities Board time to review the entire operation and prepare for the transition. *Cathy Brown*

Sincerely,



Charles G. Seivers
Administrator

CGS/sea

CC: Mayor Cathy Brown
Vice-Mayor Frank Diggs
Barbara Butler, FUD Commissioner
Robert Stair, FUD Commissioner
Steve Pemberton, FUD Manager
Byron Hale, CUB Manager
Dr. Jones, Chairman, CUB Board
Lester Fox, CUB Board Member
Joseph Holbrook, CUB Board Member
Edward Underwood, CUB Board Member

APPENDIX H-1

Nashville City/Davidson County

WHEREAS, the Nashville City and Davidson County school systems exist to provide the best educational opportunity for the children and youth of the total community within the limits of the people's ability to pay for the services, and

WHEREAS, continuous progress in education is the primary goal and objective of a school policy for the City of Nashville and Davidson County, and

WHEREAS, the coordination of community participation in the furtherance of education must be based on a plan of action directing efforts toward the common goal, and

WHEREAS, a plan of action to provide, maintain and improve the quality level of educational opportunity for the children and youth of the community requires the establishment of a statement of policies, and

WHEREAS, the promotion of maximum efficiency of education facilities requires that the creative and productive capacities of all concerned must be encouraged, utilized, and coordinated within a framework of mutual respect and understanding;

NOW, THEREFORE, BE IT RESOLVED by the Nashville City Board of Education and the Davidson County Board of Education:

1. That they shall coordinate their efforts to secure the decisions necessary to achieve the public purpose of education within the total Nashville-Davidson County community.
2. That the Nashville City Board of Education hereby enters into an agreement with the Davidson County Board of Education whereby:
 - A. The Davidson County Board of Education will operate the school facilities during the 1961-62 fiscal year in all areas served by them during the 1960-61 fiscal year;
 - B. The Davidson County Board of Education shall proceed with its capital improvements program in the annexed areas and in the areas affected by the annexation, said program for the 1961-62 being described in Appendix A of the *Davidson County Capital Improvements Program, 1961-67*; C. The Nashville City Board of Education shall proceed with its capital improvements program in the areas affected by the annexations, said program for the 1961-62 being described

in Appendix A of the *Davidson County Capital Improvements Program, 1961-67*;

- D. It is proposed that the County shall authorize and sell a \$4,000,000 countywide General Obligation Bond issue to finance school construction.
- E. The formula for the distribution of a proposed \$4,000,000 countywide General Obligation Bond issue shall be on the basis of the proposed formula shown on page ____ of the *Davidson County Capital Improvements Program, 1961-67*; and shall be specifically allocated, as follows:

TENTATIVE FORMULA FOR DISTRIBUTION OF A
\$4,000,000 COUNTYWIDE GENERAL OBLIGATION
BOND ISSUE FOR 1961-62*

- I. Assuming an issue of \$4,000,000 Countywide
General Obligation Bond

II. A.	County Program for 1961-62		\$3,150,000
	Less: Undivided Program		
	John Early Elementary	\$ 90,000	
	Glengarry Elementary	285,000	
	John Overton High	<u>250,000</u>	<u>625,000</u>
	Total remaining for divided program		<u>2,525,000</u>
B.	City Program for 1961-62		
	Less: Undivided Program		
	Highland Heights Junior High	<u>287,000</u>	<u>287,000</u>
	Total remaining for divided program		<u>1,979,000</u>
III. A.	County A.D.A.		
	Less: Undivided Program A.D.A.		
	John Early Elementary	439	
	Glengarry Elementary (est)	400	
	John Overton High	<u>817</u>	<u>1,656</u>
	Net County A.D.A.		42,844

*The final 1960-61 Average Daily Attendance of the City and County School systems will be used in computing the final and exact distribution.

B. City A.D.A.		
Less: Undivided Program A.D.A.		
Highland Heights Junior High	<u>492</u>	<u>492</u>
Net A.D.A.		27,008

C. Percentage Relationship of Net A.D.A.		
Net County A.D.A.	42,844*	61.3354%
Net City A.D.A.	<u>27,008*</u>	<u>38.6646%</u>
Total	69,582*	
100 %		

IV. Undivided Program		
John Early Elementary	90,000	
Glengarry Elementary	285,000	
John Overton High	250,000	
Highland Heights Junior High	<u>287,000</u>	<u>912,000</u>

V. Divided Program		
\$4,000,000 issue less undivided program	3,088,000	
Issued to County by percentage in No. III C	1,984,037	
Issued to city by percentage in No. III C	1,393,963	

VI. Summary of Divided and Undivided Programs		
County:		
Divided	1,894,037	
Undivided	<u>625,000</u>	<u>2,529,037</u>
City:		
Divided	1,193,963	
Undivided	<u>287,000</u>	<u>1,480,963</u>
Total:		
Divided	3,088,000	
Undivided	<u>912,000</u>	<u>4,000,000</u>

- F. It is recognized that the project costs shown in the Capital Improvements Budget and Program are estimated costs and that the actual costs can only be determined through the letting of bids. In the event that the bids for the construction of the proposed facilities or the cost acquiring proposed sites for projects within the

*The final 1960-61 Average Daily Attendance of the City and County School systems will be used in computing the final and exact distribution.

undivided bond program differ from the estimated figures whom in the *City Capital Improvements Budget and Program, 1961-67* and the *County Capital Improvements Program, 1961-67*, the City and County School Boards shall resolve the difference within the spirit of this agreement.

BE IT FURTHER RESOLVED THAT:

3. The Nashville City and Davidson County Boards of Education shall cooperate in a comprehensive examination of public education needs within the Nashville-Davidson County Community. This study shall include an examination of administration, school zoning policies, pupil transportation, school debt administration, finance and capital outlay programming and such other subjects as may be deemed appropriate to the furtherance of education opportunity.
4. The Nashville City Board of Education and the Davidson County Board of Education shall prior to May 1, 1962, develop a mutually acceptable plan for the acquisition and/or transfer of school priorities located within the areas annexed by the City of Nashville. During the period prior to the transfer of such priorities they shall continue to be maintained at County standards.

BE IT FURTHER RESOLVED THAT as part of this agreement between the Nashville City Board of Education and the Davidson County Board of Education:

5. That consistent with the principle that pupils should be disturbed as little as possible with respect to the school they attend:
 - A. The Boards jointly study the problems of rezoning along the boundary areas of the two school systems on an annual basis; and
 - B. That pupils be permitted to attend schools as presently assigned or as determined by agreement between the City and County Boards of Education without regard to corporate lines.
6. That no tuition be charged except for county students attending Hume-Fogg Technical High School and Pearl High Vocational School.

