



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File ID: FileID

Substitute

7/27/2020

Public Hearing: YES NO

Department: Board of Commissioner - District 6

SUBJECT:

Commission District(s): Commission Districts 3 & 6

DeKalb County's Objection to the Proposed Annexation of Approximately 34 Acres of Land in Unincorporated DeKalb County into the City of Atlanta Pursuant to Annexation via the Sixty Percent (60%) method.

Information Contact: Commissioner Ted Terry

Phone Number: (404) 371-4909

PURPOSE:

State law allows counties to object to annexations under certain circumstances. On July 9, 2021, DeKalb County received notice from the City of Atlanta of its intent to act on a proposed annexation petition via the sixty percent (60%) method submitted by Derrick L. Montgomery. The Petition seeks to annex approximately 34 acres into the City of Atlanta, including properties within the Brighton Village and Marshall's Landing neighborhoods. The County Attorney and other County staff have investigated grounds for an objection to the annexation.

An authorizing Resolution and a close to final draft of the Objection are attached to this item.

NEED/IMPACT:

This item will protect the health, safety and welfare interests of the County and its taxpayers.

FISCAL IMPACT:

Not known at this time.

RECOMMENDATION:

Vote to adopt the attached Resolution and object to the proposed annexation of approximately 34 acres into the City of Atlanta pursuant to the annexation petition filed by Derrick L. Montgomery and authorize the Chief Executive Officer, or his designee, to execute all necessary documents.

RESOLUTION

A RESOLUTION BY THE GOVERNING AUTHORITY OF DEKALB COUNTY TO OBJECT TO THE PROPOSED ANNEXATION OF APPROXIMATELY 34 ACRES OF LAND INTO THE CITY OF ATLANTA PURSUANT TO A PETITION FILED WITH THE CITY OF ATLANTA

WHEREAS, the City of Atlanta sent notice dated July 1, 2021 to DeKalb County of its intent to consider an annexation petition (“annexation petition”) that would annex approximately 34 acres of land into the City of Atlanta, including properties located within the Brighton Village and Marshall’s Landing neighborhoods, via the sixty percent (60%) method;

WHEREAS, the County Attorney and the administration’s staff have reviewed the annexation petition, correspondence from the City of Atlanta, and the applicable state law governing annexations;

WHEREAS, O.C.G.A. § 36-36-113 allows counties to object to annexation petitions in certain circumstances;

WHEREAS, DeKalb County has determined that an objection to the annexation petition is necessary and warranted;

WHEREAS, a draft of the actual Objection is attached hereto as Exhibit A and is incorporated herein by reference; and

NOW, THEREFORE, BE IT RESOLVED, by the Governing Authority:

1. The County Attorney is directed to deliver DeKalb County’s Objection to the annexation petition, in a form substantially similar to Exhibit A;
2. The County Attorney is further directed to pursue arbitration of this issue in the manner provided by law and to provide periodic reports to the members of the Governing Authority on the matter; and
3. The Chief Executive Officer, or his designee, is authorized to execute all necessary documents.

July 27, 2021

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2021.

STEVE BRADSHAW
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2021.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA H. SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

VIVIANE H. ERNSTES
County Attorney
DeKalb County, Georgia



DeKalb County Law Department

Viviane H. Ernstes
County Attorney

Chief Executive Officer

Michael L. Thurmond

Board of Commissioners

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District 5
Mereda Davis Johnson

District 6
Ted Terry

District 7
Lorraine Cochran-Johnson

July 27, 2021

Via email, first class mail, and statutory overnight delivery (UPS)

The Honorable Keisha Lance Bottoms, Mayor, City of Atlanta
Members of the Atlanta City Council
Atlanta City Hall
55 Trinity Avenue, SW, Second Floor
Atlanta, Georgia 30303

Re: Petition requesting annexation to the City of Atlanta by the 60% method submitted by Derrick L. Montgomery (Our File No. 08.5816)

