

## **SPECIAL SESSION**

State of West Virginia, County of Jefferson, to-wit:

At a Special Session of the County Commission of said County and State continued and held in the County Commission meeting room of the Old Charles Town Library, 200 E. Washington Street, Charles Town, West Virginia on Wednesday, April 12, 2017, beginning at 1:30 o'clock p.m.

**PRESENT:** Peter Onoszko, President  
Jane Tabb, Vice President  
Caleb Hudson, Commissioner  
Patricia Noland, Commissioner  
Stephanie Grove, County Administrator  
Nathan Cochran, Assistant Prosecuting Attorney  
Jessica Carroll, Administrative Assistant

**In re: Continued review of the Application from the City of Charles Town for Annexation by Urban Growth Boundary Adjustment.**

The meeting was called to order at 1:31 p.m. by President Onoszko, and he then led the Pledge of Allegiance. President Onoszko stated the purpose of the meeting was to continue the discussion regarding the Application from the City of Charles Town for Annexation by Urban Growth Boundary.

- **Motion by Ms. Noland to enter into Executive Session to receive legal counsel. Motion seconded and unanimously approved.**
- **Motion by Mr. Hudson to come out of Executive Session. Motion seconded and unanimously approved.**
- **Motion by Ms. Noland to amend the decision taken by the Jefferson County Commission during the April 6, 2017 regularly scheduled meeting to reject the City of Charles Town's Application for Annexation by Urban Growth Boundary Adjustment because the City did not follow WV Code §8-6-4 and §8-6-5 pursuant to the provisions of WV Code §8-6-4a (c)(2) and did not meet the threshold requirements for annexation as a minor boundary adjustment and to enter into the minutes the Order rejecting the application for annexation as proposed by the City of Charles Town. Motion seconded and unanimously approved.**

## **COUNTY COMMISSION OF JEFFERSON COUNTY WEST VIRGINIA**

**IN RE: APPLICATION FOR ANNEXATION BY THE CITY OF CHARLES TOWN**

### **ORDER REJECTING APPLICATION FOR ANNEXATION**

**Procedural Facts:**

1. The City of Charles Town (herein the “City”) filed a document titled “Application of the City of Charles Town for Annexations by Urban Growth Boundary Adjustment” (herein “Application”) and accompanying documents.

2. The application for annexation contained no evidence that the City had complied with West Virginia Code 8–6–4 at any time with regards to the annexation procedure.

3. The City requested an appearance at the Jefferson County Commission meeting on April 6, 2017 to present the application to the Commission.

4. The City appeared at the April 6, 2017 meeting to present the application.

5. At the Jefferson County Commission meeting on April 6, 2017, the City presented evidence that the territory to be annexed consisted of approximately 2,601.83 acres containing 922 properties with 2,174 residents and parts or all of 63 streets.

6. At the Jefferson County Commission meeting on April 6, 2017, the City alleged that the 2,601.83 acre territory was a “minor” boundary adjustment pursuant to West Virginia Code 8–6–4a(c)(2) and West Virginia Code 8–6–5.

7. At the Jefferson County Commission meeting on April 6, 2017, the City presented no evidence that it had passed an ordinance providing for the annexation of additional territory as required by West Virginia Code 8–6–4.

8. At the Jefferson County Commission meeting on April 6, 2017, the City presented no evidence that it had obtained a petition of a majority of qualified voters of the additional territory as required by West Virginia Code 8–6–4.

9. At the Jefferson County Commission meeting on April 6, 2017, the City presented no evidence that it had obtained a petition of a majority of all freeholders of the additional territory as required by West Virginia Code 8–6–4.

10. The City of Charles Town has manifested no belief at any time that it was required to comply with West Virginia Code 8-6-4 in any manner with regards to the application, and presented no evidence at any time that it has complied with West Virginia Code 8-6-4.

11. At the Jefferson County Commission meeting on April 6, 2017, the members of the Commission determined that West Virginia Code 8-6-4a(c)(2) required compliance with both West Virginia Code 8-6-4 and West Virginia Code 8-6-5 for the City to proceed with annexation of property by minor boundary adjustment within an urban growth boundary.

12. At the Jefferson County Commission meeting on April 6, 2017, the members of the Commission determined that the annexation of 2,601.83 acres was not “minor” within the meaning of West Virginia Code 8-6-5 and the provisions of West Virginia Code 8-6-4a(c)(2).

