

IN THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

IN RE: MINUTES OF MEETING HELD
MONDAY, MARCH 17, 1997

PRESENT: HOLMES R. SHAVER, PRESIDENT
DAVID A. COUCH, COMMISSIONER
ROBERT K. TEBAY, COMMISSIONER

At 10:00 A.M., the County Commission held a public hearing in regard to the Annexation of Property by Minor Boundary Adjustment, Tygart District, Wood County, West Virginia. Said public hearing was held in the Council Chambers in the Parkersburg Municipal Building. Present with the County Commission was James Leach, Assistant Prosecuting Attorney. Commissioner Shaver addressed the residents from Mineral Wells and then asked for C. Blaine Myers, attorney for the City of Parkersburg, to address the Commission. Mr. Myers stated that he wanted first to correct one aspect of the petition; they reflected that the Department of Highways was a joint petitioner, however, the Department of Highways takes no position for or against the annexation; the Department of Highways is the only other property owner besides the petitioner; there was an error in the original publication as to the time of the hearing, there was a corrected notice and a representative of the City at the Courthouse so that anyone showing up at the incorrect time would be advised of the correct time. Commissioner Shaver asked that when interested parties wish to speak, to please come to the microphone and state their name and address. Commissioner Shaver then asked Mark Whitley, Development Director for the City of Parkersburg to explain the petition. Mr. Whitley stated that the City has looked at this property for many years; they submitted an application for ARCDEA

funds to provide infrastructure improvements which are necessary to attract businesses in that community; they already have a little more than a million dollars approved and they hope that the Department of Highways will be making an access cut through there so that they can have clear access to the property and be able to run water lines; under State law, municipalities cannot annex properties that don't want to be annexed and even if they could, the City of Parkersburg would not do that. James Kinnett from the Parkersburg/Wood County Area Development Authority -Wood County Development Authority. (Mr. Kinnett stepped away from the microphone to show where the property is located.) Mr. Kinnett stated that there is roughly 212 acres that they are planning to develop as an industrial business park; this area was cited about two and a half years ago as the prime site primarily because of access, visibility, etc. and the ease of which potential development could take place; they are in the process of putting together the plans for development; the annexation for services was always intended for this property; they needed additional services for sewer, water, police protection and fire; the area roundtable has also applied for a grant from the economic development administration for additional support of those services to be brought out to this center; this would be developed in 10-20 acre parcels, a multi-development plan, depending on what the client is in need of; the primary focus markets are automotive, plastics, processing, warehouse distribution, electronics, offices and glass related projects. (There was an inaudible question with Mr. Kinnett answering about property owners.) James Leach stated that the County

Commission's responsibility in regard to this matter is that of administrator, by statute they are to oversee these annexation procedures; if the requirements of the annexation are met, the County Commission's responsibility is just to move this forward, they are not in any way a party of this action, they cannot appeal any decision, any complaint, any opposition; so if any municipality comes with all of the paperwork in order and unless by statute there is any party withstanding to challenge, it is the County Commission's responsibility to move this forward. After an inaudible question, Mr. Leach answered that to challenge an annexation, you have to have a standing to be recognized by the Court (a freeholder of property), which, in this case, it would be the Department of Highways or the Development Association which owns the property. Robert Epler from the Department of Highways was present. At this point the County Commission took questions and comments from residents. Nathan Peters, 222 Windsor Drive, Mineral Wells, who is spokesperson representing the Citizens Against Annexation in the Pettyville-Mineral Wells, Bonnivale and Slate areas; Mr. Peters stated that he has a petition with approximately 1400 signatures from the residents of this area. Mr. Peters read a statement in regard to annexing of the area; this type of annexation has met opposition before which involved the City of Beckley, of which the Court found that the statutory provisions for minor boundary adjustment does not permit a municipality to incorporate territory that consists only of a public street or highway; he has also received a comment from the West Virginia Department of Highways, their comment was that they