Dear Mayor Lance Bottoms and Council Members:

This letter is written to object to the proposed annexation of over 100¹ parcels constituting approximately 34 acres of land in unincorporated DeKalb County. On July 9, 2021, DeKalb County (“DeKalb”) received correspondence addressed to the Chief Executive Officer (“CEO”) from the municipal clerk of the City of Atlanta (“City”) notifying DeKalb of the City’s receipt of a petition requesting annexation of parcels in and around the Brighton Village and Marshall’s Landing neighborhoods (the “Notice”). In accordance with O.C.G.A. § 36-36-113, on July 27, 2021, the DeKalb County Governing Authority, by majority vote, adopted and approved a Resolution objecting to the annexation of all of the parcels (hereinafter collectively referred to as the “Proposed Annexation”) included in the above-referenced Notice and the Brighton Village-Marshall’s Landing annexation petition (the “Petition”).

According to the Notice, the Proposed Annexation consists of approximately 34 acres of unincorporated land located in DeKalb, located in two separate clusters: (1) one cluster consists of approximately 30 parcels west of Interstate 20 (the “Marshall’s Landing Cluster”)² and approximately 70 parcels east of Interstate 20 (the “Brighton Village Cluster”).³ Combined the

¹ As detailed below in Section B.2., the final count of the parcels proposed to be annexed is unclear as the Petition fails to expressly identify each parcel proposed to be annexed. Instead, the Notice contains a basic map generally outlining the proposed annexed parcels, with the outline splitting several parcels along the City of Atlanta/DeKalb County boundary.

² As set forth in the Notice, the parcels located on Marshall’s Lane, Settles Circle, Rockland Drive and Hilburn Drive.

³ As set forth in the Notice, the parcels located on Somerset Place, Shropshire Lane, Brighton Boulevard and Northampton Way. The Notice omits parcels located on Fayetteville Road, Pine Trail, Flat Shoals Road and parcels located in the Collection at East Lake (a townhome community) that are included in this Cluster.

parcels have four zoning and three land use designations. For the reasons set forth below, DeKalb objects to the Proposed Annexation.

A. Land Use and Zoning Objections pursuant to O.C.G.A. § 36-36-113 *et seq.*

O.C.G.A. § 36-36-113(a) authorizes a county governing authority to object to a proposed annexation due to a material increase in burden on the county directly related to one or more of the following: (1) the proposed change in zoning or land use; (2) proposed increase in density; or (3) resulting infrastructure demands. The City's acceptance of the Proposed Annexation would cause a direct and material increase in the burden on DeKalb for all three reasons: (1) the proposed zoning would allow an increase in density; (2) the likely zoning and land use changes⁴ would result in substantially different allowable uses; and (3) there would be ensuing burdens on the County's infrastructure. Further, the likely zoning and land use of a portion of the Proposed Annexation is incompatible with the current zoning and associated land use classifications under DeKalb's Zoning Ordinance⁵ as well as the character area designation under the DeKalb's Comprehensive Plan.

The Notice breaks down the proposed changes in zoning and land use characterizations in two parts. First, the parcels located in the Marshall's Landing Cluster are currently zoned R-75 (Residential Medium Lot-75) with a land use designation of TN (Traditional Neighborhood). The Notice states that the proposed City zoning is R-4 (Single-Family Residential) with a Single Family Residential land use designation. Next, the current zoning for some of the parcels located in the Brighton Village Cluster⁶ is RSM (Small Lot Residential Mix) with a land use designation of SUB (Suburban). The proposed City zoning is MR-1 (Multi-Family Residential) with a Low Density Residential land use designation.

