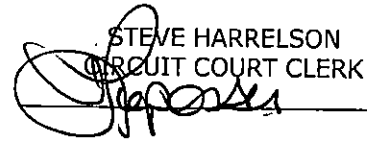


IN THE CIRCUIT COURT FOR LOUDON COUNTY, TENNESSEE

MAR 15 2023

LOUDON COUNTY, TENNESSEE)
)
 Plaintiff,)
)
 v.)
)
 CITY OF LENOIR CITY, TENNESSEE)
)
 Defendant.)

STEVE HARRELSON
CIRCUIT COURT CLERK
 D.C.

Civil Action No. 2023-CV-15

MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION AND FAILURE TO STATE A CLAIM

Comes the Defendant, City of Lenoir City, Tennessee, and pursuant to Rules 12.02(1) and 12.02(6) of the Tennessee Rules of Civil Procedure, moves this Honorable Court for an Order dismissing this cause of action for lack of subject-matter jurisdiction and for failure to state a claim. Specifically, Plaintiff lacks standing to challenge the conduct of the Defendant, and the action is not timely. In support of this motion, Defendant states as follows:

I. FACTS AND PROCEDURE

This case arises out of an annexation by the Defendant, City of Lenoir City, Tennessee (hereinafter "Lenoir City"), and subsequent challenges to this annexation by Plaintiff, Loudon County, Tennessee (hereinafter "Loudon County"). Specifically, on May 11, 2020, Lenoir City annexed certain real property consisting of approximately one hundred twenty-four (124) acres located at 5744 Hwy. 321, Lenoir City, Tennessee 37771, also known as Parcel No. 009 118.00 (hereinafter "Parcel 118"), and on November 14, 2022, Lenoir City Annexed certain real property consisting of approximately twenty-four (24) acres located at Hwy. 70, also known as Parcel, No. 009 111.00 (hereinafter "Parcel 111").

II. LAW AND ARGUMENT

A. The Plaintiff lacks standing.

Courts employ the doctrine of standing to determine whether a particular litigant is entitled to have a court decide the merits of a dispute or of particular issues. ACLU v. Darnell, 195 S.W.3d 612, 619 (Tenn. 2006). In order for a party to have standing to challenge, the following three elements must be met: (1) injury in fact, (2) causation, and (3) redressability. Id.

Relative to the injury in fact, the claimant must establish that the injury suffered is both actual and real, but monetary damages are applicable. In essence, this means that there must be evidence to support the existence of injury, as well as some concrete harm, rather than some hypothetical injury. City of Brentwood v. Metropolitan Bd. of Zoning Appeals, et al., 149 S.W.3d 49, 55 (Tenn. Ct. App. 2004), perm. app. denied (Tenn. Sept. 13, 2004) *see also* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). As for the second element, the court must look to whether there is indeed a causal connection between the conduct of the Defendant and the alleged injury of the Plaintiff. Lastly, redressability requires that relief sought by the Plaintiff will actually relieve the injury that allegedly occurred.

In the present case, Loudon County lacks standing because they have not suffered an injury-in-fact. Tenn. Code Ann. § 6-51-103(a)(1)(A) provides in part that “any aggrieved owner of property that borders or lies within territory that is the subject of an annexation ordinance” may have standing to contest the validity of an annexation ordinance. It is worth noting that Tenn. Code Ann. § 6-51-103(a)(1)(A) also specifically excludes public corporations, such as Loudon County, from the definition of an “aggrieved property owner.” The Tennessee Supreme Court has ruled previously that a County does not have standing to challenge the annexation of a Municipality. *See State ex rel. Kessel v. Ashe*, 888 S.W.2d 430, 433 (Tenn. 1994). The court in that case found that Knox County did not have standing to challenge the annexation of the city

because the interest it had in roadways subject to annexation was an easement, at most. Id. At 431.

The only other possible avenue for Loudon County would be a cognizable injury based on Tenn. Code Ann. § 6-51-110(f), which provides that “when a larger municipality initiates annexation proceedings for a territory that could be subject to annexation by a smaller municipality, the smaller municipality shall have standing to challenge the proceedings in the chancery court of the county where the territory proposed to be annexed is located;” however, this statute is clearly not applicable to Loudon County, as it is not a municipality, and there is no such authority conferring standing upon counties to do the same. Attorney, Robert L. Bowman, came to the same conclusion with regards to the standing of a county to challenge the annexation of a municipality in a letter sent to Henry J. Cullen, Chairman of the Loudon County Board of Commissioners. A copy of this letter has been attached hereto as **Exhibit A**.