received a request from the City of Parkersburg for this annexation, Commissioner VanKirk, informed that the DOH did not wish to unilaterally approve the annexation without giving property owners the right to express their concerns; in the past months residents have been harrassed by certain city officials on trying to persuade them to annex their property, this type of behavior is neither professional nor tolerable and should be controlled in the future; if the City wants a tax base, then why wouldn't they try to sell their benefit package to businesses that are contiguous with the city corporate limits at the present time; after researching they have found a strip on southside which could produce and see taxes approximately \$165,000.00 or more, not to mention the Route 50 business district, for your information, this figure excludes B&O taxes; if this petition is awarded, then all communities outside the corporate limits of Parkersburg should heed the warning and incorporate to save what pride and respect they contain before demise and destruction is cast by foreign elements that are out of control; he appeals on behalf of everyone he represents that their decision be not hastily, but thorough for the consequence in the future will be paid by none other than the taxpayers of this County. Lorraine Connely, Route 1, 111-A in Mineral Wells, stated that she was watching a movie about killer bees; she described what the bees were doing and compared this to this annexation. Mr. Myers stated that he wanted to object to what he considers abusive comments in terms of characterizing the City of Parkersburg's municipal government. Don Beeson, Route 1, Oak Dale Avenue, Mineral Wells, asked for a

definition of minor boundary adjustment. Mr. Leach first wanted to address a statement the first speaker (Peters) made about the statutory provision for a minor boundary adjustment does not permit the municipality to incorporate territory that consists of only a public street or highway, etc.; he made that statement as if it were a statement of law from the Supreme Court opinion; in actuality that was the holding of the Circuit Court and that holding was reversed by the Supreme Court, which leads into the last gentleman's question - what is a minor boundary adjustment; the full site is in re: the petition of the City of Beckley to annex by minor boundary adjustment, WV Route 3, right of way beginning at the present corporate limits, in this case site is 460 SE second 669 (its a 1995 case) this is where he drew the comments earlier about the standing issues that you must be a freeholder of the area or the municipality to challenge this type of annexation and also the Court indicates that the County Commission has broad discretion in determining what constitutes a minor boundary adjustment. Commissioner Shaver stated that they are governed by what the Legislature states they can or cannot do. Mr. Leach then stated that, from the opinion, the 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 West Virginia Code 8-6-5, so long as a portion of the area to be annexed is contiguous to the municipality. An unidentified speaker asked if it could be five miles today and ten miles tomorrow. Commissioner Shaver that the answer would be yes. Commissioner Couch asked Mr. Leach what

property owners, who do not want this annexation, can do about this. Mr. Leach stated that if the annexation by way of minor boundary adjustment is substantially opposed by freeholders of the area then the Commission is to dismiss the petition, however, to his understanding, this is not the case in this situation. Commissioner Shaver stated that the area means that it is the area to be annexed. There was inaudible speaking at this time. Jim Martin, Route 4, Mineral Wells, would like for "this man" to get up and show them where the access road into this property and how many pieces of property that is going to take and where it ends up at the Cracker Barrell. Commissioner Tebay asked if there was anyone present who owns rights, mineral rights, to the area in question. Jay Parsons, Route 3, Mineral Wells wants to know if anyone paying taxes "owns" the highway. Mr. Leach stated that he can give him a general answer on what he is understanding him to say, (that as a taxpayer, and given that the federal or state highway is being annexed, you would have standing to challenge this as a taxpayer); many times, the Supreme Court has held that general taxpayer status does not grant standing, you must have a specific "injury" and there has to be a way to address it; Mr. Leach stated that if the unknown speaker feels that it merits further attention, he would encourage them to look into it. Unknown speaker (possible Nathan Peters) asked what is stopping them to go on further for the Pepsi plant; once this starts it is a dominoe effect. Commissioner Shaver stated that he couldn't answer this question. An unidentifiable female speaker was inaudible. Mr. Kinnett pointed out where possible access roads may go. Lois Boice