The Notice is defective in that it fails to provide the proposed zoning and land use for many of the properties included in the Proposed Annexation: 1008 and 1030 Fayetteville Road; 1708, 1730, and 1748 Pine Trail; the properties located in the Collection at East Lake (a townhome community with an address of 2030 Flat Shoals Road); and 2018, 2048, 2054, 2090, 2118, and 2124 Flat Shoals Road. The current DeKalb zoning for 1030 Fayetteville Road is O-1 (Office Institutional District) while the three Pine Trail properties, 1008 Fayetteville Road, and 2018, 2048, 2054 and 2118 Flat Shoals Road are R-75. The current zoning for properties located in the Collection at East Lake and 2090 and 2124 Flat Shoals Road is RSM. All of the properties have a SUB land use designation.

1. The Proposed Zoning Changes Set Forth in the Notice Will Result in an Increase in Density and Land Use.

⁴ As detailed in Section A.2., the Notice omits the proposed zoning and land use for many of the parcels in the Proposed Annexation. As a result, DeKalb performed its analysis based on the City's adjacent zoning and land use.

⁵ Contained in Chapter 27 of the Code of DeKalb County, as Revised 1988, Georgia (the "DeKalb County Code").

⁶ Only those parcels located on Somerset Place, Shropshire Lane, Brighton Boulevard and Northampton Way.

The proposed zoning change will result in a substantial increase in density of the parcels located in the Marshall's Landing Cluster as it will allow the development of more lots in the area due to a 10% decrease in minimum lot size and more structures as a result of a 43% increase in allowable land coverage. DeKalb's current R-75 zoning of the Marshall's Landing Cluster is meant to provide for the protection of existing neighborhoods and developments as new subdivisions are created specifically where lots have a minimum area of ten thousand (10,000) square feet.⁷ Further, the R-75 zoning allows only a maximum lot coverage of 35%.⁸ In the alternative, the proposed zoning of R-4 for the Marshall's Landing Cluster allows smaller lots of 9,000 square feet⁹ with 50% land coverage.¹⁰ Given the size of the Marshall's Landing Cluster, this proposed change in zoning would have a significant increase in the density of the neighborhood through the creation of smaller lot sizes allowing more lot coverage.

The proposed change in zoning in part of the Brighton Village Cluster (as set forth in the Notice) will result in a different allowable use of the parcels not otherwise contemplated by the DeKalb Code and Comprehensive Plan. First, a proposed change from DeKalb's RSM zoning to the City's MR-1 zoning for some of the parcels¹¹ will result in a different allowable use of these parcels. DeKalb's RSM zoning designation provides for the creation of residential neighborhoods that allow a mix of attached and detached single family housing options.¹² In the alternative, the City's Multi-Family Residential district encourages multi-family residential housing compatible with single family and commercial nodes.¹³ Further, MR-1 does not prohibit multi-family¹⁴ residential housing and is compatible with much denser land use designations as a result.¹⁵ Accordingly, the proposed zoning change for the Brighton Village Cluster would allow for denser multi-family housing while the DeKalb zoning does not.

Both of these proposed zoning changes will result in a more dense and broader use of the parcels located in the Proposed Annexation, which will have a material increase in burden on DeKalb and its infrastructure as a result.

2. The Likely Zoning and Land Use of the Fayetteville Road, Pine Trail, and Flat Shoals Road Parcels Will Result in a Significantly Different Allowable Use of the Parcels Not Otherwise Authorized by DeKalb County's Code and Comprehensive Plan.

⁷ DeKalb County Code, Ch. 27, Sec. 2.7.2.

⁸ DeKalb County Code, Ch. 27, Sec. 2.2.1., Table 2.2.

⁹ Code of the City of Atlanta, Georgia (the "Atlanta City Code"), Pt. 16, Sec. 16-06.007.

¹⁰ Atlanta City Code, Pt. 16, Sec. 16-06.008.

¹¹ Parcels located on Somerset Place, Shropshire Lane, Brighton Boulevard, and Northampton Way.

¹² DeKalb County Code, Ch. 27, Sec. 2.12.1.

¹³ Atlanta City Code, Pt. 16, 16-35.002.

¹⁴ *Id.*, Pt. 16, Ch. 35.

