



DeKalb County Government

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

Agenda Item

File ID: 2021-2370

Substitute

3/23/2021

Public Hearing: YES NO

Department: Board of Commissioner - District 3

SUBJECT:

Commission District(s): Districts 3 & 6

DeKalb County's Objection to the Petition for Annexation of 1078 and 1058 Moreland Avenue, S.E. into the City of Atlanta filed by the owner of 1078 Moreland Avenue and 1058 Moreland Avenue.

Information Contact: Commissioners Larry Johnson and Edward "Ted" Terry

Phone Number: 404-371-2425 and 404-371-2645

PURPOSE:

State law allows counties to object to annexations under certain circumstances. The County Attorney and relevant County staff have investigated potential grounds for an objection to a recently filed petition for annexation of 1078 and 1058 Moreland Avenue, S.E. into the City of Atlanta received pursuant to the City's Notice dated February 1, 2021, which was received on February 25, 2021.

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 object to the annexation of 1078 and 1058 Moreland Avenue S.E. into the City of Atlanta based upon the proposed change in zoning and land use, proposed increase in density, resulting infrastructure demands, and identify a facial defect in the Notice received by the County, and authorize the chief executive officer to execute all necessary documents.

RESOLUTION

A RESOLUTION BY THE GOVERNING AUTHORITY OF DEKALB COUNTY TO OBJECT TO THE ANNEXATION OF 1078 AND 1058 MORELAND AVENUE INTO THE CITY OF ATLANTA PURSUANT TO A PETITION FILED WITH THE CITY OF ATLANTA

WHEREAS, by correspondence dated February 1, 2021, which was received by the County on February 25, 2021, the City of Atlanta sent notice to DeKalb County of its intent to consider an annexation petition (“annexation petition”) that would annex 1078 and 1058 Moreland Avenue, S.E. into the City of Atlanta;

WHEREAS, the County Attorney and the administration’s staff carefully 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; and

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 file 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 _____, 2021.

STEPHEN R. 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

District 1
Robert Patrick

District 2
Jeff Rader

District 3
Larry Johnson

District 4
Steve Bradshaw

District 5
Mereda Davis Johnson

District 6
Edward "Ted" Terry

District 7
Lorraine Cochran-Johnson

Via email and statutory overnight delivery (UPS) to:

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, GA 30303

Re: Application for annexation by 100% method of 1078 and 1058 Moreland Avenue, S.E.
(Parcel ID Nos. 15 145 15 054 and 15 145 15 099, respectively) submitted by Stoney
Creeks Development, LLC

Dear Mayor Bottoms and Council Members:

This letter is written in response to Deputy City Clerk Foris Webb III’s correspondence dated February 1, 2021, which was received by the County on February 25, 2021, related to the receipt of an application for annexation by the 100% method from the owner of 1078 and 1085 Moreland Avenue, S.E., and to notify you that the DeKalb County Governing Authority objects to the annexation. In accordance with O.C.G.A. § 36-36-113, on March 23, 2021, the DeKalb County Governing Authority, by majority vote, adopted and approved a Resolution objecting to the annexation of the parcels included in the above-referenced application for annexation (hereinafter collectively referred to as the “Parcels”).

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 a burden upon 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 of Atlanta’s (hereinafter the “City”) proposed annexation of the Parcels currently located in unincorporated DeKalb County (hereinafter “DeKalb”) would cause a direct and material impact in all three regards, namely resulting in (1) zoning and land use changes that allow different and more intense uses, (2) increased density, and (3) ensuing burdens on DeKalb’s infrastructure.

