IN THE CIRCUIT COURT OF LOUDON COUNTY, TENNESSEE

LOUDON COUNTY, TENNESSEE,	)	
	)	
Plaintiff,	)	
	)	2023-cv-15
v.	)	No. # ~~2024-cv-37~~
	)	
CITY OF LENOIR CITY, TENNESSEE, MOUNTAIN VIEW ESTATES, LLC and WNW PROPERTIES 5 LLC,	)	FILED & ENTERED 8-21-2024
	)	MINUTE BOOK # 111
	)	PAGE NO.
Defendants.	)	CIRCUIT COURT CLK.

MEMORANDUM OPINION AND ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION TO DISMISS

This case came on to be tried on the 17th day of June 2024, upon the Defendants' Tenn. R. Civ. P. 12.02(6) Motions to Dismiss. For the following reasons, the motions are DENIED in part and GRANTED in part.

THE COMPLAINT

Loudon County (hereinafter "the county") filed its Amended Complaint against the City of Lenoir City (hereinafter "the city"), Mountain View Estates, LLC (hereinafter "MVE") and WNW Properties 5 LLC (hereinafter "WNW") seeking relief on two grounds. The first relief sought is that of declaratory relief pursuant to the Tennessee Declaratory Judgment Act contained in Tenn. Code Ann. § 29-14-101 *et seq.*, where in the county asserts that the city annexation ordinance at issue is an *ultra vires* act and is therefore invalid under applicable Tennessee law and in violation of an Interlocal Agreement between the two governmental entities. See gen. compl. The second ground for relief sought by the county is that of breach of

agreement as to the Interlocal Agreement, with the county seeking as damages specific performance of the terms of the Interlocal Agreement. *Id.*

THE MOTIONS TO DISMISS AND PROCEDURAL HISTORY

In response, the city filed the instant motion arguing that the county's complaint should be dismissed pursuant to Tenn. R. Civ. P 12.02(6) on two grounds, lack of subject matter jurisdiction and for failure to state a claim. The city's motion first argues that the county lacks standing to pursue its causes of action because it has not sustained an "injury in fact." Def. Mot. to Dism., p. 2. In support of this argument, the city notes that Tenn. Code Ann. § 6-51-103(a)(1)(A) requires that a party challenging an annexation ordinance must be an "aggrieved property owner" of property that borders or lies within the annexed territory. *Id.* The city also notes that public corporations are excluded by the statute from the definition of an "aggrieved property owner." *Id.* at p. 3. Secondarily, the city argues that the county's complaint was not timely filed arguing that the statute requires the action to be filed within thirty (30) days of the effective date of the annexation ordinance. *Id.*

The city filed its Response in Opposition to Motion to Dismiss on March 5, 2024. On March 27, 2024, the county filed its Amended Complaint naming both Mountain View Estates, LLC (hereinafter "MVE") and WNW Properties 5 LLC (hereinafter "WNW") as party defendants.[1] These defendants filed their own Tenn. R. Civ. P. 12.02(6) motions on June 7, 2024, and June 10, 2024. Both MVE and WNW motions essentially adopt the city's arguments, with one notable exception. As an additional ground for dismissal, MVE argued that the county lacks standing to challenge the annexation arguing that holding in *Highwoods Properties, et al.*

[1] These two (2) defendants owned the property that was annexed and are necessary parties to the litigation as to the county's claim pursuant to Tenn. Code Ann. § 29-14-107(a). As a result, the hearing date for the motion of April 24, 2024, was reset to June 17, 2024, in order to give the two (2) new defendants time to answer the complaint or otherwise respond.

v. City of Memphis, 297 S.W.3d 695 (Tenn. 2009) limits the availability of a declaratory judgment action to factual situations where the land annexed contains no people, private property or commercial activity. MVE Mot. to Dism., p. 2, MVE further argues that because it owned property subject to the annexation, as did the *Highwood* plaintiffs, it could have filed a *quo warranto* action, thereby, presumably, precluding the county from having the ability to file a declaratory judgment action. *Id.*