¹⁵ MR-1 zoning is compatible with Low-Density Residential, Medium-Density Residential, High-Density Residential, Very High-Density Residential, Low-Density Commercial and High-Density Commercial land use designations. See City of Atlanta 2016 Comprehensive Development Plan, Table 9-3.

The likely changes¹⁶ to the zoning and land use designation of the remaining parcels will result in a significantly different allowable use in the parcels not authorized by the DeKalb County Code and Comprehensive Plan. The current zoning on these parcels is R-75, RSM and OI (Office Institutional District) with a Suburban land use designation. Based on the adjacent City zoning and land use, the proposed zoning and land use on these parcels may likely be C-1 (Community Business District Regulations) and Low Density Commercial, respectively.

R-75, RSM and OI zoning designations provide for (1) the protection of neighborhoods and existing development as new subdivisions are created, (2) the creation of residential neighborhoods that allow a mix of attached and detached single family housing options, and (3) convenient areas within the county for the location of office and institutional uses for the residents, respectively.¹⁷ In the alternative, the City's C-1 zoning designation provides for medium-intensity retail and service activities and residential use either as single or mixed use development.¹⁸ The permitted uses in R-75, RSM, and OI are significantly more restrictive than those in C-1. Neither R-75 nor RSM, which are the zoning designations for all but one property, allow most of the uses allowed by C-1, including, but not limited to banking institutions, mortuaries, hospitals, museums, higher learning institutions, offices, retail, and restaurants. Further, none of the DeKalb zoning designations allow for commercial greenhouses, indoor recreation facilities, automobile service stations, and automobile sales.¹⁹ The likely change in land use designation from Suburban to Low Density Commercial will exacerbate these issues as the Low Density Commercial characterization includes commercial uses such as retail, restaurants and other neighborhood services while the DeKalb Suburban land use characterization limits non-residential development to small-scale convenience goods and services.²⁰

3. The Proposed Changes in Zoning and Land Use Designations Will Have Increased Demands on DeKalb's Infrastructure.

The Proposed Annexation and affiliated changes in zoning, land use and resulting density impact will, by definition, increase the stresses on DeKalb's existing infrastructure, which is designed to serve existing density projections. Specifically, the proposed changes in zoning and land use and increased density resulting from multi-family housing and commercial establishments will certainly increase the traffic demands on the existing streets within unincorporated DeKalb. That means when more dense development occurs in this annexed area, the bulk of the traffic and road impact would fall on unincorporated DeKalb's roads and residents, rather than on the City's roads and residents. Further, the Proposed Annexation will also significantly affect DeKalb's

¹⁶ The Notice fails to indicate the proposed zoning and land use changes for 1008 and 1030 Fayetteville Road; 1708, 1730, and 1748 Pine Trail; and 2018, 2048, 2054, 2090, 2118 and 2124 Flat Shoals Road, and the properties located in the Collection at East Lake. As a result, this analysis assumes the adjacent City zoning and land use designations will apply. The County reserves the right to amend this Objection if it learns that the proposed zoning and land use changes are different.

¹⁷ DeKalb County Code, Ch. 27, Secs. 2.7.1., 2.12.1, 2.29.1.

¹⁸ Atlanta City Code, Pt. 16, 16-11.002.

¹⁹ DeKalb County Code, Ch. 27, Table 4.1; Atlanta City Code, Pt. 16, Sec. 16-11.003.

²⁰ City of Atlanta 2016 Comprehensive Development Plan, p. 222; DeKalb County 2035 Comprehensive Plan, p. 78.

water, sewer and stormwater systems. As set forth above, many of the uses resulting from the proposed zoning and land use changes are not contemplated by the DeKalb County Code.

B. Other Issues Associated with the Petition and Proposed Annexation

DeKalb has more than adequately stated the various statutorily required facts and arguments for successfully objecting to the Petition; however, various other relevant issues related to the Petition exist and are explained in more detail below.