Mr. Webb's February 1, 2021 correspondence does not clearly identify what the Parcels will be zoned if annexed into the City. The Annexation Application requests that the property be rezoned to MR3 under the City's Zoning Ordinance.¹

Proposed Change in Zoning and Land Use and Proposed Increase in Density

First, the proposed annexation is incompatible with both the current land use designation of the affected property under DeKalb's Comprehensive Plan ("Comp Plan"), as well as the current zoning classification and associated land uses authorized under DeKalb's Zoning Ordinance.² Here, the property subject to the proposed annexation is currently designated with an underlying land use designation of "TN"³ under DeKalb's underlying Comp Plan.⁴ Under Atlanta's Comp Plan, this property would be reclassified as "MDR."⁵ While DeKalb's TN classification seeks to promote 'residential development in conformity with existing traditional development and street patterns,' Atlanta's MDR land use category generically contemplates 'residential uses.' More importantly and practically impactful, DeKalb's existing RSM zoning designation of the subject property is restricted to traditional single-family attached and detached dwellings,⁶ while Atlanta's proposed MR-3 would allow for multi-family structures such as apartments.⁷

Secondly, the proposed zoning change⁸ would result in significantly increased density potential. In this regard, DeKalb's TN land use designation only allows up to twelve (12) dwelling units per acre, while its currently controlling RSM zoning district only actually allows for up to eight (8) units/acre.⁹ Notably, the property in question was the subject of a 2000 rezoning, which conditioned development on a site plan consisting of sixty-five (65) attached townhomes. This equates to a meager density of just under six (6) units per acre, and is a condition that the owner would have to successfully petition the County to remove in order to develop at a higher density. In comparison, Atlanta's proposed land use and zoning designations would provide for significantly higher densities. Although utilizing "floor area ratio" instead of dwelling units/acre in addressing density, Atlanta would clearly allow for much greater density as evidenced with illustrative sample calculations. For example, Atlanta's subject MR-3 zoning allows for a maximum eight (8) story¹⁰ building.¹¹ On the subject 478,015 square foot lot,¹² 1,000 square foot

¹ As set forth below, DeKalb objects to the Notice received by the City to the extent that it is incomplete and does not contain the necessary proposed zoning and land use information. DeKalb has formulated its objections based upon the available information and reserves the right to supplement its objections if additional information becomes available.

² Contained in Chapter 27 of the Code of DeKalb County, Georgia (the "Code").

³ Traditional Neighborhood.

⁴ I.e. Future Land Use Map.

⁵ Medium Density Residential.

⁶ See Table 2.4 of DeKalb's Zoning Ordinance.

⁷ See Section 16-35.005(2).

⁸ From DeKalb's RSM to Atlanta's MR-3.

⁹ Notably, the base dwelling unit/acre for RSM is only four (4), but properties are eligible for a density bonus up to eight (8) per acre in exchange for concessions such as preserving open space. See Table 2.4 of DeKalb's Zoning Ordinance. Of course, the typography of many properties would render any otherwise eligible density bonuses impossible to satisfy, assuming they desired to do so in the first instance.

¹⁰ Per Section 16-35.003(3) of Atlanta's Zoning Ordinance.

¹¹ Compared to DeKalb's current RSM zoning classification which only allows building heights up to three (3) stories.

¹² Approximately 10.97 acres.

units would result in a whopping 332 dwelling units per acre. Alternatively, even larger 2,500 square foot units would yield 134 dwelling units per acre.¹³ Of course, this drastic change in density from DeKalb's maximum 12 or 8 units per acre,¹⁴ and authorized high-rise development, would negatively impact¹⁵ the surrounding unincorporated County properties, currently occupied with low density, low-rise single-family detached homes.¹⁶

Finally, the proposed annexation and affiliated changes in (1) Comprehensive Plan land use designations, (2) zoning classifications, and (3) resulting density impacts would, by definition, increase the stresses on DeKalb County's existing infrastructure, which is designed to serve existing density projections.

Disproportionate Impact of Annexation on Traffic and Roads in Unincorporated DeKalb and Increased Demands on DeKalb's Infrastructure

The proposed annexation and affiliated changes in zoning, use and resulting density impacts 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 will certainly increase the traffic demands on the existing streets within unincorporated DeKalb. The annexed area is surrounded on three sides by roads and land located in unincorporated DeKalb. That means when more intense development occurs in this annexed area, the bulk of the traffic and road impact falls on unincorporated DeKalb's roads and residents, rather than on the City's roads and residents.