APPLICABLE STANDARD OF REVIEW

The city's motion to dismiss for failure to state a claim is governed by Tenn. R. Civ. P 12.02(6). The sole purpose of a Tenn R. civ. P. 12.02(6) motion to dismiss is to test the sufficiency of the complaint, not the strength of the plaintiff's evidence. *Doe v. Sundquist,* 2 S.W.3d 919, 922 (Tenn. 1999); *Bell ex rel. Snyder v. Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.,* 986 S.W.2d 550, 554 (Tenn. 1999). It requires the courts to review the complaint alone and to look to the complaint's substance rather than its form. *Daniel v. Hardin County Gen. Hosp.,* 971 S.W.2d 21, 23 (Tenn.Ct.App.1997); *Kaylor v. Bradley,* 912 S.W.2d 728, 731 (Tenn.Ct.App.1995). Dismissal under Tenn. R. Civ. P. 12.02(6) is warranted only when the alleged facts will not entitle the plaintiff to relief or when the complaint is totally lacking in clarity and specificity. *Dobbs v. Guenther,* 846 S.W.2d 270, 273 (Tenn.Ct.App.1992).

A Tenn. R. Civ. P. 12.02(6) motion admits, for purposes of the motion only, the truth of all the relevant and material factual allegations in the complaint but asserts that no cause of action arises from these facts. *Winchester v. Little,* 996 S.W.2d 818, 821–22 (Tenn.Ct.App.1998); *Smith v. First Union Nat'l Bank,* 958 S.W.2d 113, 115 (Tenn.Ct.App.1997). Accordingly, courts reviewing a complaint being tested by a Tenn. R. Civ. P. 12.02(6) motion must construe the complaint liberally in favor of the plaintiff by taking all factual allegations in the complaint as true,

Stein v. Davidson Hotel, 945 S.W.2d 714, 716 (Tenn. 1997), and by giving the plaintiff the benefit of all the inferences that can be reasonably drawn from the pleaded facts. Robert Banks, Jr. & June F. Entman, *Tennessee Civil Procedure* § 5–6(g), at 2 54 (1999).

RELEVANT HISTORICAL BASIS FOR POWER OF MUNICIPALITIES TO ANNEX

Prior to constitutional convention of 1953, it was well settled law in this state that owners of real property annexed by a municipality "could not be heard to complain; they had no voice in the matter, no power to resist, nor was nay legal right of theirs infringed thereby." *McCallie v. City of Chattanooga,* 40 Tenn. 317, 321 (1859). The only restraint upon a municipality was the legislature. *Willet v. Corporation of Belleville,* 79 Tenn. 1 (1893). This was reaffirmed in *Town of Oneida v. Pearson Hardwood Flooring Co.,* 88 S.W.2d 998 (Tenn. 1935) where the court stated "[t]he legislature, clothed with the power to create municipal corporations, may at will alter their boundaries without the consent of the municipality or the inhabitants of its territory. That is a political power, which in the absence of constitutional restraint, is not open to review or hinderance. *Oneida* at 999.

This all changed because of the 1953 Constitutional Convention which adopted Article 11, Section 9 to the Constitution of Tennessee. Section 9, as adopted, read as follows:

> "The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidate and dissolved and by which municipal boundaries may be altered."

In 1955, the General Assembly did just that when it enacted Tenn. Code Ann. §6-309 which allowed municipalities to annex real property and prescribed how such annexation could be accomplished. As well be set out below, the legislature has amended what was then Tenn. Code Ann. § 6-309 and is now Tenn. Code Ann. § 6-51-103 numerous times, with the current version having an effective date of May 20, 2013.