Without an actual injury being suffered by Loudon County, there cannot be any causal connection to Lenoir City’s conduct, nor could there be any redressability if an injury was not suffered. Without these elements, Loudon County is not entitled to have a court decide the merits on its case.

B. The complaint is not timely filed.

The complaint should also be dismissed for failure to state a claim because it is not timely filed. Tenn. Code Ann. § 6-51-103 provides, as stated above, that only an aggrieved property owner has standing to file. The statute also states that the suit must be filed prior to the operative date of the ordinance, and the operative date of the ordinance is thirty (30) days after passage of the ordinance plan. In the case of Parcel 118, the ordinance passed on May 11, 2020, and the ordinance for Parcel 111 passed on November 14, 2022. Clearly, the complaint was filed outside

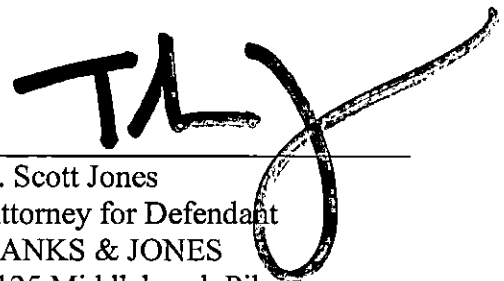
the thirty (30) day window required by the statute, as it was filed on February 14, 2023, and should be dismissed. *See City of Oak Ridge v. Roane Co.*, 563 S.W.2d 895 (Tenn. 1978) (Tennessee Supreme Court held that the Roane County Court did not have jurisdiction to void an annexation ordinance when the action was filed more than thirty (30) days after the operative date of the ordinance).

WHEREFORE because Plaintiff does not have standing as a County to challenge the actions of Lenoir City as a Municipality and because Plaintiff's complaint was not timely filed, this Defendant respectfully requests that this Court dismiss Plaintiff's claims against them and such other relief that this Court may deem appropriate. Further, pursuant to Tenn. R. Civ. P. 54.02, Plaintiff requests said dismissal to be a Final Judgment as there is no just reason for delay.

Respectfully submitted this 15th day of March 2023.



Walter B. Johnson
TBN 011014
City Attorney, Lenoir City
530 Hwy. 321 North
P.O. Box 445
Lenoir City, TN 37771
(865) 335-3869



T. Scott Jones
Attorney for Defendant
BANKS & JONES
2125 Middlebrook Pike
Knoxville, TN 37921
(865) 546-2141
scottjones@banksandjones.com




CERTIFICATE OF SERVICE

I, hereby certify that a true and exact copy of the foregoing Motion has been mailed by U.S. Mail, facsimile, postage prepaid or by hand delivery to:

Kyle. A. Baisley, W. Michael Baisley
Long, Ragsdale & Waters, P.C.
111 N. Northshore Dr., Suite S-700
Knoxville, Tennessee 37919
Attorney for Plaintiff Loudon County, Tennessee

This the 15th day of March 2023.



T. Scott Jones, Esq.

1874

1874

Exhibit A

KRAMER RAYSON LLP
ATTORNEYS AT LAW

JOHN T. JOHNSON, JR.
WARREN L. GOOCH
EDWARD G. PHILLIPS
THOMAS M. HALE
JACKSON G. KRAMER
BEECHER A. BARTLETT, JR.
JOHN C. BURGIN, JR.
JOHN E. WINTERS
ROBERT L. BOWMAN
SHANNON COLEMAN EGGLE
KATE E. TUCKER
BETSY J. BECK
WILLIAM J. CARVER
GEORGE R. ARRAVANTS, JR.
BRANDON L. MORROW
BRYCE E. FITZGERALD
NATHANIEL D. MOORE
CAMILLE H. SANDERS
ERICA D. GREEN
ANDREW M. HALE
LUCAS M. FISHMAN
JAMES T. SNODGRASS
KATHERINE R. OVERTON

POST OFFICE BOX 629
KNOXVILLE, TENNESSEE 37901-0629

FOUNDED 1948

R.R. KRAMER (1888-1966)
E.H. RAYSON (1923-2017)