1. Notice of the Proposed Annexation to DeKalb Was Not Properly Delivered.

The City's Notice to the DeKalb is deficient.²¹ The Notice was not properly sent to the Governing Authority of DeKalb County, as it was only sent to the CEO and not to the members of the Board of Commissioners.²²

2. The Petition Requesting Annexation Is Facially Defective.

The Petition is further facially defective for several reasons. First, the Petition does not contain a complete description of the land proposed to be annexed, as required by O.C.G.A. § 36-36-32(b). Instead, the Notice contains only a basic black and white map outlining the area of the proposed annexations (which appears to be over 100 parcels) without listing the parcels to be annexed.

Further, the Petition purports to contain the signatures of owners of 60% of the total acreage of the Proposed Annexation ("Acreage Requirement") and 60% of electors residing within the Proposed Annexation ("Elector Requirement"); however, the Petition fails to adequately demonstrate that each of these requirements have been met. Instead, the map only states that 60% of the acreage for the Proposed Annexation is 20.52 acres, without providing any additional information as to how the Petition meets the Acreage Requirement.²³ Further, even if the ownership requirement is met, the Petition only purports to contain signatures of electors residing in the consenting parcels (28 parcels), which is only approximately one-third (1/3) of the Parcels and likely does not meet the Elector Requirement.²⁴

²¹ In the event the City amends its Notice to address any of the items set forth herein, DeKalb reserves the right to have the full 30-day period to object to the amended notice.

²² Local Act 1981, p. 4304, Sec. 1, as amended.

²³ A calculation of the Acreage Requirement is necessary here where there are only 28 consenting properties, but over 100 parcels to be annexed. Further, the Petition contains several duplicate signatures, and one consenting property owner (1834 Brighton Boulevard) does not own land located in the Proposed Annexation. Because there is no calculation of how the Acreage Requirement is met, DeKalb cannot be sure whether these errors cause the Petition to fall below the Acreage Requirement.

²⁴ Approximately 78% of DeKalb County residents are registered to vote based on 2019 figures. The U.S. Census estimated that the population of DeKalb in July 2019 was 729,000 and DeKalb shows that it had 568,000 registered voters in November 2019. See <https://www.census.gov/quickfacts/dekalbcountygeorgia>; <https://www.dekalbcountyga.gov/sites/default/files/users/user3587/Official%20VT200%2011-19.pdf>.

Additionally, the Petition fails to indicate the proposed zoning and land use designations for many of the parcels²⁵ as required by O.C.G.A. § 36-36-111. Because the proposed zoning and land use for these parcels are not identified, the County cannot formulate a complete objection.

3. The Proposed Annexed Properties Are Not Contiguous.

The proposed annexation does not meet the contiguity requirements of O.C.G.A. § 36-36-31. Proposed annexations via the sixty percent (60%) method require one-eighth of the aggregate external boundary to abut the municipal boundary.²⁶ Annexed properties must adjoin one another and all properties adjoining shall have their area included in determining the aggregate external boundary of the area to be annexed.²⁷

The Proposed Annexation consists of two clusters, the Marshall's Landing and Brighton Village Clusters, both of which abut the municipal boundary but do not adjoin each other as required under Georgia law.²⁸ Because the properties do not properly adjoin one another, they may not be annexed together as one body.

Further, all of the consenting property owners and electors reside in the Brighton Village Cluster, while a large majority of the land abutting the City boundary comes from the Marshall's Landing Cluster. In fact, only one consenting property owner (of over 100 parcels in the proposed annexation) has land abutting the City boundary. Less than roughly 150 feet of the required 2,548.8 feet²⁹ required for the contiguity requirement comes from a consenting property owner. Allowing an annexation of over 100 parcels to proceed based on consent given only by a handful of distant property owners, and only consent from one property owner abutting the City boundary, is against the intent and policy of the Georgia Code. This type of proposed annexation would allow an applicant to choose any neighborhood abutting a city to bolster its municipal boundary and contiguity requirements, even where almost no abutting property owners consent. Accordingly, this type of annexation is not appropriate under the Georgia Code.