BE IT FURTHER RESOLVED THAT:

7. The Superintendent of the County Board of Education shall advise the Superintendent of the City Board of Education as to the status

of all school personnel for schools within the areas annexed to the City of Nashville as of the effective date of such annexation.

8. The Superintendent of the County Board of Education and/or his representative shall advise with the Superintendent of the City Board of Education and/or his representative prior to personnel transfers or the assignment of new personnel concerning schools within the areas annexed to the city of Nashville but subsequent to the effective date of such annexation.
9. That all rights of all school personnel shall be protected in accordance with existing law.
10. That the County Board of Education, under policies which the County Board transports pupils throughout the County, will continue to transport pupils living within the annexed area during the 1961-62 and the 1962-63 school years.

APPROVED BY DAVIDSON COUNTY BOARD OF EDUCATION
May 25, 1961

APPROVED BY NASHVILLE CITY BOARD OF EDUCATION
June 9, 1961

APPENDIX H-2

Knoxville And Knox County Agreement For Transfer Of Schools

THIS AGREEMENT, made and entered into this 19 day of June 1963, by and between the CITY OF KNOXVILLE, a municipal corporation with situs in Knox County, Tennessee, of the first part, hereinafter called "CITY," and the COUNTY OF KNOX, a governmental division of the State of Tennessee, of the second part, hereinafter called "COUNTY,"

WITNESSETH

WHEREAS, by Ordinances Nos. 2947, 3049, 3050, 3052, 3053, 3054, the City annexed certain territory pursuant to the authority of Title 6, Chapter 30 TCA so that the said territory is now within the corporate limits of the City, and

WHEREAS, certain public schools of a value of approximately \$12,000,000 now owned and operated by the County are located within the area so annexed, and

WHEREAS, the parties are empowered by law to effect a transfer of annexed school properties by contract between them,

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinbelow contained, it is agreed between the parties as follows:

I

On or before July 1, 1963, the County will give and convey absolutely to the City the following County Schools:

- | | |
|----------------------------------|---------------------------------|
| 1. Alice Bell School | 2. Anderson School |
| 3. Bearden Elementary School | 4. Bearden High School |
| 5. Cedar Grove School | 6. Central High School |
| 7. Chilhowee School | 8. Fountain City Grammar School |
| 9. Galbraith School | 10. Happy Home School |
| 11. Holston High School | 12. Inskip Elementary School |
| 13. Lyons View School | 14. Mooreland Heights School |
| 15. Norwood School | 16. Oakland School |
| 17. Pleasant Ridge School | 18. Pond Gap School |
| 19. Ridgedale School | 20. Robert Huff School |
| 21. Rocky Hill School | 22. Shannondale School |
| 23. Smithwood School | 24. Spring Hill School |
| 25. Sterchi School | 26. West Haven School |
| 27. West Hills Elementary School | 28. Young High School |

Such conveyance shall include all land and buildings comprising the school properties of the above schools, together with all equipment, furniture, fixtures, books and other items of personal property now in use or present and available for use at any of the above schools, excepting however items of equipment used by or available for the use of all County Schools without designation to a particular school, such as but not limited to special projectors, film strips, special scientific equipment and special musical instruments and equipment. County agrees that it will, on or before the said date, execute and deliver all deeds, assignments and other instruments of transfer necessary or appropriate to effectuate such conveyance or conveyances.

II

Effective July 1, 1963, all employees of the Knox County Board of Education assigned to the above schools shall be and become employees of the Board of Education of the City if they choose to do so, providing that as concerns teachers, such employment rights shall exist only for those who are at that time certified or otherwise approved by the State of Tennessee Department of Education. An appropriate proportionate number of maintenance employees, clerical employees, and supervisory personnel of the County Board of Education, not assigned to any particular school, whose employment by the County will no longer be necessary by reason of the reduction of the number of County Schools shall similarly become employees of the Board of Education of the City if they choose to do so. All such persons thus becoming employees of the City shall be entitled to the following rights, which the City hereby agrees to preserve and protect:

- A. They shall acquire tenure rights under the City Charter as if they had been employees of the City for the period of time they have been employees of the County Board of Education.
- B. They shall be placed on the salary scale of the City Board of Education as if they had been employees of the City Board of Education for the time they have been employees of the County Board of Education. If the County shall have granted credit for pay purposes for experience in employment by other Boards of Education, the City Board of Education shall likewise grant credit for such experience not to exceed three years, provided however that compensation of no Knox County employee shall be decreased by reason of the three year limitation for non-Knox County experience.
- C. Such employees may elect to continue membership in any pension plan of which they are members. In absence of such election, they shall acquire the same pension rights as new employees of the City Board of Education.

III

County represents that Exhibit "A" attached hereto is a complete listing of the proportion of the outstanding Rural Bonds of the County applicable to the schools above listed, and that the same accurately reflects the principal and interest requirements to maturity of such proportion of such bonds. City agrees that it will provide funds sufficient to meet all payments to principal and interest due and accruing on the above listed bonds from and after July 1, 1963, as follows:

- A. Not less than thirty days before any date on which a payment on principal or interest is due to be delivered by the County, the County's general accounting office shall give written notice to the Mayor and Finance Director of the City, advising them of the due date and the amount of such payment and such other information respecting the same as they may reasonably request.
- B. Not less than fifteen days preceding such due date, the City shall transmit and deliver to the Trustee of the County funds sufficient to meet such payment to principal and interest.
- C. The City's liability under this Article III shall be only to the County and shall be limited to the amounts stated in Exhibit "A," plus interest on any amount not paid when otherwise due.
- D. County agrees that the funds to be transferred will be applied to the payment of such bonds according to the terms of the notice given the City as above.

IV

Pursuant to the authority of TCA 49-711 the parties agree as follows respecting the issuance of school bonds and the division between them of funds from school bonds:

- A. City hereby waives its right to all or any part of funds due it from County bonds sold during 1962.
- B. In lieu of its rights to demand a proportional payment from each county-wide school bond issue, the City agrees that from and after the execution of this agreement all County bonds for school purposes shall be issued and sold according to the following terms:
 - 1. Funds raised at the request of the County Board of Education for school construction outside the City shall be expended by the County without a proportional payment from such funds.

2. County shall issue county-wide bonds to meet the capital needs of the City School System as follows:
 - a. City shall make request or requests for funds from time to time by delivery to the County Court Clerk and the County Judge of a certified copy of a Resolution by the City Council authorizing expenditure of such funds by the City School Board. Such request for requests shall be made on or before January 1 of each year in which funds will be needed so that necessary bond resolution may be prepared for presentation to the County Court at its regular January meeting and the bonds marketed by April 1.
 - b. The County shall upon receipt of such request or requests issue without delay sufficient County bonds to produce the amount of funds requested.
 - c. Upon receipt of the proceeds of such bonds, the County Trustee shall forthwith transfer said funds to the Treasurer of the City free of any control of the County as to the use of such funds, provided that the same shall be expended by the City in accordance with the terms of TCA 49-713.
 - d. The City School Board and the County School Board will develop by mutual agreement a county-wide budget of capital expansion and improvement funds, projecting the needs for school facilities over a ten year period, and specifying the recommended order of such expansion and improvements year by year. In developing such budget the respective Boards may make such use of population studies and school studies as may be available from the Metropolitan Planning Commission. The Capital Budget and projection of needs so developed shall annually be extended by the Boards for one year, and may be adjusted from time to time as circumstances shall require.