In sum, the proposed annexation will pose significantly harmful, direct, and material impacts on the area in question by virtue of (1) proposed changes in zoning and land use, (2) proposed increases in density, and (3) the resulting infrastructure demands.

B. Other Issues Associated with Annexation Petition and Proposed Annexation

DeKalb has set forth above the various statutorily required arguments for objecting to an annexation petition. Various other issues related to the annexation petition exist, as explained in more detail below.

Notice of the Proposed Annexation to DeKalb is Deficient

The City's Notice to DeKalb is facially deficient and only references 1078 Moreland Avenue S.E.; however, the correspondence Atlanta received from the Petitioner and the Petition references and includes a request to annex both 1078 and 1058 Moreland Avenue S.E. into the

¹³ These sample calculations admittedly do not represent a likely floor plan that would include non-residential areas such as designated parking and common areas, etc., but regardless display the stark density differential under the two jurisdictions' controlling land development guidelines.

¹⁴ 12 under the Comp Plan's TN designation, 8 (with bonuses) under RSM zoning.

¹⁵ And literally cast a shadow.

¹⁶ Specifically zoned R-75 and R-60, which require a minimum street frontage/lot width of 75 and 60 feet, respectively.

City of Atlanta. Additionally, the Notice does not clearly state the proposed zoning and land use information for the area proposed to be annexed.¹⁷

Lack of Intergovernmental Agreements

Action by the City on the annexation petition should be delayed because there are no intergovernmental agreements or decisions made concerning the delivery of any governmental services to the property owners within the annexed area. Because of the piece-meal fashion of this proposed annexation, there will be service delivery confusion, especially related to fire rescue and police services. Additionally, it is unclear whether the proposed development will seek water and sewer services from the City or DeKalb. DeKalb is seeking to have a final vote on the annexation 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.

No Consultation with School Systems

There is no indication that the City School System and/or the DeKalb School System have been included in discussions related to this proposed annexation. In 2018, DeKalb County was named as a defendant in litigation between the City and the DeKalb School System related to the expansion of the City School System as a result of the 2017 “Emory Annexation.” It took a considerable amount of DeKalb County staff’s time and taxpayers’ funds to defend DeKalb. In order to avoid additional litigation, DeKalb is seeking to have a final vote on the proposed annexation delayed by the City until such time as issues related to the school systems are resolved.

DeKalb Objects to the Funding of the Proposed Annexation through Tax Abatements

DeKalb is not currently aware of any tax abatements, but objects to the proposed annexation to the extent that the City has offered tax abatements to the property owners without DeKalb’s consent. This action reduces tax revenues received by the County to fund the infrastructure demands discussed above.

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, an approximation of the financial impact to DeKalb cannot be determined because of the lack of agreement related to the provision of services.

Thank you for your attention to this matter.

Sincerely,

¹⁷ In the event that the City amends its Notice to address the deficiencies set forth herein, DeKalb reserves the right to have the full thirty (30) day period to object to the amended notice.

Viviane H. Ernstes
County Attorney

Via UPS (statutory overnight delivery)

cc: Christopher Nunn, Commissioner, Department of Community Affairs
Foris Webb III, Municipal Clerk, City of Atlanta

Via email

cc: DeKalb County
Michael L. Thurmond, Chief Executive Officer
Members, DeKalb County Board of Commissioners
Zachary Williams, Chief Operating Officer
La'Keitha D. Carlos, Chief of Staff, Chief Executive Officer
Kwasi K. Obeng, Chief of Staff, BOC
Erica Hamilton, Elections Director
Stacy Grear, GIS Director
Andrew Baker, Director, Planning

City of Atlanta
Nina Hickson, Esq., City Attorney

DeKalb County Schools
Cheryl Watson-Harris, Superintendent

Atlanta Public Schools
Dr. Lisa Herring, Superintendent

Applicants
Carl Westmoreland, Esq.
Henry Bailey, Jr., Esq.