RELEVANT STATUTES

Tenn. Code Ann. § 6-51-103 states:[2]

(a)(1)(A) Any aggrieved owner of property that borders or lies within territory that is the subject of an annexation ordinance prior to the operative date thereof, may file a suit in the nature of a quo warranto proceeding in accordance with this part, § 6-51-301 and title 29, chapter 35 to 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 and so constitutes an exercise of power not conferred by law. Notwithstanding any other section in this chapter, for purposes of this section, an "aggrieved owner of property" does not include any municipality or public corporation created and defined under title 7, chapter 82 that owns property bordering or lying within the territory that is the subject of an annexation ordinance requested by the remaining property owner or owners of the territory and whose property and services are to be allocated and conveyed in accordance with § 6-51-111, § 6-51-112 or § 6-51-301, or any contractual arrangement otherwise providing for such allocation and conveyance.

...

(c) The municipality shall have the burden of proving that an annexation ordinance is reasonable for the overall well-being of the communities involved.

(d)(1) If more than one (1) suit is filed, all of them shall be consolidated and tried as one (1) in the first court of appropriate jurisdiction in which suit is filed. Suit or suits shall be tried on an issue to be made up there, and the question shall be whether the proposed annexation is or is not unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality. Should the court find the ordinance to be unreasonable, or to have been done by exercise of powers not conferred by law, an order shall be issued vacating the ordinance and the municipality shall be prohibited from annexing, pursuant to the authority of § 6-51-102, any part of the territory proposed for annexation by such vacated ordinance for a period of at least twenty-four (24) months following the date of such order. In the absence of such finding, an order shall be issued sustaining the validity of such ordinance, which shall then become operative thirty-one (31) days after judgment is entered unless an abrogating appeal has been taken from the judgment, or unless the presiding court grants the municipality's petition to defer the effective date pursuant to subdivision (d)(2).

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[2] The effective dates of the statute are 1955 Pub.Acts, c. 113, § 2; 1961 Pub.Acts, c. 220, § 1; 1970 Pub.Acts, c. 516, § 1; 1974 Pub.Acts, c. 753, §§ 4, 8, 9; 1982 Pub.Acts, c. 867, § 2; 1984 Pub.Acts, c. 642, §§ 1 to 10; 1989 Pub.Acts, c. 326, § 1; 1989 Pub.Acts, c. 327, § 1; 2005 Pub.Acts, c. 264, § 2, eff. July 1, 2005; 2005 Pub.Acts, c. 411, § 4, eff. June 17, 2005; 2013 Pub.Acts, c. 462, §§ 3, 4, eff. May 20, 2013.

Tenn. Code Ann. § 6-51-113 sets out that "[e]xcept as specifically provided in this part, the powers conferred by this part shall be in addition and supplemental to, and the limitations imposed by this part shall not affect the powers conferred by any other general, special or local law."

The Tennessee Declaratory Judgment Act, specifically Tenn. Code Ann. § 29-14-10 sets out, in relevant part:

> Any person interested ... whose rights, status, or other legal relations are affected by a ... municipal ordinance ... [,] may have determined any question of construction or validity arising under the ... ordinance ... [,] and obtain a declaration of rights, status or other legal relations thereunder.

Tenn. Code Ann. §6-58-104(a)(6)(A) provides that "[a] municipality may make binding agreements with other municipalities and with counties to refrain from exercising any power or privilege granted to the municipality by this title [Title 6 of Tenn. Code Ann.], to any degree contained in the agreement including, but not limited to, the authority to annex."

RELEVANT CHRONOLOGY AS PLED IN AMENDED COMPLAINT

The Amended Complaint sets out the following dates that are relevant to this court's inquiry:

April 10, 2000:	Lenoir City adopted Loudon County Growth Plan
June 5, 2000:	Loudon County commission adopts Loudon County Growth Plan
June 28, 2000:	Tennessee State Planning Advisory Committee approved it.
January 23, 2002:	Loudon County sued Lenoir City seeking declaratory relief related to LC attempted annexation of parcels in the county.
Approx. 2003:	Settlement of the above suit.
April 4, 2005:	Interlocal Agreement adopted by the county
April 11, 2005:	Interlocal Agreement adopted by the city
March 3, 2020:	Lenoir City RPC approved an Agenda Application Form # 0098 submitted by JC Ross Family Trust requesting annexation of 124 acres located at 5744 Hwy 321, a/k/a Parcel No. 009118.00 into Lenoir City's R-3 zoning district.
May 11, 2020:	Lenoir City Council adopted resolution annexing Parcel 118.
August 12, 2020:	Lenoir City RPC Agenda Application Form #0159 by WNW Properties

September 13, 2022: LC RPC adopted resolution annexing Parcel no. 009 111.00.
November 14, 2022: LC City Council approved the resolution annexing parcel 111 on final reading.

