



DeKalb County Government

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

Agenda Item

File ID: 2022-1835

Substitute

6/28/2022

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 17 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. DeKalb County received notice dated May 25, 2022 from the City of Atlanta of its intent to act on a proposed annexation petition via the sixty percent (60%) method submitted by Bruce Smith. The Petition seeks to annex approximately 17 acres into the City of Atlanta, including properties located on Flat Shoals Road, Pine Trail, and within the Collection at East Lake townhome community. The County Attorney and relevant County staff have investigated grounds for an objection to the proposed 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 17 acres into the City of Atlanta pursuant to the annexation petition filed by Bruce Smith; to authorize an objection to be sent to the City of Atlanta in a form acceptable to the County Attorney; and to authorize the Chief Operating 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 17 ACRES OF LAND INTO THE CITY OF ATLANTA PURSUANT TO A PETITION SENT TO THE CITY OF ATLANTA

WHEREAS, the City of Atlanta sent notice dated May 25, 2022 to DeKalb County of its intent to consider an annexation petition (“annexation petition”) that would annex approximately 17 acres of land into the City of Atlanta, including properties located on Flat Shoals Road, Pine Trail, and within the Collection at East Lake townhome community, 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.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2022.

ROBERT J. PATRICK
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2022.

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 2
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District 3
Larry Johnson

District 4
Steve Bradshaw

District 5
Mereda Davis Johnson

District 6
Ted Terry

District 7
Lorraine Cochran-Johnson

June 28, 2022

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

The Honorable Andre Dickens, 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 Bruce Smith

Dear Mayor Dickens and Council Members:

This letter is written to object to the proposed annexation of approximately 60¹ parcels constituting approximately 17 acres of land in unincorporated DeKalb County. The Chief Executive Officer (“CEO”) of DeKalb County (“DeKalb”) received correspondence from the municipal clerk of the City of Atlanta (“City”) dated May 25, 2022 notifying DeKalb of the City’s receipt of a petition requesting annexation of parcels located on Pine Trail and Flat Shoals Road and within the Collection of East Lake townhome community (the “Notice”). In accordance with O.C.G.A. § 36-36-113, on June 28, 2022, 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 annexation petition (the “Petition”).

Various petitioners have unsuccessfully requested annexation of these parcels before. In July 2021 and April 2022, DeKalb received notification of petitions for annexation to the City for these parcels² as part of a larger proposed annexation.³ On August 4, 2021, DeKalb objected to the first notice and petition based on a material increase of burden on DeKalb resulting from the proposed land use, zoning and increase in density, and other procedural and facial deficiencies.

¹ As detailed below in Section B.2, the Petition fails to expressly identify each parcel proposed to be annexed. Instead, it contains only a general description of boundaries and basic map outlining the proposed annexed parcels, labeled with street numbers and some street names.

² With the exception 2021 Flat Shoals Road.

³ Both petitions included almost identical maps of the proposed parcels to be annexed into the City in addition to parcels located west of Interstate 20 on Marshall’s Lane, Settles Circle, Rockland Drive and Hilburn Drive, and parcels located in the Brighton Village neighborhood.

On August 20, 2021, the City denied that petition for annexation for the failure to (1) contain a complete description of the proposed annexation, (2) satisfy the acreage or elector requirement, and (3) meet contiguity requirements. The DeKalb County Governing Authority also voted to object to the second notice and petition on May 10, 2022; however, an objection was never sent because the City denied the second petition for failure (1) to satisfy the acreage requirement and (2) meet contiguity requirements.

Many of the same deficiencies pointed out by DeKalb and the City still exist in the current Notice and Petition, and 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 several reasons: (1) the proposed zoning would allow an increase in density and (2) there would be ensuing burdens on the County's infrastructure.

According to the Notices, the Proposed Annexation consists of approximately 17 acres of unincorporated land located in DeKalb,⁴ which combined, have four zoning designations and one land use designation.⁵ The Notice breaks down the Proposed Annexation based on the current and proposed⁶ zoning and land use designations. The current zoning for parcels on Lefferts Place and 2030, 2124, and 2090 Flat Shoals Road 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. Next, the current zoning for the parcel located at 1030 Fayetteville Road is OI (Office-Institutional District) with a land use designation of SUB (Suburban). The proposed City zoning is O-I (Office Institutional) with an Office Institutional land use designation. The parcels located on Pine Trail and at 2118 Flat Shoals are currently zoned R-75 (Residential Medium Lot-75) with a land use designation of SUB (Suburban). The proposed City's zoning is R-4 (Single-Family Residential) with a Single Family Residential land use designation. Finally, zoning for the parcel located at 2124 Flat Shoals Road is C-1 (Local Commercial) with a SUB (suburban) land use designation. The proposed City zoning is C-1 (Community Business District) with a Low Density Commercial land use designation.

⁴ As set forth in the Notices, the parcels located on Pine Trail, Flat Shoals Road, Fayetteville Road, and within the Collection at East Lake (a townhome community).

⁵ Where the zoning and land use designations are provided. The Notice does not provide the proposed zoning and land use designations for 2018, 2048, 2054, and 2124 Flat Shoals Road, 1008 Fayetteville Road, and parcels located on Garden Place. DeKalb reserves the right to object to any proposed zoning and land use designations of those parcels when that information becomes available.