asked if the residents had any say about them using Blair Avenue and Grand Avenue. Mr. Kinnett stated that they are State roads and anyone can use them. There was more statements from Ms. Boice but they are inaudible. Commissioner Shaver stated for the record that they were in receipt of a letter from Diane Clark, Maple Drive, Mineral Wells who is in opposition to this. An unidentified (Bill) speaker stated that he spoke with a friend and was told that people that are interested in developing in Parkersburg were out to buy his property and Mr. Shaver was in their company and wanted to know if this was a conflict of interest. Commissioner Shaver stated that the incident had to have been at least a year, (at the time Toyota was looking at the area), he was asked if he knew Mr. Stiles, who was a friend of his (Shaver's) dad, and was asked if he would talk to Mr. Stiles and to tell him that the Development Authority would be interested in his property if he would ever sell; Mr. Stiles told him that they were not interested in selling. Mr. Myers stated that the petition was placed at the Wood County Courthouse, the Post Office, the fire station in Mineral Wells, two separate places on the property to be annexed and at the Municipal Building. An unidentifiable female person, working for the Citizens for the Incorporation of Mineral Wells, stated that they are within days ready to submit the names for the incorporation of Mineral Wells, and ask the Commission to delay their decision; they are not against building and development, they encourage it. Terry Thomas, Mineral Wells asked Mr. Myers if he stated he put a petition at the fire station. Mr. Myers stated that Roger Martin is the person who would

have supervised having this done, whether he did it himself or not, Mr. Myers does not know. Mr. Thomas stated that he is the fire chief and was never asked to put the petition at the fire station, they were not aware of it and stated that 50% of the property is in the floodplain and wants to know why they are building in the floodplain; he would like to know where Route 95 touches I-77. Robert Epler, District Engineer for the Division of Highways stated that he could probably tell where they coincide (Edgelawn area), there used to be an Exxon station in that area. Nathan Peters asked if there has or should have been an environmental impact study on putting an industrial park in this area to the surrounding community. An unidentified speaker (Mr. Kinnett?) stated that an environmental analysis has been done and has clearance, it also has an archeological study done on it, which is cleared; it also has a wetlands mitigation study and has been cleared. Jack Hoffman asked if this was a matter of record. Mr. Kinnett stated that the one on the ninety acres is a private entity and he would have to ask them and theirs is available. (inaudible speaking) Mr. Myers stated that he has presented a letter dated May 23, 1995 and to his understanding talking to Mr. Epler, is that the Department (of Highways) takes no position for or against the annexation. At 11:07 A.M., the County Commission adjourned until 11:20 A.M., so that they may confer with counsel. Commissioner Shaver stated that they will be continuing this due to several points that have been brought to their attention that need validated and hope to make a decision by the end of the day. There was more discussion. Commissioner Shaver stated that he

wants everyone to understand that they (Commission) want to do the right thing by law, so that if it would be in the citizens' favor or the petitioner's favor that it isn't overthrown in court and he wants to make sure they don't go outside the law in anything they do to consider this petition; by law they can't consider the petitions (by residents); if the posting was not properly done, they (Commission) will have to deny the petition. Commissioner Tebay stated that they (Commission) can't take sides, all they can do is interpret the law and do as instructed by the law. More discussion took place about the minor boundary adjustment definition. Mr. Myers stated that a statement that an unidentified female speaker just made was incorrect; the law is that a property owner may not be annexed without their consent. Nathan Peters stated that there is a lot of vacant land along the four lane that can be affected. Commissioner Shaver agreed. More discussion. Commissioner Tebay suggested that they (residents) get counsel and their recourse would be to take it to the Judicial Court and talk with the legislatures if they don't like the law that the Commission has to uphold. Mr. Myers stated that based upon the Beckley decision, the Supreme Court has said that those who are not within the annexed area would have no standing; they need to obtain independent legal advice with regard to that. Commissioner Shaver thanked everyone.

