

COMMISSIONERS MEETING – MONDAY, JULY 10, 2006

Annexation Hearing

Stephen D. Hambley called the meeting to order at 10:30 a.m. with Sharon A. Ray present. This was a scheduled annexation public hearing on 7.8465 acres of land from Brunswick Hills Township to the City of Brunswick. The regular Commissioners meeting will be Thursday, July 13, 2006, at 9:30 a.m. at Patricia G. Geissman's request because she will be out of town until then.

Mr. Hambley swore in those wishing to comment during the hearing and opened the hearing for opening statements.

David Spotts, Attorney, stated that he was agent for the petitioner.

Trina Devanney, Assistant Prosecutor, stated that she would be representing Brunswick Hills Township. She introduced Kathleen Scheutzow, Chair of the Brunswick Hills Township Trustees, and said that they are in opposition to the annexation.

Santo Incorvaia, Brunswick City Assistant Law Director, stated that Brunswick City Council passed legislation in support of the annexation. They are looking forward to providing police protection, fire protection, suppression, EMS service, water service, and any and all services rendered to residents of the City of Brunswick upon final approval of the petition. This property is an island surrounded by the City and it is in the best interest of the territory for it to be annexed to the City of Brunswick.

Mr. Hambley asked the Clerk if the following statements regarding the validity of the petition were true and she said they were true:

- a. Petition contains signatures of majority (51%) of owners
- b. No signature was obtained more than 180 days before filing of petition with Clerk
- c. Accurate legal description of the perimeter and an accurate map/plat of the territory proposed for annexation was filed
- d. Agent was listed in the petition.
- e. List of adjacent property owners/land was attached

He asked the Clerk if all the required procedures had been followed; she said they had. The hearing was opened for the presentation of the case.

Mr. Spotts, Agent for the petitioner, said they would like to annex to the City of Brunswick because they believe that they are capable of handling all of the emergency services and utilities to the property.

Ms. Devanney, representing the Township, questioned Township Trustee Scheutzow. Ms. Scheutzow testified that the township would prefer to keep the land in the township for the tax benefit. They believe they can provide all of the services that have been outlined with the exception of water. The Township has its own police and fire departments that service that area. There is a waterline available on S.R. 303 that is owned by the City of Cleveland. The sewage system available is provided by the Medina County Sanitary Engineer. Township property can obtain private utilities and sewer services so it is a water issue. She said she called the City of Cleveland's Department of Water and explained the location of the property and the waterline, and that it was historically a contentious situation. This person checked his records and said as long as there was a road-opening permit he saw no problem with connecting that property to the water source. She called specific to this property because she had spoken with Mr. Avner after the earlier annexation effort and he said they would be willing to stay in the township if they could get water to the property. He asked her to find out if they could get water. The property does not have water now because the waterline is on the north side of S.R. 303 and it requires a road-opening permit to break into the right-of-way and access the waterline. In this case, two road-opening permits will be required. She spoke with someone from the Ohio Department of Transportation (ODOT), because it is a State route, and they said

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they issue road-opening permits for property that is contiguous to township land. They sent her the road-opening form, which she forwarded to the petitioner. A road-opening permit is also required on the opposite side of the street that is contiguous to the City of Brunswick; they have jurisdiction for issuing those permits. She relayed this information to Mr. Avner and sent him the ODOT permit. Since he is the developer, she assumed he would follow through with that, but she is not sure she specifically said that he was to follow up with the City of Brunswick. Mr. Avner called her and told her, as a courtesy, that they were going forward with the annexation petition.

Ms. Scheutzow explained the C-1 commercial district in the Township. She said it varies from the City of Brunswick in that the Township allows a residence to be on the property for someone who owns the business or works in the business. A person could put a restaurant on the property and their residence could also be on the property if that person was part of the business. There is a front and back portion to the property and the entire portion is zoned C-1. C-1 zoning allows local service-type businesses, multi-family dwellings, and apartment buildings; they could use the property in just about any fashion. Her opinion is that there is no benefit, other than water, to being annexed to the City of Brunswick, so she speculated that they must have more information than she does.

Mr. Spotts questioned Ms. Scheutzow. Ms. Scheutzow testified that the person's position at the water department that she was transferred to was someone in the Permits Department responsible for connecting to the water system. She did not have his name with her at this time and she did not recall his position. She felt this person had the authority to give her the information because he was the one her phone call was directed to and who was responsible for making connections to water service in the City of Brunswick. She did not have this information in writing to support this testimony. This person told her the developer would need to submit a road-opening permit to them to get their connection permit. The City of Cleveland tells people that water is available and the process to get it.