DECLARATORY JUDGMENT CAUSE OF ACTION

In response to the city's argument that it's complaint should be dismissed for lack of subject matter jurisdiction and for failure to state a claim, the county first take issue with a fundamental premise of the city's motion, i.e. that it's claim is in the nature of *quo warranto.* The county admits that it is not bringing a *quo warranto* action because it cannot do so, given the fact that it does not qualify under the statute as an "aggrieved property owner." Instead, the county points out that it has brought, in part, a declaratory judgment action under Tenn. Code Ann. § 29-14-103 challenging the validity of the annexation ordinance, rather than a *quo* action challenging the reasonableness of the ordinance.

In *City of Oak Ridge v. Roane County*, 563. S.W.2d 895 (Tenn. 1978), the court stated that it is "[w]ithin the four corners of the statute [wherein] lies the entire jurisdiction and authority of the courts to review the actions of municipalities in enacting annexation ordinances." *City of Oak Ridge* at 897. Obviously, the statute only directly references the usage of the *quo warranto* remedy to challenge an annexation ordinance. However, in *Earhart v. City of Bristol,* 970 S.W.2d 948 (Tenn. 1998) approved the use of the Declaratory Judgment Act to challenge an annexation, provided that the challenger that the alleged that the annexation ordinance was an *ultra vires* act, i.e. challenged the validity of the annexation ordinance, and that the *quo warranto* remedy was unavailable to the challenger. *Earhart* at 952. *Earhart* importantly held that although objections to the reasonableness of an ordinance can be raised via a *quo warranto* action, the validity of an ordinance is subject to challenge under the Declaratory Judgment Act. *Earhart* at 953.

The county cites to *Town of Oakland v. Town of Sommerville,* 2003 WL 22309498 (Tenn. Ct. App. 2003) where it was held that an action under the Tennessee Declaratory Judgment Act, a statutory (not equitable) remedy fell within the purview of Tenn. Code Ann. § 6-51-113 as "any other general ... law." *Oakland* at *6. The *Oakland* court held that the city of Oakland was not precluded by the limited *quo warranto* relief provided in Tenn. Code Ann. § 6-51-103. Specifically, the court ruled that "where *quo* is not available, alternative remedies are not barred" and that "[t]he Tennessee Declaratory Judgment Act is just such other general law conferring the power to challenge the validity and construction of statutes and municipal ordinances." *Oakland* at 6 (citing *Earhart* at 952-953).

In 2009, the *Highwoods* court certainly acknowledged the availability of a declaratory judgment action to challenge an annexation, but refused to allow the plaintiffs therein to pursue a declaratory judgment action because they owned property within the annexed territory and the *quo warranto* remedy was available to them. *Highwoods* at 707. Thus, the court determined, they failed to meet the second prong of the *Earhart* test.

Lenoir City argues that *Oakland* and *Earhart* are factually distinct to this case. While the court acknowledges that there are certainly some factual distinctions or differences, the court finds that any such distinction or difference does not render the holdings of *Oakland* and *Earhart* inapplicable herein.

As to MVE's argument of lack of standing on the part of the county, the court does not read the *Highwood* decision as narrowly as does MVE. As *Highwood* clearly states, the plaintiffs therein owned property in the area annexed and had the *quo warranto* remedy available to them. *Id.* Here, as set out above, the *quo remedy* was not available to the county. Therefore, the court is not persuaded by MVE's argument.