When a majority of each of the respective Boards agrees upon such a budget, it is agreed that such budget shall form the basis for each Board's request to its respective legislative body for capital funds.

Nothing herein is intended to limit or in any wise restrict the right of County Court to issue or refuse to issue bonds for school construction outside the City in such amounts and at such times as it may see fit, whether consistent or inconsistent with the request of the County Board of Education. Neither is anything herein intended, except as provided in paragraph 3 hereinbelow, to limit or in any wise restrict the right of City Council to request or refuse to request the issuance of county-wide bonds for school construction inside the City in such amounts as it may see fit, and County court shall be bound to issue such bonds upon proper request by City Council in accordance with Article IV, C, a, b, c, above, irrespective of any agreements or lack of agreement between the Boards of Education.

3. The City may not in the first three years hereafter be entitled to more than 60 percent of the total bonds issued by the County under this agreement. In the next three years thereafter the City may not be entitled to more than 65 percent of the total bonds issued by the County under this agreement. After these two periods of three years have expired the limitation of division of bonds sold by the County shall be upon the basis of average daily attendance for each year thereafter.
4. Nothing herein shall be construed to give to the County or its School Board any right to direct or control the management or operation of the City School System or any part thereof.
5. The provision of this Article IV shall continue in full force and effect until the City shall have paid to the County the total requirements of principal and interest on Rural bonds as set out in Exhibit "A" hereto, provided, that the parties may by mutual agreement sooner terminate the same. After the said total requirements of principals and interest have been paid by the City to the County the parties shall review the fiscal problems of each with reference to schools existing at that time to determine whether the provisions of Article IV shall be terminated or not.

If after review it appears to either party upon reasonable grounds that it would be inequitable to continue in force the provisions of this Article IV, then such party may terminate the provisions of this Article IV upon six months notice to the Chief Executive Office of the other, assigning reasons for such termination.

V

The Parties agree as follows respecting the attendance at the above schools by a student living outside the corporate limits of the City.

- A. Pupils now attending such schools may continue to do so tuition-free.
- B. New first graders, new high school students, and other pupils hereafter moving into a county school district may attend the nearest of the above listed schools located within two miles of his residence, tuition-free.
- C. Pupils not now attending one of the above listed schools who move hereafter into a different county school district, and whose residence is more than two miles from all of the above listed schools, may attend one of the above listed schools nearer to his residence than the nearest county school if he would have attended said school had it remained a part of the County School System.
- D. No pupil may attend a City School without payment of tuition if he or his parents or guardian have moved their residence from within the present corporate limits of the City to a place outside the present corporate limits of the City at any time after November 22, 1960.
- E. The City reserves the right to transfer pupils attending under paragraphs A, B, and C above if transfer shall seem advisable to alleviate crowded conditions.
- F. Attendance tuition-free under paragraphs A, B, and C above shall cease after June 1969, following which time all County Students attending City Schools must pay tuition or attend under an exchange agreement then in effect.

VI

In event of consolidation of the two school systems the above agreement respecting the city's payment of principal and interest on rural bonds and the above agreements respecting waiver of the division of bond proceeds shall be void and of no effect. If such consolidation shall become effective at a time less than one year following any remittance by the City to the County of funds for payment of bonds as provided in Article III above, the County shall return to the city the same proportion of such remittance as the time elapsed between such remittance and the effective date of consolidation bears to one year, less the amount of funds the County would have received during such period from beer tax, capital outlay, etc., and which the County had previously pledged for retirement of said rural school bonds had annexation not been voted.

VII

As additional consideration for the transfer and conveyance of the school properties aforesaid, City agrees to pay to the County the sum of Three Hundred Twenty-Eight Thousand Dollars (\$328,000) cash, the same to be paid as follows: Fifty Thousand Dollars (\$50,000) on the 15th day of October, November and December, 1963, Fifty Thousand Dollars (\$50,000) on the 15th day of January and February 1964, and Seventy-Eight Thousand Dollars (\$78,000) on the 15th day of March, 1964.

County agrees, as additional consideration, that during the school year ending June 1964, it will provide transportation to and from school for all pupils who would have been entitled to such transportation by the County for the transfer and conveyance provided in this Agreement.

VIII

The provisions of this agreement may be enforced by suit for specific performance to the Chancery Court for Knox County, Tennessee, or in the alternative by suit for damages in any Court of this State having jurisdiction. It is specifically agreed that in event of breach of Article IV, B, 2, any funds borrowed by the City and applied to school construction pending outcome of the suit for specific performance may be repaid by the City with proceeds of the bonds thereafter issued by the County whether the same be issued in conformity with a decree of specific performance or otherwise.

IN WITNESS WHEREOF, parties have caused this agreement to be executed on the day and year first above written by their duly authorized authors and officials.

Approved as to form and correctness:

Director of Law

CITY OF KNOXVILLE

By

Mayor

COUNTY OF KNOX

By

County Judge

APPENDIX H-3

Arbitration Brief For Memphis Board Of Education

SHELBY COUNTY AND
THE SHELBY COUNTY BOARD OF EDUCATION
Petitioners

and

BOARD OF EDUCATION
OF THE MEMPHIS CITY SCHOOLS
Respondent

MEMORANDUM OF POINTS AND AUTHORITIES

Comes the respondent, Board of Education of the Memphis City Schools, and respectfully submits this Memorandum of Points and Authorities to the Board of Arbitration:

I.

THE LAW DOES NOT REQUIRE THAT AN ANNEXING
MUNICIPALITY COMPENSATE ANOTHER AGENCY OF
GOVERNMENT FOR PUBLIC PROPERTIES WHICH HAVE
BEEN TAKEN AS A RESULT OF ANNEXATION

At the threshold of this controversy, there is a fundamental difference of view between the parties as to the basic function of the Board of Arbitration. In the one hand, petitioners view the law as requiring that compensation be paid for annexed schools, and they would limit this arbitration to the sole issue of the value of the school properties taken into the City. Respondent on the other hand very earnestly contends that the Board is confronted by a much broader range of issues than the mere appraisal of real estate. It is responsible for arriving at a **just** and **reasonable** decision which takes into account the overall realignment of governmental functions, rights and responsibilities resulting from the annexation. Obviously, since the results of the Board's decision will ultimately be borne by the residents and taxpayers of the community, the final criterion must be one of fairness to the various groups of taxpayers involved.