⁶ Where provided.

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

The proposed zoning changes for 2118 Flat Shoals Road and properties on Pine Trail would result in a substantial increase in density of the parcels as it would 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 these parcels 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 current R-75 zoning allows a maximum lot coverage of 35%.⁸ In the alternative, the proposed zoning of R-4 for these parcels allows smaller lots of 9,000 square feet⁹ with 50% land coverage.¹⁰ Given the size of these parcels, 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 for parcels located on Lefferts Place and 2030, 2124, and 2090 Flat Shoals Road would result in a different allowable use of the parcels not otherwise contemplated by DeKalb's Code and Comprehensive Plan. First, a proposed change from DeKalb's RSM zoning to the City's MR-1 zoning would 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.¹¹ In the alternative, the City's Multi-Family Residential district encourages multi-family residential housing compatible with single-family and commercial nodes.¹² Further, MR-1 does not prohibit multi-family¹³ residential housing and is compatible with much denser land use designations as a result.¹⁴ Accordingly, the proposed zoning change for these parcels would allow for significantly denser multi-family housing.

Both of these proposed zoning changes would result in a more dense and variety of uses in the Proposed Annexation area, which would have a material increase in burden on DeKalb and its infrastructure.

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

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

¹² Atlanta City Code, Pt. 16, 16-35.002.

¹³ *Id.*, Pt. 16, Ch. 35.

¹⁴ 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 2021 Comprehensive Development Plan, p. 47.

The Proposed Annexation and affiliated changes in zoning and resulting density impact would, 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 increased density would certainly increase the traffic demands on the existing streets within unincorporated DeKalb. That means if more dense development were to occur 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 would also significantly affect DeKalb's water, sewer and stormwater systems due to the increased density and resulting population increase.

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 DeKalb is deficient.¹⁵ The Notice was not properly sent to the Governing Authority of DeKalb County,¹⁶ because it was not sent to the members of the Board of Commissioners by certified mail or statutory overnight delivery.¹⁷

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 map roughly outlining the area of the Proposed Annexation (which appears to be approximately 60 parcels) without listing the parcels¹⁸ 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 are met. As noted by the City in both of its prior denials for annexation, the Petition states that the total acreage of the Proposed Annexation is 16.77 acres but fails to provide a total number of parcels in the Proposed Annexation and a calculation for the total acreage. Further, the Petition purports to contain the signatures of only 8 voters but

¹⁵ 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.

¹⁶ Local Act 1981, p. 4304, Sec. 1, as amended.

¹⁷ See O.C.G.A. § 36-36-9.

¹⁸ By parcel identification number.

appears to include at least 46 residential units in the Collection at East Lake townhome community.¹⁹

Additionally, the Petition fails to indicate the proposed zoning and land use designations for several of the parcels²⁰ 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 Likely Do Not Meet Contiguity Requirements.

The proposed annexation likely does not properly 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.²¹ The Notice and Petition fail to provide a calculation showing that the contiguous boundary equals one-eighth of the aggregate external boundary.²²

Further, only one²³ parcel abutting the City boundary for less than 150 feet has approved the Proposed Annexation. It also appears that the petitioner has extended the boundary of the Proposed Annexation to include 2021 Flat Shoals Road solely in an effort to meet the one-eighth aggregate external boundary requirement. Allowing an annexation of parcels to proceed based on consent given only by one distant property owner abutting the City boundary is against the intent and policy of the Georgia Code. Accordingly, this type of annexation is not appropriate under the controlling legislation.

4. The Proposed Annexation Would 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 the piece-meal fashion of this proposed annexation, there would 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.

C. Conclusion.

¹⁹ Petitioner notes that the townhome community is in development but is not clear as to how many units have residents, so the calculation is unclear.

²⁰ Properties located at 2018, 2048, 2054, and 2118 Flat Shoals Road, 1008 Fayetteville Road, and on Garden Place. Failure to include the proposed zoning and land use designations does not allow DeKalb sufficient information to form its complete objection. For instance, nearby City zoning and land use designations allow for more dense commercial uses not currently allowed by DeKalb.

²¹ O.C.G.A. § 36-36-31(a).

²² Instead, the Notice simply states that the contiguous boundary is 840.3 feet and the total boundary is 6286.8 feet. No measurements are provided otherwise.

²³ 1030 Fayetteville Road.

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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 would 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

cc: DeKalb County
Michael L. Thurmond, Chief Executive Officer
Members, DeKalb County Board of Commissioners
Irvin J. Johnson, Tax Commissioner
Zachary L. 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
Keisha Smith, Elections Director
Stacy Grear, GIS Director
Andrew Baker, Director, Planning and Sustainability
David Hayes, Director, Watershed Management
Peggy Allen, Associate Director, Roads and Drainage
Rick Lemke, Director, Public Works

City of Atlanta

Odie Donald II, Chief of Staff
Nina Hickson, City Attorney
Kenyatta Mitchell, Intergovernmental Affairs Director, Office of the Mayor

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Keyetta M. Holmes, Director, Office of Zoning and Development

Applicant
Bruce Smith