As noted above, *Earhart, Oakland* and *Highwoods* clearly distinguish between challenges to the reasonableness of the annexation ordinance and the validity of the ordinance. As setout above, Tenn. Code Ann. § 6-51-103 authorizes a *quo warranto* action to "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 property owners." This is often referred to as an attack on the "reasonableness" of the annexation ordinance. Declaratory judgments action brought in the context of a challenge to an annexation ordinance attack the *ultra vires* nature or "validity" of the ordinance itself, not just the reasonableness of the ordinance assessed against the "welfare of the residents" and "affected property owners." However, this court has found no cases that hold that a declaratory judgment action cannot also attack the reasonableness of the ordinance. However, as will be set out below, any such attack as to the reasonableness of the ordinance must be brought with the thirty (30) day *quo warranto* time period.

The parties herein agree that the applicable time-period in which to bring a *quo warranto* action is thirty (30) days from the final approval of the annexation ordinance by the municipality. The applicable statute of limitations for declaratory judgment actions is not as definite. In *Allen v. City of Memphis,* 397 S.W.3d 572 (Tenn. Ct. App. 2012), the court noted "[t]here is no universal statute of limitations applicable to all actions for declaratory judgment." *Allen* at 582; citing *Witty v. Cantrell,* 2011 WL 2570754, at *9 (Tenn. Ct. App. June 29, 2011). However, " 'when a petition for declaratory judgment seeks the same relief that is otherwise available in another statutory proceeding, then the filing of the declaratory judgment is governed by the statute of limitations governing that statutory proceeding.' " *Id.* at 582, citing *Hughley,* 208 S.W.3d at 395 (quoting *Newsome v. White,* 2003 WL 22994288, at *4 (Tenn. Ct. App. Dec. 22, 2003)).

The court finds that the county had stated a claim challenging the alleged *ultra vires* nature of ordinance and that the action was timely filed in that regard. Therefore, the city's motion is DENIED in that regard. As to any allegations that challenge the reasonableness of the ordinance or that involve alleged procedural defects, the court finds that any such challenge must have been brought within the thirty (30) day *quo warranto* time frame and GRANTS the city's motion in that regard.

Having said that, the court is aware that the parties did not address the validity v. procedural factual allegations against the backdrop of the statute of limitations as the court did. Frankly, the court spent a considerable amount of time trying to parse through the factual allegations and categorizing them as one or the other. In the end, the court realized that the parties are entitled to first address any such issues in that regard. Therefore, below the court has given instructions to counsel pertaining to that issue.

BREACH OF CONTRACT CAUSE OF ACTION

Unlike the issues and discussion as to whether the county's declaratory judgment action should be dismissed, the analysis as to the county's breach of contract claim is much simpler. As set out above, Tenn. Code Ann. § §6-58-104(a)(6)(A) specifically authorizes a Tennessee county and a Tennessee city to enter Interlocal Agreements as to annexation matters. Here, the county and city did just that. On April 4, 2005, the subject Interlocal Agreement was adopted by the county and on April 11, 2005, the Agreement was adopted by the city. The city does not challenge the validity of the Agreement in its motion.

The genesis of the settlement was a lawsuit that the county filed against the city growing out of the city's attempted annexations of property in 2001. The complaint alleges that the lawsuit was eventually settled, and that the settlement resulted in the dismissal of the county's

lawsuit and the above-referenced Interlocal Agreement being approved and ratified by both governing bodies. Per the county's complaint, the county agreed to dismiss the 2003 lawsuit and abandon its declaratory judgment action attempting to invalidate the city's annexation of forty (40) parcels in exchange for the city agreeing to certain restrictions as to future annexation of real property in the county.