Ms. Scheutzow said she is the zoning liaison to the Trustees, but she did not memorize the C-1 code and is not an expert according to Mr. Spotts' definition. She said she is not an attorney and this is not a legal interpretation, but she offers Council her interpretation of that section of the code if they ask for it. She has seen the corresponding Brunswick Zoning Code, but has not compared them item by item. She believes, based upon her inquiry of the people of the Ohio Department of Transportation and the City of Cleveland and her attendance at the Suburban Regional Water Council of Governments where there was presentation by the City of Cleveland, that water can be provided to that parcel if they have a road-opening permit.

Mr. Incorvaia questioned Ms. Scheutzow. Ms. Scheutzow testified that the Township cannot issue a road-opening permit on S.R. 303, but the City could, based upon what ODOT told her; on the north side, one would be issued by the City of Brunswick and the south side, by ODOT. The Township's fire station is on S.R. 42 and Station #2 is on Grafton and Substation Roads that could provide fire service. She is familiar with the Brunswick City Fire Department and she agreed that it is closer than the Township's fire stations. The Township supplies fire inspection services. The Township does not supply building inspection services; that would be supplied by the County. Mr. Incorvaia said the City of Brunswick supplies building inspection services.

Mr. Hambley said, for the record, that the City of Brunswick and Brunswick Hills Township are still under litigation regarding the recent transaction between Brunswick and Cleveland regarding the water system. He said that, according to Ms. Scheutzow, the parcel should be able to gain access to water and she agreed. He asked Ms. Scheutzow about her statement saying the Township opposes the annexation because of loss of tax revenue. Currently, a portion of the parcel is commercial and a portion is R-1 residential. She said she did not know how much the tax loss would be. Mr. Hambley said this hearing is fact-finding

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and they are charged with reviewing the entire record that is produced at the hearing as well as other records that are provided. They evaluate this information and review the conditions and criteria. He asked Ms. Scheutzow her opinions regarding the following criteria according to the Ohio Revised Code as follows:

- a. The territory proposed to be annexed is not unreasonably large.
- b. On balance, the general good of the territory proposed to be annexed will be served and the benefits to the territory proposed to be annexed and the surrounding area will outweigh the detriments to the territory proposed to be annexed and the surrounding township area located within ½ mile.
- c. No street or highway will be divided/segmented by the boundary line of the township and municipality creating a road maintenance problem; if a street or highway is divided/segmented, the municipality has agreed to assume the maintenance of the street or highway.

Ms. Scheutzow answered that it is not an unusually large property. They notified Brunswick Hills Township property owners within a half-mile radius of the subject property and none of them wanted to see the property annexed (some said because of tax loss). She said the Township would get property taxes for a period of time in the future, but they would not get the increased value of the property. They will lose the commercial property taxes and this erodes their tax base. Mr. Hambley clarified that it is loss of potential gain of the development. He said his analysis shows Brunswick Hills Township has 2.60 inside-mills and there are 9.25 outside-voted mills. Brunswick City currently has 2.60 inside-mills and .75 outside-voted mills. Ms. Scheutzow said, from the Township's perspective, they would like to keep some commercial property in the Township because they get more tax from commercial property in relationship to cost of services.

Ms. Devaney questioned Ms. Scheutzow. Ms. Scheutzow testified that the Township Trustees ultimately pass the zoning code as it is presented to them by the Zoning Commission. The three Trustees share inspection of the Township as liaisons and that Trustee works with that particular segment of Township government, relaying information back and forth. She reviewed her conversations regarding water connection. She discussed the mutual-aid fire service agreement with the City of Brunswick and if a certain time was exceeded, another department would be called upon to respond. Brunswick Hills Township received building inspection services from the Medina County Building Department.

Mr. Hambley commented that he has personally found Ms. Scheutzow's expertise in zoning to be very high. She also sits on zoning for the County Planning Commission and has been very knowledgeable, even before she was a Trustee, regarding local zoning.