On this date, the County Commission of Wood County was presented a Petition Against Annexation by residents of the Mineral Wells area which contained approximately one thousand four hundred (1,400) signatures. The aforementioned Petition Against Annexation contains

the following language, "We the undersigned business owners and residents/freeholders of the unincorporated areas of Pettyville, Mineral Wells, Bonnivale and Slate do hereby petition against any proposed efforts by the City of Parkersburg to annex any portion of the aforementioned unincorporated areas into their corporate limits." Presentation of said Petition Against Annexation was presented to the County Commission of Wood County during the Public Hearing held on this date at 10:00 o'clock A.M. The County Commission did hereby ORDER that the said Petition Against Annexation be FILED since the County Commission has no authority to act upon the said document in accordance with Chapter 8, Article 6, Section 5 of the Code of West Virginia, 1931, as amended.

In view of the findings of fact made herein on March 17, 1997, this County Commission accordingly concludes that the Petition for the Annexation of Property By Minor Boundary Adjustment - Tygart District, Wood County, West Virginia is in proper form; that the area proposed to be annexed is a proper subject for annexation by minor boundary adjustment, and therefore, it is ORDERED that said property, formerly situate in the District of Tygart, Wood County, West Virginia, be and the same is, hereby annexed, by minor boundary adjustment, to the petitioner herein and, accordingly, the corporate limits of the City of Parkersburg be, and the same are, hereby changed by virtue of such annexation, to include said property described as follows:

Beginning at a point in the existing Corporation Line of the City of Parkersburg, said point being in the northerly controlled access right-of-way line of Interstate Route 77, and in the southwesterly line of Edgelawn Addition No. 1, as shown in Plat Book

4, Page 81, in the Office of the Clerk of the County Commission of Wood County, West Virginia; Thence, leaving the existing corporation line, with the northerly controlled access right-of-way line of Interstate Route 77, and the easterly controlled access right-of-way line of West Virginia Route 95, in a westerly and northerly direction, to a point in the existing Corporation Line of the City of Parkersburg, said point being in the westerly right-of-way line of Camden Avenue; Thence, with the existing corporation line, in a northerly and westerly direction, to a point in the existing Corporation Line of the City of Parkersburg, said point being in the westerly right-of-way line of West Virginia Route 95; Thence, leaving the existing corporation line, with the westerly controlled access right-of-way line of West Virginia Route 95, and the northerly and westerly controlled access right-of-way line of Interstate Route 77, in a southerly direction, to the northeasterly corner of a tract of land and described in a deed to Mineral Wells Associates, a West Virginia Limited Partnership, dated June 6, 1994, and recorded in Deed Book 933, Page 66, in the Office of the Clerk of the County Commission of Wood County, West Virginia; Thence, leaving the said controlled access right-of-way line, and with the boundary line of the said parcel South 54 degrees 03' West 2101.50 feet; Thence South 35 degrees 28' East 1719.50 feet; Thence, North 54 degrees 33' East 1281.50 feet to the westerly controlled access right-of-way line of Interstate Route 77; Thence, with the easterly prolongation of the said boundary line, in an easterly direction, to the easterly controlled access right-of-way line of Interstate Route 77; Thence, with the said right-of-way line of Interstate Route 77, and in the southwesterly line of Edgelawn Addition No. 2, as shown in Plat Book 4, Page 35, in the Office of the Clerk of the County Commission of Wood County, West Virginia; Thence, with the existing Corporation Line, in a northerly direction, to the beginning, containing 162.9 acres, as shown on the attached plat, which is made a part of this description. Bearings are based on the deed of record (D.B. 933, P.66). This description was written by Tom M. Henderson, LLS No. 718, and is based on instruments of record. A plat of said property is attached to the Order that was prepared regarding this matter.