The county's instant complaint attaches the Interlocal Agreement which provides as follows:

a. "The Urban and Planned Growth Boundaries as agreed upon and approved by the Tennessee State Planning Advisory Committee on June 28, 2000, are hereby confirmed and ratified." See Interlocal Agreement, § 1.
b. "All future parcels of property to be included for annexation(s) by Lenoir City, Tennessee shall be located within the Urban and Planned Growth Boundaries referenced above and shall be annexed by request of the parcel property owner(s), or by their consent to annexation, without regard to subject property's contiguous nature to the actual city limits of Lenoir City, Tennessee, then in effect at the time of the annexation. **In all other respects future annexations by Lenoir City shall comply with [Tenn. Code Ann. § 6-58-101 et seq.].** Interlocal Agreement, § 3 (emp. added).
c. "Any property parcels requested to be annexed by Lenoir City which are located outside of the Urban and Planned Growth Boundaries referenced [in the Loudon County Growth Plan] shall be written request [sic] to be **approved first by the Loudon County Commission and then secondarily approved by the Lenoir City Council in order to be annexed.** Interlocal Agreement, § 5 (emp. added).
d. "This resolution and Interlocal Agreement shall remain in effect for the duration of the Public Chapter 1101 Growth Plan approved by the state and local government planning advisory committee of June 28, 2000, and any subsequent amendments or modifications thereto, or until such time as both parties hereto agree cooperatively to repeal, alter, amend or disregard this agreement." Interlocal Agreement, § 6.

Understandably, the county argues that its complaint sets out a viable cause of action for breach of the Interlocal Agreement, given that it has alleged that the Agreement remains a binding and enforceable agreement. For purposes of this motion, the court agrees. The county has alleged in its complaint the fundamental prerequisites for establishing a breach of contract

cause of action, those of an offer, acceptance, consideration and damages. The court agrees and for purposes of this motion finds that the county has stated a claim for breach of contract.

CONCLUSION

For the foregoing reasons, the court denies the city's motion to dismiss as to any grounds alleged by the county that attack the validity of the ordinance, finding that any such claims may be brought via a declaratory judgment action. As to any grounds alleged by the county that attack procedural deficiencies in the ordinance, the court finds that while those may be brought via a declaratory judgment action, such claims are time-barred inasmuch as they are required to be brought within the thirty (30) day *quo warrant* time period.

Given that the parties did not specifically brief the issue as to which factual claims of the county are procedural in nature and which go to the validity of the ordinance, counsel for the parties are ordered to confer and attempt to agree as to which factual claims fall into which category.[3] In the event that the parties are unable to agree, they are instructed to brief the issue of procedural v. validity of the factual claims. The county's brief is due on September 13, 2024, and the city's on September 27, 2024. No reply briefs are permitted. The court will decide any procedural v. validity issues via conference call on September 30, 2024, at 03:00 p.m. via the court's remote platform. Additionally, the court will establish a new Scheduling Order during the call.

[3] The court would note that the city, in its Reply to Plaintiff's Response in Opposition to Motion to Dismiss filed on March 6, 2024, did set out numerous specific factual allegations in the county's complaint. Def. Mot. to Dism., pp. 1-2. The court considered those, and other, factual allegations in the complaint against the "procedural v. substantive" framework discussed above and actually included in its draft opinion a ruling on as to whether those allegations are procedural or substantive in nature. However, after doing so, it finally occurred to the court that the parties should have the opportunity to brief the prior to the court ruling on which category each specific allegation falls into. Whether a cause of action was timely filed concerning each factual allegation is will depend on the classification of each allegation.

As to the county's breach of contract cause of action, the court DENIES the city's motion to dismiss.

As to MVE's additional ground alleged for dismissal, the court DENIES the motion.

ENTERED this the 20th 21st Aug day of August 2024.

Michael S. Pemberton
Circuit Court Judge
Ninth (9th) Judicial District
State of Tennessee

CERTIFICATE OF SERVICE

I, Tabatha Loposser, hereby certify that a true and exact copy of the foregoing was delivered to all counsel or parties of interest in this case, by electronic mail, hand delivering or by placing same in the United States Mail, with sufficient postage, on this the 21 day of August, 2024.

Steve Harrelson, Circuit Court Clerk

By Tabatha Loposser
Tabatha Loposser, Deputy Clerk

K A. Baisley
T. Scott Jones
Walter Bobinson
M. Edward Owens jr
Jim Price

E-MAILED
8-21-24