4. The Proposed Annexation Will Cause Service Delivery Issues.

Any action by the City on the annexation petition should further be delayed because there are no intergovernmental agreements or decisions in place concerning the delivery of any governmental services to the property owners within the Proposed Annexation area. Because of

²⁵ 1008 and 1030 Fayetteville Road; 1708, 1730, and 1748 Pine Trail; properties located within the Collection at East Lake; and 2018, 2048, 2054, 2090, 2118, and 2124 Flat Shoals Road.

²⁶ O.C.G.A. § 36-36-31(a).

²⁷ O.C.G.A. § 36-36-31(b); *see also* O.C.G.A. § 36-36-32(b).

²⁸ Although there are no separate guidelines for properties that adjoin one another in a proposed annexation, the definition of "contiguous area" under the Code is helpful. Along with Interstate 20, two private properties separate the Marshall's Landing and Brighton Village Clusters. The definition of "contiguous area" excludes property owned by a municipal corporation, county, state, or by the width of a street or right of way, creek or river, or right of way of a railroad or other public service corporation. None of these exclusions apply to the Proposed Annexation, and as a result, the properties do not properly adjoin one another.

²⁹ *See* Notice, p. 4.

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Members of the Atlanta City Council
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the piece-meal fashion of this proposed annexation, there will be service delivery confusion, especially related to police services. At a minimum, the final vote on the annexation should be delayed by the City until such time the intergovernmental agreements are executed, or other decisions made for delivery of all services to the annexed area.

5. The City and/or Applicant Did Not Consult with the Relevant School System.

There is no indication that the DeKalb School System has been consulted in regard to this proposed annexation, aside from the Notice being sent to the Superintendent, despite the fact that the proposed annexation contains approximately 100 residential parcels. Due to the large number of residential properties included in this annexation and likely resulting impact on the DeKalb School System, the City and/or applicant should have included the DeKalb School System in discussions regarding this proposed annexation.

C. Conclusion.

For the reasons set forth herein, DeKalb objects to the Proposed Annexation and requests that an arbitration panel be appointed pursuant to O.C.G.A. § 36-36-114. At this juncture, while DeKalb believes it will be financially impacted, an approximation of the financial impact to DeKalb cannot be determined because of the lack of any agreement related to the provision of services.

Sincerely,

Viviane H. Ernstes
County Attorney

Via UPS (statutory overnight delivery), email, and first-class mail

cc: Foris Webb III, Municipal Clerk, City of Atlanta
Christopher Nunn, Commissioner, Department of Community Affairs
Christy Barnes, Director of Legal Services, Department of Community Affairs

Via email

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cc: DeKalb County

Michael L. Thurmond, Chief Executive Officer
Members, DeKalb County Board of Commissioners
Irvin J. Johnson, Tax Commissioner
Zachary Williams, Chief Operating Officer
La'Keitha D. Carlos, Chief of Staff, Chief Executive Officer
Kwasi Obeng, Chief of Staff, Board of Commissioners
Jack Lumpkin, Public Safety Director
Darnell Fullum, Fire Chief
Erica Hamilton, Elections Director
Stacy Grear, GIS Director
Andrew Baker, Director, Planning and Sustainability
Reginald Wells, Director, Watershed Management
Peggy Allen, Associate Director, Roads and Drainage
Rick Lemke, Director, Public Works

City of Atlanta

Carmen Chubb, Chief of Staff
Nina Hickson, City Attorney
Charletta Jacks, Intergovernmental Affairs Director, Office of the Mayor
Keyetta M. Holmes, Director, Office of Zoning and Development

DeKalb County Schools

Cheryl Watson-Harris, Superintendent
Members, DeKalb County Board of Education

Atlanta Public Schools

Dr. Lisa Herring, Superintendent
Members, Atlanta Board of Education

Applicant

Derrick L. Montgomery