It is appropriate to consider, at the outset of this discussion, the language of the statute which authorizes this arbitration:

"Municipal Property And Services - Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as hereinabove provided, an annexing municipality and any affected instrumentality of the State of Tennessee, such as, but not limited to, a utility district, sanitary district, school district, or any other public service district, *shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets and liabilities of such state instrumentality that justice and reason may require in the circumstances.* Provided, however, that any and all agreements entered into before March 8, 1955 relating to annexation shall be preserved. The annexing municipality, if and to the extent that it may choose, shall have the exclusive right to perform or provide municipal and utility functions and services in any territory which it annexes, notwithstanding Sec. 6-26-7 or any other statute, subject, however, to the provisions of this section with respect to electric cooperatives. Subject to such exclusive right any such matters upon which the respective parties are not in agreement in writing within sixty (60) days after the operative date of such annexation shall be settled by arbitration with the laws of arbitration of the state of Tennessee effective at the time of submission to the arbitrators and Subsection (2) of Sec. 23-501, shall not apply to any arbitration arising under Subsection 6-308--6-320. The award so rendered shall be transmitted to the chancery court of the county in which the annexing municipality is situated, and thereupon shall be subject to review in accordance with Subsection 23-513--23-515 and 23-518. T.C.A. 6-318. (Emphasis supplied)

There are no court decisions construing this statute which are particularly helpful in dealing with the issues raised by this arbitration. The case of *Whitt v. McCanless*, 200 Tenn. 360 (1956), simply upholds the constitutionality of the 1955 annexation law, of which this statute forms a part. In *Hamilton County v. City of Chattanooga*, 203 Tenn. 85 (1958), the court held that a county was an "affected instrumentality" within the meaning of the statute and, therefore, arbitration would be required. However, the court did not expand on the language of the statute to throw any light on what the result of the arbitration might be.

No language in this statute suggests that the standard applied by the Board should be one of monetary compensation according to either the value or the cost of the properties taken. On the contrary, the statute recognizes that an annexation does not involve a simple transfer of property but results in an indivisible transfer of numerous "public functions, rights, duties, property, assets and liabilities" and, as we shall later discuss, we doubt that the statute authorizes a monetary award.

The statute leaves the Board of Arbitration free to reach a decision which is fair to all agencies and all taxpayers and which takes into account the entire governmental reorganization which results from the changed boundaries. "Reason and justice" are the only measures by which the ultimate result is to be evaluated, and the word "compensation" does not appear in any place in the statute. The language of the statute, therefore, lends no support to the simplistic approach of the petitioners: an approach which assumes that monetary compensation must be paid and leaves as the only question for the Board the issue of "how much."

In weighing the intent of this statute, it is also significant to note that the Chancery Court is designated as the reviewing body for this arbitration proceeding. This is the court where all considerations of general equity to the parties and taxpayers can be evaluated. If, as petitioners contend, the act was tantamount to a condemnation statute, it would have been more logical to designate the Circuit Court as the reviewing tribunal.

II.

THE COUNTY TAXPAYER HAS SUFFERED NO LOSS AS A RESULT OF THE ANNEXATION OF SCHOOLS IN THE WALKER HOMES AND WHITE HAVEN AREA

In weighing the economic impact of annexation on the various groups of taxpayers involved, the Board has had the benefit of the testimony of Dr. Wilbur R. Thompson. Dr. Thompson is a pioneer in the field of urban economics and, in addition to his academic work, has had personal experience with various intergovernmental authorities. He is therefore, eminently, and perhaps uniquely, qualified to express an opinion with regard to the dictates of fairness and reason in the type of intergovernmental transfer of duties and properties which confronts this Board.

At pages 218 through 224 of the record of the October 4th hearing, Dr. Thompson discussed his general opinion with respect to the transfer of property and responsibilities from one governmental agency to another. He pointed out that an annexation is not a taking of property from its owners but a taking of both the owners and their property into a new governmental jurisdiction. Applying this reasoning to an annexation of school properties, it is obvious that if the annexation takes both the school buildings and the children served by those schools, there has been on gain or less ["no gain or loss"] which would justify one group of taxpayers being compensated at the expense of another. Stated another way, the county held the school property which is the subject of this arbitration for the sole purpose of performing its responsibility of educating the children in the annexed areas. When the respondent relieves the county of this responsibility, the respondent is entitled to take charge of these properties and should not be required to pay additional compensation.

Dr. Thompson's opinion was based in part on the fact that a governmental agency is regarded, not as a private property owner, but as a trustee which holds property for the benefit of the citizens or taxpayers. At page 221, he carefully drew a distinction between condemnation proceeding in which the owner is divested of his property and an annexation, in which property and owners alike pass into the jurisdiction of a new governmental agency. This view of the transaction is not only supported by Dr. Thompson's personal expertise, but has been confirmed by the Supreme Court of this state. In *Prescott v. Town of Lennox*, 100 Tenn. 591 (1898), the Court held that the organization of a special school district for the town of Lennox divested title to the school in that town of the 18th school district of Shelby County and into the newly created municipality. The Court confirmed Dr. Thompson's opinion by stating:

"In the present case it is evident that the property in question cannot now be used for school purposes, unless by the Board of Education, representing such uses within the limits of the new corporation, and if complainants were permitted to control at all, it would be only on the idea of an ownership which could alone be divested by grant or by express Legislative enactment. Such theory, however, would ignore the fact that the title to such property is only held in trust for the public, and that by the change of municipal conditions the cestui que trust has become that public constituting the new corporation of Lennox." 100 Tenn. 594 (Emphasis added).

Of course, as both the Court in *Lennox* and the City Board's witnesses pointed out, an injustice would be worked in particular situations. This might occur if the annexed area did not include all of the school children served by the annexed schools, resulting in the county's being obliged to construct new school buildings. T.C.A. 6-318 would allow a Board of Arbitration to make adjustments for such situations. In the present case, however, no such inequity exists. At page 372 of the hearing of June 7th, the petitioner's witness, Mr. George Barnes, testified that the County Board had not been obliged to construct any additional school facilities as a result of the annexation. In fact, all of the proof at the hearing was to the effect that the children served by these schools had been taken into the city along with the school buildings.