November 8, 2022

E-mail: rlbowman@kramer-rayson.com
Direct Dial: 865.342.0430

OF COUNSEL
WAYNE R. KRAMER
CHARLES M. FINN
ROBERT A. CRAWFORD
STEVEN E. KRAMER
LESLIE L. SHIELDS

OFFICES
FIRST HORIZON PLAZA
SUITE 2500
800 SOUTH GAY STREET
KNOXVILLE, TENNESSEE 37929
TELEPHONE 865 525-5134
FAX 865 522-5723
105 DONNER DRIVE
SUITE A
OAK RIDGE, TENNESSEE 37830
TELEPHONE 865 220-5134
FAX 865 220-5132

Henry J. Cullen, Chairman
Loudon County Board of Commissioners
206 Tansai Place
Loudon, TN 37774

Re: Municipal Annexation in Tennessee

Dear Chairman Cullen:

We have been asked for an opinion regarding (1) a general summary of the Tennessee law surrounding a municipality's rights and powers of annexation; and (2) who has standing to challenge a municipal annexation (i.e., whether a county has standing to challenge a municipal annexation).

Annexation Generally

Tenn. Code Ann. § 6-51-104(a)(1) provides that a "municipality, when petitioned by interested persons, or upon its own initiative, by resolution, may propose extension of its corporate limits by the annexation of territory adjoining its existing boundaries." If all of the property owners within the territory proposed for annexation have consented in writing, then a referendum is not required to effectuate the annexation. Tenn. Code Ann. § 6-51-104(a)(2)(A).¹ Thus, there are two methods for territory to be annexed into a municipality: a resolution for annexation by referendum, or a resolution for annexation by owner consent. *See* Tenn. Code Ann. § 6-51-104.²

Regardless of which avenue is pursued, there are two threshold requirements for annexation. First, the territory must be contiguous to the municipality's corporate limits. *See* Tenn. Code Ann. § 6-51-104(a)(1).³ Second, the territory must be within the municipality's urban growth boundary,

¹ Tenn. Code Ann. § 6-51-104(a)(2)(B) provides for a lower threshold than all of the property owners' consent to avoid a referendum, but that threshold will be repealed January 1, 2023, meaning that, absent unanimous owner consent of the proposed annexed territory, a referendum is required.

² Municipalities are no longer permitted to annex territory by ordinance, regardless of whether or not the property owner's consent to the annexation.

³ There is an exception for annexation for non-contiguous territory to be annexed that has its own requirements. *See* Tenn. Code Ann. § 6-51-104(d).

and if it is not, the county growth plan must be amended to expand the urban growth boundary to include the proposed annexed territory. *See* Tenn. Code Ann. § 6-58-111(a), (c).

The second threshold requirement notwithstanding, territory outside a municipality's urban growth boundary may still be annexed without amending the municipality's urban growth boundary to include the proposed annexed territory in one of two ways. First, the annexation must be accomplished by referendum as provided for in Tenn. Code Ann. § 6-51-104 and § 6-51-105. *See* Tenn. Code Ann. § 6-58-111(c)(2). Second, if the territory to be annexed is a single tract of land, the following three conditions set forth in Tenn. Code Ann. § 6-58-118 must be met: "(1) the tract is contiguous to a tract of land that has the same owner and has already been annexed by the municipality; (2) the tract is being provided water and sewer services, and (3) the owner of the tract, by notarized petition, consents to being included within the urban growth boundaries of the municipality."

Before territory can be annexed, the municipality must first adopt a plan of services for the proposed annexed area. Tenn. Code Ann. § 6-51-102. The plan of services must include, but is not limited to, plans for police and fire protection; water, electrical, and sanitary sewer service; solid waste collection; street maintenance and repair; recreational facilities and programs; street lighting; and zoning services. Tenn. Code Ann. § 6-51-102(b)(2). Further requirements for and considerations of the plan of services can be found in Tenn. Code Ann. § 6-51-102(b)(2). Prior to adopting the plan of services, the municipality must submit the proposed plan of services to the local planning commission for a study and report to be rendered within ninety (90) days of submission. Tenn. Code Ann. § 6-51-102(b)(4). Additionally, a public hearing must be held before adopting the plan of services, with notice of the hearing being placed in the newspaper no less than fifteen (15) days before the hearing. *Id.* The notice must include no less than three (3) locations where the public can inspect the plan of services during all business hours from the date of notice until the hearing. *Id.*