13. At the Jefferson County Commission meeting on April 6, 2017, the members of the Commission unanimously rejected the City’s Application because the City did not follow both West Virginia Code 8-6-4 and West Virginia Code 8-6-5 pursuant to the provisions of West Virginia Code 8-6-4a(c)(2) and did not meet the threshold requirements for annexation as a minor boundary adjustment.

### **Statutory Requirements**

14. West Virginia Code 8-6-4a(c) states:

*(c) Procedure for a municipality to annex property within an urban growth boundary.*

(1) If the proposed property to be annexed by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article. Agreement with the county commission is not required.

(2) If the proposed property to be annexed by minor boundary adjustment by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article if the provisions of section five of this article are followed, except that agreement with the county commission is not required.

W. Va. Code § 8-6-4a(c)

15. The Jefferson County Commission FINDS that, to meet the requirements of W. Va. Code § 8-6-4a(c)(2), the City of Charles Town must follow both W. Va. Code § 8-6-4 and W. Va. Code § 8-6-5 to proceed with the annexation.

#### **Requirements Pursuant to W. Va. Code § 8-6-4**

16. W. Va. Code § 8-6-4 requires that a majority of the qualified voters and freeholders in the affected area must petition Charles town to be annexed into the city.

(a) The governing body of a municipality may, by ordinance, provide for the annexation of additional territory without ordering a vote on the question if: (1) A majority of the qualified voters of the additional territory file with the governing body a petition to be annexed; and (2) a majority of all freeholders of the additional territory, whether they reside or have a place of business therein or not, file with the governing body a petition to be annexed.

W. Va. Code § 8-6-4 (portions omitted)

17. The City presented no evidence either in the application or the April 6, 2017 meeting that the City complied with West Virginia Code 8-6-4 at any time with regards to the annexation procedure. There was no evidence that the City passed an ordinance for annexation pursuant to West Virginia Code 8-6-4. There was no evidence that the City had obtained a petition to be annexed of a majority of all qualified voters and freeholders of the additional territory. The Commission therefore FINDS that the Application fails on that basis alone for lack of compliance with the facial requirements of W. Va. Code § 8-6-4a(c)(2).

#### **Gatekeeping Requirements Pursuant to W. Va. Code § 8-6-5**

18. The Jefferson County Commission acknowledges that W. Va. Code § 8-6-4a(c)(2) states that ... “agreement of the county commission is not required” under W. Va. Code § 8-6-5.

19. The Commission FINDS that the statement “agreement of the county commission is not required” in W. Va. Code § 8-6-4a(c)(2) refers to the Commission’s decision to grant or deny a petition for annexation on the merits based on the seven factors stated in the test contained in W. Va. Code § 8-6-5(f). If W. Va. Code § 8-6-4a(c)(2) did not apply, those seven factors, at a minimum, are the matters that the Commission would have to consider to determine whether to grant or deny an application for minor boundary adjustment. If the annexation lies within an Urban Growth Boundary, W. Va. Code § 8-6-4a(c)(2) abrogates the Commission’s capacity to deny the application on its merits based on the seven factors in W. Va. Code § 8-6-5(f).

20. However, the Commission FINDS that, W. Va. Code § 8-6-5(d) creates a duty on the part of the Commission to exercise a gatekeeping function to determine if an application for annexation meets the threshold statutory requirements to proceed as an application. The Commission’s gatekeeping function must occur before the Commission engages in an analysis of an application on the merits under W. Va. Code § 8-6-5(f) and is a separate and distinct duty from a decision on the merits. The Commission is mandated by W. Va. Code § 8-6-5(d) to engage in this duty before the application for annexation may be accepted and before the application can proceed. <sup>1</sup>

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<sup>1</sup> It is only after the Commission has performed its gatekeeping function and determined that the application has met the threshold requirements that the Application moves forward to notice, publication and hearing. W. Va. Code § 8-6-5(e) states:

(e) If the application meets the threshold requirements, the county commission shall order publication of a notice of the proposed annexation to the corporate limits and of the date and time set by the commission for a hearing on the proposal. Publication shall be as in the case of an order calling for an election, as set forth in section two of this article. A like notice shall be prominently posted at not less than five public places within the area proposed to be annexed.

W. Va. Code § 8-6-5(e)

21. W. Va. Code § 8-6-5(d) states in relevant part:

(d) Upon receipt of a complete application for annexation by minor boundary adjustment, the county commission shall determine whether the application meets the threshold requirements for consideration as a minor boundary adjustment including whether the annexation could be efficiently and cost effectively accomplished under section two or four of this article.

22. The Commission FINDS that this § 8-6-5(d) gatekeeping function is not abrogated by the statement that “agreement with the County Commission is not required” contained in W. Va. Code § 8-6-4a(c)(2).