The witness, John P. Freeman, speaking with the benefit of vast experience in school finance and in the relationship of the City and County school systems in this community, confirmed Dr. Thompson's testimony. Beginning on page 402 of the transcript of the hearing of June 7th, Mr. Freeman pointed out that those taxpayers remaining outside the city have suffered no loss as a result of these annexations. To illustrate this point, he showed that the taxpayers in Shelby County may be divided into three groups for purposes of this arbitration: (1) Taxpayers residing within the city of Memphis prior to the annexation, (2) taxpayers continuing to reside outside the city of Memphis, and (3) taxpayers residing in the annexed area. The taxpayers in Group (1),

who live within the old boundaries of Memphis and who send their children to schools located within those boundaries, have not reaped any benefit from the fact that other schools located in the Whitehaven-Walker Homes areas are now under the jurisdiction of the City Board of Education. The taxpayers in Group (2), who have always sent their children to schools that remain outside the city and whose schools are still a part of the Shelby County system, have suffered no loss by the detachment of other schools from the system. The situation of these taxpayers is unchanged and there is no equity in the county's property that the schools of these taxpayers should be subsidized by the remainder of the citizens of Shelby County. Taxpayers in Group (3), who have come into the city along with the annexation of their schools, are in the same position as they were when these schools were in the county. They have been taxed as county taxpayers to build the schools in question, and it would be a gross injustice to require them to be taxed again as city taxpayers to pay for the schools a second time.

In terms of the analysis used by the Tennessee Supreme Court in *Lennox*, the taxpayers in Group 3 are the beneficial owners of the annexed schools and petitioners are their trustee. If petitioners' theory of this arbitration were upheld, it would result in a legal absurdity: the requirement that a *cestui que trust* must purchase his own property from his trustee.

The validity of this analysis was further confirmed by Mr. Gary Head, a professional in the field of local government:

"In addition, I have a strong conviction that when one government Unit accepts the responsibility of another Governmental Unit, and, consequently the assets, that no payment should be required." (Page 57, Hearing of September 13th)

The petitioners themselves furnish no basis on which to challenge the conclusions of these witnesses. No loss or inequity was shown to exist by the petitioners, and no expert testimony in the field of governmental relations was presented to suggest that one agency of government should receive financial compensation for the mere process of turning over certain of its functions to another governmental agency. Moreover, when the petitioners' witness, Mr. George Barnes, was invited on cross examination to give his opinion as to the requirements of "justice and reason" with regard to this transaction, he declined the opportunity. (See Page 344, et seq. Hearing of June 3rd). He also failed to indicate any financial loss which the petitioners would sustain in the course of turning over to the respondents the schools and education responsibilities in the annexed areas. In fact, to the extent that the County's situation has changed at all, the remaining portion of the County School System has realized a net gain in this transaction. This is because non-severable assets of the petitioners have remained entirely in the hands of the County School Board. The County, for example, will now have a greater per capita amount of administrative and transportation facilities with which to serve the remaining students.

Based on the facts set out above, respondents submit that justice and reason do not require any compensation whatsoever for the school properties in the annexed areas. These properties were acquired and held by petitioners in order to discharge their responsibility of educating the children living in those areas. Respondents, having relieved petitioners of that responsibility to the beneficial owners of the property, are entitled - as part of the overall transfer of governmental duties - to assume control of the properties used in the performance of these duties. To require respondents to go further and to pay the County for the privilege of taking over these functions would be manifestly unjust and unreasonable. It would require taxpayers living within the City limits to simply subsidize the operation of a school system in other parts of Shelby County.

III.

EVEN IF PAYMENT FOR THE SCHOOLS WERE REQUIRED, THE INEQUITIES SUFFERED BY THE CITY TAXPAYER HAVE MORE THAN OFFSET THE CLAIM OF PETITIONERS

Although, as discussed above, it is respondent's position that neither law nor equity would require a payment for assets transferred between governmental bodies, the proof disclosed a number of areas in which the City taxpayer has already suffered inequities. These areas more than offset the entire claim of the County for compensation.

A. The Illegal Division of County School Funds

Prior to the decision of the Tennessee Supreme Court in *Board of Education v. Shelby County, et al.*, 207 Tenn. 330 (1960), bond proceeds and County school levies were divided on a fifty-fifty basis between the City and the County Boards of Education. Since more children attended the Memphis City School system, this resulted in an inequitable distribution of school funds, which was held by the Supreme Court to be illegal and unconstitutional. At page 398 of the Hearing of June 7th, Mr. John Freeman testified that the total amount of bond funds wrongfully withheld from the City Board as a result of this arrangement was approximately \$13,000,000. It is the position of respondent that this amount should be offset against any claim which the City might otherwise be awarded. This was substantiated by the testimony of Mr. Harvey on pages 165-7 (May 26th). He shows that the city received \$17,950,000 from bond issues of 1948-60. Based on the 75-25 pupil population, the City Board should have received \$32,175,000 of the \$42,950,000 issued during these years.

The petitioners seek to evade this issue by relying on the refusal of the Supreme Court to make a cash award in favor of the City Board. This overlooks the well-recognized principle that even a claim which has been barred so that it can no longer be the basis of an affirmative action may be raised as a defense. This is particularly

true where the claim is in the nature of a recoupment arising out of the same transaction (51 A, Jr. 2d "Limitation of Action", Sec. 77). Many of the site purchases and construction payments on which the County bases its claim were made out of these very school funds which over the years were illegally withheld from the City Board. The County's claim, therefore, arises directly out of the same transaction as the barred claim of the City Board for the recovery of these funds. While the Supreme Court declined to award the City a recover for these past injustices, it does not follow that expenditures made of illegally-obtained money should be allowed as a basis of affirmative recovery of the County against the City Board. This would allow the County to take advantage of the past wrong-doing and to receive the illegal funds a second time.

B. The Construction of the Shelby County Administration Building

In the course of the present hearing, another example of illegal appropriation of funds to the County School Board came to light. The testimony of Mr. Ward Harvey showed that the new Administration Building of the Shelby County Board of Education was built with funds which had not been divided on an a/d/a basis with the City School system (Pages 226-8, Hearing of May 31st). This building is used entirely for school purposes by the County board and its construction, therefore, represents an expenditure of County funds for education purposes. Under the rule of *Board of Education v. Shelby County et al.*, *supra*, the County was obligated to give the City Board an a/d/a share of any educational appropriations. The County expenditure on this building was \$895,000.00. Based on a 3:1 a/d/a ratio, the County is obligated to pay the City \$2,685,000 and this amount of money, which has not been received by the City of Memphis, should be offset against any County claim.

C. The Physical Needs of the Annexed Buildings

In addition to incurring the general liabilities and responsibilities associated with the duty of educating children in the annexed areas, the City Board has incurred various extraordinary expenses in maintaining and improving the annexed schools. Mr. John Freeman testified to the pressing facility needs in these areas and to the regrettable state of most of the annexed buildings. Exhibits Number 1 and 2 to his testimony set out the extensive needs in the annexed areas. At page 410 of the Hearing of June 7th, Mr. Freeman testified that there were approximately \$1,000,000 in maintenance costs required of these funds, of which \$310,000.00 had already been committed. Capital needs in these areas were estimated at an additional \$3,000,000.