Ms. Devaney questioned Mr. Avner. Mr. Avner testified that he spoke to Roger Westfall or Ryan Cummins from the City of Brunswick about obtaining a road-opening permit and was told the City would handle getting the permit from ODOT for him to gain access to the water once it was annexed. He did not ask if that was available if the parcel remained in the Township. He was not told he had to apply for a Regular-type annexation. He did not want to get into a fight between the municipalities for an Expedited-type annexation. They wanted City water, which is a key element in order to satisfy a tenant they have for the building, so they went through the process of getting annexed. He just recently understood the difference between the two types of annexations.

Mr. Hambley opened up the hearing for any other testimony. Robert McCafferty, 3576 Monterrey Circle, Brunswick Hills Township, commented that the procedures are the same for the City and the Township for getting permits for water service. The only difference is that Mr. Avner did not ask the City if they would do it without annexation. He asked to see Mr. Incorvaia's document from Brunswick City Council in support of the annexation and asked

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who voted Aye and who voted Nay. Mr. Incorvaia said the document said there were six Ayes and one abstention. He asked if Brunswick City Councilperson Susan Hambley voted for the annexation because he sees a conflict of interest. Mr. Hambley said the Prosecutor and the Ohio Board of Ethics have a different point of view. Joe Dickinson, Assistant County Prosecutor, stated that the issue has been fully evaluated by people who are charged with officially making that determination and they have found that there is no basis for conflict of interest. Mr. McCafferty said the City of Brunswick is no longer in the water business and yet they are dictating to the Township. He said he is sick of the term “island” that was created by the City of Brunswick. He praised Ms. Kreutzow’s zoning expertise.

Ms. Devanney stated that Ms. Scheutzow now has her notations as to who she spoke with at the City of Cleveland. Ms. Scheutzow submitted the notes for the record and explained them briefly.

There being no further testimony, Mr. Hambley opened up the hearing for closing statements. Mr. Spotts stated that there is no dispute that the petitioner meets all of the procedural requirements. Granting the annexation is consistent with the Planning Department’s report, which he incorporated into his presentation. The conditions and the criteria have been met by the petitioners. The City of Brunswick supports the annexation and has appropriately passed the necessary resolutions. They have also guaranteed to provide the services required by the statutes and there have been no disputes about anything the City did incorrectly. They have presented evidence that there is a balance of general good, in particular with the water issue. They are anxious to proceed with the project and by carefully analyzing the situation, they have chosen this path. The proximity of the City’s fire service is an important consideration and may be valued in the best interest of the public in general. Fire suppression services are available through the City of Brunswick and not through the Township. He said he hopes they will proceed to grant the petition.

Mr. Incorvaia stated that Brunswick City Council passed a resolution supporting the annexation and they will provide city services upon annexation. They believe all of the procedural requirements have been met and it is the best interest of the territory for the annexation to proceed.

Ms. Devanney stated that the Township opposes this annexation because the statutory obligations have not been met and there is no benefit to the property to annex into the City. As demonstrated through this testimony, the Township provides all of the services to this property already and can continue to do so. According to Ms. Scheutzow’s testimony, water seems to be available to this property. There is no testimony that the City rejected a request for a road-opening. There is no benefit to the property, so this annexation cannot proceed.

Mr. McCafferty commented that it comes down to two entities fighting amongst themselves. He heard that the tax base is of no consequence, but if they keep eroding the properties of the Township, they won’t have the ability to afford to provide services to their residents. The percentage of property was formerly 70% Township and 30% City, but now it is 50% Township and 50% City. They also “jam” 15-20 homes on one acre in the City. He said it is time to take a stand, and it is time for the City and Township to get along.

There were no further closing statements. Mr. Hambley said the Commissioners would be making a decision by resolution within 30 days. The legal standard for that decision is a preponderance of substantial, reliable, and verifiable evidence on the whole record. The specific findings of fact are required in the decision for each of the conditions of annexation that are detailed in the Ohio Revised Code. If Mrs. Geissman has the opportunity to review the full record, it will be her decision whether she is comfortable to vote, not having been present at this hearing.

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Ms. Ray moved to close the public hearing on the annexation petition for 7.8465 acres from Brunswick Hills Township to the City of Brunswick at 11:30 a.m. and Mr. Hambley seconded the motion. There was no discussion. Roll Call showed both Commissioners voting AYE. Ms. Ray moved to adjourn the meeting; seconded by Mr. Hambley. There was no discussion. Roll Call showed both Commissioners voting AYE.

MEDINA COUNTY COMMISSIONERS:

Stephen D. Hambley

Sharon A. Ray

Patricia G. Geissman

Respectfully submitted,

Pam Vereb, Clerk