Under both methods, there are several publication and notice requirements the municipality must comply with in connection with the annexation. First, the municipality must "promptly" mail a copy of the resolution describing the territory proposed for annexation to the last known address listed in the office of the property assessor for each property owner of record within the territory proposed for annexation. Tenn. Code Ann. § 6-51-104(b)(1)(a). The resolution must be sent no later than fourteen (14) days prior to the scheduled hearing date for the proposed annexation. *Id.* Additionally, a copy of the resolution must be posted in at least three (3) public places in both the territory proposed for annexation and "in a like number of public places" in the municipality proposing the annexation. *Id.* Finally, notice of the resolution must be published in the newspaper of general circulation "at or about the same time" of the public postings. *Id.* The resolution for annexation must include the plan of services, so any notice providing the resolution should also include the plan of services. *See Id.*

If the annexation is by referendum, then between sixty (60) and thirty (30) days after publication, "the proposed annexation of territory shall be submitted by the county election commission in an election held on the request and at the expense of the proposing municipality, for approval or disapproval of the qualified voters who reside in or own property in the territory proposed

for annexation.” Tenn. Code Ann. § 6-51-105(a). At the discretion of the municipality’s legislative body, the question of annexation of a particular territory may also be submitted as a referendum to the municipal citizens. Tenn. Code Ann. § 6-51-105(b). Once the county election commission certifies the results, it must then forward a copy of the certification to the county in whose county the territory being annexed is located. Tenn. Code Ann. § 6-51-105(d). If a majority of all qualified voters in the proposed annexed territory voting in the referendum vote in favor of annexation, the annexation shall become effective thirty (30) days after the certification of the election. Tenn. Code Ann. § 6-51-105(e). If the proposed annexation is put to citizens of the municipality, then a majority of all qualified voters voting must vote in favor of annexation, in addition to a majority of qualified voters in the proposed annexed territory voting in favor of annexation, for the annexation to be effective. *Id.*

If the annexation is accomplished by written consent of the property owner or owners, then the annexation shall become effective upon adoption of such resolution by the municipality. Tenn. Code Ann. § 6-51-104(c).

Standing to Challenge Annexation

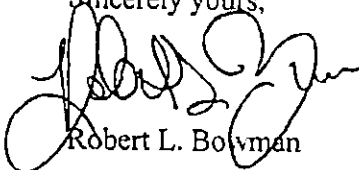
Tenn. Code Ann. § 6-51-103(a)(1)(A) provides, in part, that “[a]ny aggrieved *owner of property that borders or lies within territory that is the subject of an annexation ordinance . . .* may . . . contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole.” (emphasis added). Indeed, the Tennessee Supreme Court has held on two separate occasions that only the fee title owner of property bordering or within the proposed annexed territory have standing to challenge the annexation. *See State ex rel. Kessel v. Ashe*, 888 S.W.2d 430 (Tenn. 1994) (holding that Knox County’s interest in roadways through dedication did not grant it standing as an “aggrieved owner of property” to oppose annexation because, at most, its interest in the roadways was an easement); *City of Gallatin v. City of Hendersonville*, 510 S.W.2d 507 (Tenn. 1978), overruled by statute as stated in *City of Watauga v. City of Johnson City*, 589 S.W.2d 901 (Tenn. 1979) (holding that Hendersonville was not an owner of property within the meaning of statute and therefore was without standing to contest the validity of annexation by Gallatin); *compare. State ex rel. Spooone v. Mayor and Alderman of Town of Morristown*, 431 S.W.2d 827 (Tenn. 1968) (when county owned roads and a school building within the proposed annexed territory, court stated that it saw “no reason why [the statute] should not include a county when the county desires to question the reasonableness of the ordinance under this statute,” thus holding county was an “aggrieved owner of property”).

While Tenn. Code Ann. § 6-51-110(f) confers standing to a smaller municipality to challenge the annexation of a larger municipality if the proposed annexed territory could be subject to annexation by the smaller municipality, there is no such authority applicable to counties. Therefore, absent some other theory of standing not discussed herein or raised in a reported case, unless a county is an “aggrieved property owner” within the meaning of Tenn. Code Ann. § 6-51-103, it is unlikely it would have standing to challenge a proposed annexation.

Mr. Henry J. Cullen
November 8, 2022
Page 4

If you have any questions regarding the foregoing, please do not hesitate to contact me.

Sincerely yours,



Robert L. Bowman

RLB:ec

cc: Mayor Buddy Bradshaw