These expenses were over and above the normal expenditures incurred in extending the city school system, such as the increase in the amount of the supplement which is paid out of City property taxes. In the present year, for example, the City of Memphis has contributed \$9,982,758.93 to the City Board's budget, for an average contribution of \$75.51 per pupil. This amount is raised purely from the City property tax. If this amount were capitalized at 8 percent, the result would be a capital outlay of \$948.88 for each pupil taken into the City as a result of these annexations. This amount

multiplied by the 8,406 pupils in the Westwood area would result in a capitalized expenditure of \$7,934,255.38 and multiplied by the 11,907 annexed students in Whitehaven would result in a capitalized expenditure of \$11,238,779.16, or a total of \$19,173,034.44. In light of these increased expenses incurred by the City Board with regard to capital expenditures and to increased operating expenses, it would be unreasonable, both legally and practically, to require the City Board to bear additional expenses resulting from this annexation.

D. Overall Inequities Suffered By The City Taxpayer

In addition to the above matters which relate directly to school expenditures, the respondent has shown that the City taxpayer is already subsidizing the general operation of county government to an inequitable degree. The principal proof on this issue was the Memphis-Shelby County Fiscal Relationship Study (Exhibit 2 to the testimony of Mr. Gary Head) and the supporting testimony of the witnesses, Messrs. Head and Thompson. This study covers the fiscal years of 1968, 1969 and 1970 and it is pointed out at Page 2 of the Study that during this period \$17,000,000 in "spillover" benefits flowed from the City taxpayer to the County taxpayer. This phenomenon is the result of a system of double taxation by which the City resident pays 100 percent of the amount required to operate the City government and also pays approximately 85 percent of the property taxes required to operate the County government.

The method used in the Fiscal Relationship Study was to determine the amount of benefits received by the City taxpayer as a result of each Shelby County program and to deduct from that amount the total costs of the proper paid for by the city taxpayer. If the cost of the City taxpayer exceeded the benefit of the program, the excess amount was noted as a "spillover" benefit from the City taxpayer to the County. It was noted at Page 3 of the Study that no County service produced a contrary spillover in the City's favor while virtually every County function resulted in a spillover from the City taxpayer to the County.

As described by Mr. Head, the Study adopted as its hypothetical theory the assumption that the benefits of most city and County services should be allocated equally among the taxpayers. Mr. Head pointed out that this basic method was a means of assuring absolute fairness to the County taxpayer, since the contrasting audit approach would have showed an increased spillover from the City taxpayer to the County (Pages 28-30, Hearing of September 13th).

A second area in which the Head study bent over backward to assure fairness to the County was the computation of the trade spillover. The fact that a preponderance of commercial property is located in the City was adjusted by allowing the County full credit for all commercial benefits which were not identifiable as stemming from City residents (Page 34, Hearing of September 13th). The study, therefore, shows the minimum amount of benefit spillover from the City resident to the County and, in Mr. Head's opinion, the true amount of County benefit would exceed the \$17,000,000 which was identified by the study (Pages 23-4, Hearing of September 13th).

Although the County's witness, Mr. John Thomas, indicated that various other studies on the City-County fiscal relationship had been conducted, the petitioners did not attempt to present any evidence which would refute the findings of respondent's analysis as reflected in the Head study. It can only be assumed from this that other studies would either support the respondent's case or would not stand the scrutiny to which Mr. Head's study was subjected. Mr. Thomas did suggest two different approaches which might be made in another study. The first suggestion was that an adult approach should be used. Such approach, however, would result in a showing of greater inequity in favor of the County taxpayer. This is true because such County services as the construction and maintenance of the road system and the operation of the sheriff's department outside the city limits would then be attributed to non-city residents. Under the approach of Mr. Head's study, these services, although performed outside the City limits, were attributed equally to all residents of Memphis and Shelby County. Thus, the first suggestion of Mr. Thomas would result in a finding of spillover benefits to the County government which would greatly exceed the \$17,000,000 indicated by Mr. Head's study.

The second approach suggested by Mr. Thomas was the unique theory of removing the tax produced by commercial and other income-producing property from the amounts credited to the City taxpayer. This suggestion overlooks the fact that the concentration of commercial property in an urban area is offset by the greater need for services to the poor that exists in such area. Even more important, Mr. Thomas' application of this principal was inconsistent if commercial and industrial assessments are to be excluded on the ground that they reflect a fortuitous distribution of income-producing property, since it would seem to naturally follow that farm properties which are also income producing, non-residential uses should be removed from the credits attributed to the non-city taxpayer. Thus, the consistent application of Mr. Thomas' second suggestion would undoubtedly lead to the finding of additional spillover benefit in favor of the County.

On the basis of the evidence, therefore, the \$17,000,000 in spillover benefits identified by Mr. Head must be taken as the minimum amount of inequity suffered by the City taxpayer. The Board of Arbitration, which is charged with considering the full range of issues relating to the annexation, should take into account the existence of this inequity. Even though it falls outside the scope of school expenditures, it is a direct subsidy provided to the County by the same group of taxpayers who would bear the ultimate expense of any award which the petitioners might receive, and respondent submits that any award of this Board should attempt to deal equitably with all of the economic realities faced by the taxpayers involved.

IV.

RESPONDENT SHOULD NOT BE REQUIRED TO
ASSUME OUTSTANDING BONDED INDEBTEDNESS
ARISING FROM COUNTY-WIDE BOND ISSUES

Although there is superficial plausibility in the claim that the City Board should assume the obligation of retiring outstanding bonded indebtedness with respect to the annexed schools, a careful analysis would show that such action should not equitably be required for the reason that those bonds are being retired from tax levies imposed by the County on all County taxpayers.

The County had authority under TCA 49-715 to issue bonds which would be retired solely from taxes levied on property from areas outside the City. Had this been done, it would clearly be equitable to require that the outstanding obligations of these bonds be assumed by the City upon the annexation of the schools. The County, however, chose to disregard this opportunity and to finance the schools by a bond issue which is to be retired from General County Funds. Since 1961, the proceeds of such bond issues have been divided equitably on a per capita basis for the benefit of the school children in the County. The bonds are retired by a tax levy which falls equally over all of the assessed property in the County, with the City taxpayer already retiring 80 to 85 percent of these bonds. So long as the buildings and equipment which were purchased by these bond issues continue to be enjoyed upon an equitable and per capita basis by the citizens of the County, no inequity results even through control of particular schools may be transferred from one jurisdiction to another.