23. Under the facts of this application, the intertwining with the requirements of W. Va. Code § 8-6-4a(c)(2) due to the location of the territory in an urban growth boundary, and its gatekeeping function, the County Commission FINDS that the threshold requirements for consideration as a minor boundary adjustment include determining whether the City complied with W. Va. Code § 8-6-4a(c)(2). Those threshold requirements are:

- (1) Compliance with W. Va. Code § 8-6-4, which includes an ordinance by the city based a petition of a majority of qualified voters of the additional territory and a petition of a majority of all freeholders of the additional territory filed pursuant W. Va. Code § 8-6-4 and
- (2) Compliance with the definition of “minor” boundary adjustment W. Va. Code § 8-6-5
- (3) The efficiency and cost effectiveness of the annexation under W. Va. Code §§ 8-6-2 and 4

24. With regard to compliance with W. Va. Code § 8-6-4, the City presented no evidence either in the application or the April 6, 2017 meeting that the City complied with West Virginia Code 8–6–4 at any time with regards to the annexation procedure. The Commission therefore FINDS that the Application fails on that basis alone for lack of compliance with the facial requirements of W. Va. Code § 8-6-4a(c)(2)

25. With regard to the definition of “minor” boundary adjustment, the County Commission has been given broad latitude as a legislative function to determine the definition of “minor.” The Courts have stated “In general, a county commission enjoys a broad discretion in

exercising its legislative powers in determining the geographic extent of a minor boundary adjustment sought by a municipality under W.Va.Code 8-6-5 (1989), so long as a portion of the area to be annexed is contiguous to the municipality.” *Pet. of City of Beckley to Annex, by Minor Boundary Adjustment*, 460 S.E.2d 669, 677 (W. Va. 1995). Although the Court’s analysis in the *Beckley* case was not undertaken with regards to an Urban Growth Boundary, the ability of a county commission to determine the application of the term “minor” has been consistently affirmed as a legislative function. *See Coffman v. Nicholas County Commn.*, 796 S.E.2d 591, 599 (W. Va. 2017) “It is well-settled that the determination as to geographic boundaries is essentially a legislative function into which the courts generally should not intrude unless the process is unconstitutional or invalid.” *See also Jenkins v. City of Oak Hill*, 2016 WL 6819052, (W. Va. Nov. 18, 2016) (memorandum opinion).

26. Under the facts of this case, and the circumstances unique to Jefferson County, the Commission FINDS that the territory to be annexed, consisting of approximately 2,601.83 acres containing 922 properties with 2,174 residents and parts or all of 63 streets, is not “minor” and therefore does not meet the threshold requirements for a “minor” boundary adjustment pursuant to W. Va. Code § 8-6-5(d) and W. Va. Code § 8-6-4a(c)(2).

27. With regard to the efficiency and cost effectiveness of the annexation under W. Va. Code §§ 8-6-2 and 4, the Commission FINDS that the failure of the City to present evidence that a petition was filed renders the analysis moot.

28. The Commission therefore FINDS that the Application fails because it does not meet the threshold requirements for a petition for minor boundary adjustment pursuant to W. Va. Code § 8-6-5(d) and W. Va. Code § 8-6-4a(c)(2)

IT IS HEREBY ORDERED that the Jefferson County Commission, MEMORIALIZES and AFFIRMS its unanimous decision of April 6, 2017 rejecting the Application of the City of Charles Town for Annexations by Urban Growth Boundary Adjustment, and ADOPTS, CLARIFIES AND AMENDS said decision for the reasons set forth herein.

The Jefferson County Commission notes that the decision of April 6, 2017 was approved by a unanimous vote of its Commissioners, with all Commissioners voting to reject the application as not meeting the threshold requirements for consideration as a minor boundary adjustment pursuant to W. Va. Code § 8-6-5(d), and W. Va. Code § 8-6-4a(c)(2), which require the City of Charles Town to follow both W. Va. Code § 8-6-4 and W. Va. Code § 8-6-5, as more fully stated herein, with no Commissioners voting to accept the application.

SO ORDERED this 12<sup>th</sup> day of April 2017 by the undersigned on behalf of a majority vote of the Jefferson County Commission at a duly called meeting of the Commission.

JEFFERSON COUNTY COMMISSION

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Peter Onoszko, President

There being no further business, the meeting was adjourned at 1:52 pm.

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PETER ONOSZKO, PRESIDENT

Respectfully submitted  
Jessica D. Carroll  
Administrative Assistant