The same reasoning applies to the County's claim of cash payment for equipment in these school buildings. The funds used to purchase this equipment have been divided on a per capita basis among the school children through the County. If, for example, a particular tax levy was used to buy desks or books on an equal basis for all children in both school systems, there would be no equity in requiring annexed school children either to abandon their per capital share of these assets or to pay a part of their costs a second time.

It should also be noted that TCA 6-318 not only fails to require that a cash award be made for annexed school property, but does not even authorize such an award. No clause of this statute confers on the Board of Arbitration any power to direct a cash award with respect to properties which have already been paid for by the County. The only relief which the statute would authorize the Board to give to the petitioners would be the allocation of "liabilities" to the City Board if such an allocation were acquired [required] by justice and reason. Based on the language of the statute, respondent submits that the maximum relief which could be granted the County would be the assumption of existing liabilities by the City Board although, as discussed above, this relief would not be appropriate in light of the county-wide nature of these liabilities.

CONCLUSION

The respondent, Board of Education of Memphis City Schools, therefore, submits to the Board of Arbitrators that it is not liable to reimburse the County in any amount whatsoever for the schools involved in this annexation. This is true for the following reasons:

1. The entire process of annexation has resulted in no more than a transfer of trust in the annexed schools together with their beneficial owners - the people of Whitehaven and Walker Homes areas - from one governmental agency as Trustee to another.
2. The claim of compensation has been more than offset by the numerous inequities suffered by the City taxpayer and the City Board.
3. The compensation sought by the petitioners is neither required nor authorized by the terms of TCA 6-318, and no inequities have been suffered by the petitioners which would warrant a departure from the Act.

Respectfully submitted,

EVANS, PETREE, COBB & EDWARDS

By _____
Attorneys for Respondent
Board of Education of the
Memphis City Schools

CERTIFICATE OF SERVICE

Copy of the foregoing Memorandum of Points and Authorities served on Lee Winchester, Jr., Esq., Attorney for Petitioners, by forwarding same copy by United States mail, postage prepaid, addressed to said attorney at this business address in Memphis, Tennessee, this the 7th day of January, 1972.

Board Of Arbitration Award, Shelby County vs. Memphis Board of Education

SHELBY COUNTY AND
THE SHELBY COUNTY BOARD OF EDUCATION

Petitioners

and

BOARD OF EDUCATION
OF THE MEMPHIS CITY SCHOOLS

Respondent

After a full hearing before the Board of Arbitration, duly impaneled pursuant to the provisions of TCA 6-318 and after consideration of all of the evidence presented to the Board, it is the finding and opinion of the majority of the Board of Arbitration that the Petitioner, Shelby County Board of Education, should be granted a total sum of \$1,917,904.00 without interest thereon as a full and final settlement with respect to the school sites, school buildings, and other school properties passing to the Board of Education of the Memphis City Schools by reason of the 1969 and 1970 annexations.

Payment of this amount shall be made by the Board of Education of the Memphis City Schools as follows: \$127,296.00 shall be paid in cash with respect to the equipment and furnishings of the annexed schools. The balance of the award, or \$1,790,608.00, shall be credited to the Shelby County Board of Education for use as future construction funds in the same manner as the credit prescribed in Item 3 of the Settlement Agreement previously entered into by the parties with respect to the school properties annexed in 1965, except that the Average Daily Attendance percentage used in that agreement shall be adjusted to reflect the Average Daily Attendance at 21.74 percent for the Shelby County Board of Education with regard to the funds awarded by

reason of the 1969 annexations and 13.33 percent with regard to funds awarded by reason of the 1970 annexations.

The computation of the above amount was made in the following manner:

1. The total acquisition cost of each parcel of land was computed with respect to each of the annexed areas. This amount was \$143,187.00 with respect to the 1969 annexation and \$397,866.00 with respect to the 1970 annexation.

To this amount was added the cost of improvements depreciated over a thirty-year period. This amount was \$4,022,748.00 with respect to the 1969 annexation and \$6,240,792.00 with respect to the 1970 annexation.

The content value of each of the annexed schools was then added less a depreciation figure of 50 percent, said 50 percent depreciation figure having been agreed to as reasonable by officials of the respective Boards. This depreciated content value was \$330,866.00 with respect to the 1969 annexation and \$415,350.00 with respect to the 1970 annexation.

2. The total thus obtained was \$4,496,801.00 for the 1969 annexation and \$7,054,088.00 for the 1970 annexation. This total was then multiplied by the percentage which the Average Daily Attendance of pupils in the County School System bore with respect to the Average Daily Attendance of students in Shelby County as a whole. The period used for the computation of the a/d/a was the period immediately following the assumption of control of the annexed schools by the Board of Education of the Memphis City Schools. With respect to the 1969 annexation, the percentage factor was 21.74 percent. With respect to the 1970 annexation, the percentage factor was 13.33 percent.
3. The result thus obtained represented the final award which is set out above. The award consists of a total award of \$977,604.00 with respect to the 1969 annexation, including \$71,930.00 for contents. The award also consists of a total of \$940,300.00 with respect to the 1970 annexation including \$55,666.00 for contents. Further itemization of these figures can be obtained by reference to the computation sheet which is attached as an appendix to this award.

IT IS FURTHER ADJUDGED by the Board of Arbitration that this award would be submitted to the Chancery Court of Shelby County pursuant to the terms of TCA 6-318.

The undersigned members of the Board of Arbitration concur in the foregoing finding and opinion, this the 15th day of March, 1972.

/a/ George M. Houston, Chrm.

/a/ Walter P. Armstrong, Jr.

To the majority finding and opinion of the Board of Arbitration the Honorable Ed Gibbons respectively excepts and reserves the right to file a minority finding and opinion in the Chancery Court of Shelby County pursuant to TCA 6-318.

/a/ Ed Gibbons

**Chancellor's Consent Order, Shelby County Vs.
Memphis Board of Education**

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

SHELBY COUNTY BOARD OF EDUCATION,
Complainant

vs.

No. 76380-3 R. D.

BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS,
Defendant

**CONSENT ORDER APPROVING SETTLEMENT AGREEMENT AND
DISMISSION CAUSE**

This cause came on to be heard on the joint report of the parties to this lawsuit advising the Court that a settlement agreement heretofore filed as an exhibit to this report has been executed by all of the parties hereto.

And it appearing that this settlement agreement concludes all of the matters in controversy between the parties, including the annexation of schools in two areas which were involved in the original arbitration and litigation.

It further appears to the Court that the settlement agreement should be approved pursuant to the Tennessee Code Annotated 6-318; and that the trustee of Shelby

County should be authorized and directed to carry out the terms of the settlement agreement; and that the provisions of the arbitration award should be completely set aside and superseded by the settlement agreement.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the contract dated the ____ day of _____, 1974, between the Shelby County Board of Education and the Board of Education of the Memphis City Schools be, and the same is hereby, approved as a final settlement of all liability arising from the annexations covered therein, and the Trustee of Shelby County, Tennessee, the Chairman of the Shelby County Court and others charged with distributing funds to the Shelby County Board of Education and Board of Education of the Memphis City Schools are authorized to carry out the terms of the said contract.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the arbitration award heretofore filed in this cause is forever set aside and held for naught and is superseded by the aforesaid contract. The costs of this cause are assessed fifty (50%) percent against the defendant, Board of Education of the Memphis City Schools, and fifty (50%) percent against the plaintiff, Shelby County Board of Education.

Chancellor

Approved:

R. LEE WINCHESTER, JR.
Attorney for Plaintiff,
Shelby County Board of Education

EVANS, PETREE, COBB & EDWARDS

By _____
Attorneys for Defendant,
Board of Education of the Memphis City Schools

CONTRACT

THIS INSTRUMENT entered into this 4th day of June, 1974, by and between the SHELBY COUNTY BOARD OF EDUCATION, party of the first part, hereinafter referred to as the "County Board of Education" and THE BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS, party of the second part, hereinafter referred to as the "City Board of Education."

WITNESSETH

WHEREAS, effective December 31, 1968, the City of Memphis annexed into its corporate boundaries additional territory containing the following schools owned by the County Board of Education: Ford Road School, Geeter School, Lakeview School, Levi School, Mitchell Road High School, Walker Elementary School, Weaver Elementary School, and Westwood High and Elementary School; and

WHEREAS, effective December 31, 1969, the City of Memphis annexed into its corporate boundaries additional territory containing the following schools owned by the County Board of Education: Fairley Elementary and High School, Gardenview Elementary School, Graceland Elementary School, Graves Elementary School, Havenview Elementary School, Hillcrest High School, Oakshire Elementary School, Raineshaven Elementary School, Westhaven Elementary School, Whitehaven Elementary and High School and Winchester Elementary School; and

WHEREAS, effective December 31, 1971, the City of Memphis annexed into its corporate boundaries additional territory containing the following schools owned by the County Board of Education: Coro Lake Elementary School and White's Chapel Elementary School; and

WHEREAS, effective December 31, 1972, the City of Memphis annexed into its corporate boundaries additional territory containing the following schools owned by the County Board of Education: Scenic Hills Elementary School, Raleigh-Bartlett Meadows Elementary School, and Coleman Elementary School.

WHEREAS, in the case of each of the above annexations, the Shelby County Board of Education subsequently transferred the operation of the aforesaid schools to the City Board of Education and included in said transfer the furniture, fixtures and equipment located in and about the aforesaid properties; and

WHEREAS, being unable to agree upon the terms upon which the aforesaid school properties, furniture, fixtures and equipment are to be transferred to the City Board of Education, the parties have heretofore transmitted the matter to arbitration in accordance with the provisions of Section 6-318, etc., Tennessee Code Annotated, with

respect to the 1968 and 1969 annexation resulting in an annexation award which has not been accepted and implemented by the parties and which has been appealed to the Chancery Court of Shelby County, Tennessee in case Number 76380-3; and

WHEREAS, both Boards as a result of continued negotiations, subject to the ratification by the Shelby County Quarterly Court, have resolved their differences and reached agreement both as to the amount and method of payment by the City Board of Education of the County Board of Education for all school properties, furniture, fixtures and equipment contained in all four of the above listed annexations:

NOW, THEREFORE, in consideration of the mutual promises of the parties and the further consideration as hereinafter set forth, it is agreed as follows:

1. That the total amount of bond proceeds creditable to the County in the manner hereinafter set forth with respect to all school properties, furniture, fixtures and equipment contained in the 1968 annexation shall be: \$2,354,428.60;

that the total amount of bond proceeds creditable to the County in the manner hereinafter set forth with respect to all school properties, furniture, fixtures and equipment contained in the 1969 annexation shall be: \$4,555,798.17;

that the total amount of bond proceeds creditable to the County in the manner hereinafter set forth with respect to all school properties, furniture, fixtures and equipment contained in the 1972 annexation shall be: \$272,504.22; and

that the total amount of bond proceeds creditable to the County in the manner hereinafter set forth with respect to all school properties, furniture, fixtures and equipment contained in the 1973 annexation shall be: \$1,031,037.02.

2. It is agreed that the total balance of payments for these four annexations in the amount of \$8,213,768.01 shall bear no interest and shall be credited to the County Board of Education by the City Board of Education only in the following manner: Shelby County or the Shelby County Board of Education shall have the right to issue County School Bonds or to use any other local funds subject to A.D.A. distribution as required by state laws for constructing purposes without participation by the City Board of Education in the proceeds until such time as the County Board shall have received \$8,213,768.01 of the said bond issues or other capital improvement funds that would otherwise have been paid to the City Board of Education. In other words, Shelby County or the Shelby County Board of Education shall have the right to issue County

School Boards [bonds] or to use any other local funds subject to A.D.A. distribution as required by state laws for capital improvement purposes without the necessity of making any average daily attendance distribution to the City Board of Education other than as a credit against the obligation established herein, until such time as the City Board's A.D.A. share of such proceeds shall equal \$8,213,768.01.

3. The County Board agrees that, as the above credit is expended, it will promptly give notice to the City Board of the amount of bond credit and of the purpose for which it has been expended and of the source of County funds utilized whether they be bond or other county revenues.
4. Shelby County and the County Board of Education hereby agree that title to all school properties annexed by the City of Memphis shall be vested indefeasibly and in fee simple absolute in the Board of Education of the Memphis City Schools. Shelby County and the Shelby County Board of Education further agree that they will, upon request of the City Board, make formal conveyance of any or all of the said properties to the city Board by appropriate quit claim deed.
5. It is further agreed that the amount of credit due for the anticipated annexation of the North Raleigh Area which includes Brownsville, Spring Hill, Raleigh Egypt Elementary and High School shall be determined by the basis used in establishing the amounts in this settlement.
6. It is further agreed and understood by the parties that this contract is intended to supersede and supplant the arbitration award presently before the Chancery Court of Shelby County, Tennessee, in case Number 76380-3. Upon the conclusion of this agreement, that case shall be dismissed and the arbitration award therein set aside by consent of the parties. Shelby County, the Shelby County Board of Education, and the City Board of Education hereby mutually release each other from any further liability of any nature growing out of the four annexations covered by this agreement.

IN WITNESS WHEREOF, the aforesaid parties, the Shelby County Board of Education and the Board of Education of the Memphis City Schools, have hereto set their hands by their duly authorized officers the day and year above written.

SHELBY COUNTY BOARD OF EDUCATION

By

Attest:

Secretary

BOARD OF EDUCATION OF THE MEMPHIS
CITY SCHOOLS

By

Attest:

Secretary