On this date, the County Commission of Wood County, in regular session, announced to all concerned, upon a motion made by David A. Couch, seconded by Robert K. Tebay and made unanimous by Holmes R. Shaver, that they, as a Commission will meet in Special Session on Wednesday, March 19, 1997 between 9:00 o'clock A.M. and 12:00 o'clock Noon in regard to the preparation of the budget for the fiscal year 1997/1998, as required by Chapter 11, Article 8, Section 10 of the West Virginia Code of 1931, as amended. This meeting will be held

in the Office of the County Administrator. An Order was prepared regarding this matter.

On this date and pursuant to an Order appearing in Order Book 51, at Page 433 and bearing the date of April 1, 1991, dealing with the procedure policy for appointments being made by the County Commission of Wood County; the County Commission, upon a motion made by Holmes R. Shaver, seconded by David A. Couch and made unanimous by Robert K. Tebay, placed William R. Leachman in nomination to fill a vacancy on the Wood County Airport Authority. The said vacancy was announced on February 10, 1997 due to the resignation of Rex Foster. Mr. Foster's term would have expired June 30, 2000. An Order was prepared regarding this matter.

On this date, the County Commission of Wood County, upon a motion made by Robert K. Tebay, seconded by David A. Couch and made unanimous by Holmes R. Shaver, does hereby ORDER that the sealed bids received and opened on the 10th day of February, 1997 be rejected. Receipt of said sealed bids is reflected on an Order appearing in Order Book 60, at Page 33 and bearing the date of February 10, 1997 at which time the bids, upon a motion duly made, seconded and passed, did hereby take the aforementioned bids under advisement. The County Commission of Wood County does hereby further ORDER that new specifications be prepared for the four-wheel drive vehicles to be utilized by the Wood County Sheriff's Department. An Order was prepared regarding this matter.

At 3:00 P.M., came Mineral Wells Public Service District, by its Counsel, Ellen L. Medaglio, along with Roy Radabaugh, Commissioner


of said Public Service District and presented to the Commission the Petition of Mineral Wells Public Service District to enlarge the District so as to include within the same areas in Steele, Slate and Tygart magisterial Districts in Wood County, West Virginia, fully described in said petition and shown upon a plat attached to the Order that was prepared regarding this matter. The County Commission, upon a motion made by Robert K. Tebay, seconded by David A. Couch and made unanimous by Holmes R. Shaver set a hearing for 10:00 A.M. on April 10, 1997 to be held in the Wood County Courthouse. An Order was prepared regarding this matter.

Also at 3:00 P.M., came Lubeck Public Service District by its Counsel, Lawrence Ronning and Jim Cox, Manager of said Public Service District and presented a Petition to enlarge and re-adjust the boundaries of said District. The County Commission, upon a motion made by Robert K. Tebay, seconded by David A. Couch and made unanimous by Holmes R. Shaver, set a hearing for 10:00 A.M. on April 10, 1997 to be held in the Wood County Courthouse.

Having no further scheduled appointments or business to attend to, the County Commission adjourned at 4:00 P.M.

Approved:

THE COUNTY COMMISSION OF WOOD COUNTY


Holmes R. Shaver, President


David A. Couch, Commissioner


Robert K. Tebay, Commissioner

To listen to these minutes please refer to Tape #26.

CITY OF PARKERSBURG

EXISTING CORPORATION LINE

EXISTING CORPORATION LINE

Point of Beginning

EDDELAWN NO. 1

INTERSTATE ROUTE 77

EDDELAWN NO. 2

INTERSTATE ROUTE 77

LITTLE KANAWHA RIVER

PROPOSED CORPORATION LINE

AREA TO BE ANNEXED

PROPOSED CORPORATION LINE

TYGART DISTRICT

LITTLE KANAWHA RIVER

TYGART DISTRICT

PROPOSED CORPORATION LINE

INTERSTATE ROUTE 77

PROPOSED CORPORATION LINE



S 34° 02' W
210' 00"

TYGART DISTRICT MAP 200
TRACT J-1
MINERAL WELLS ASSOCIATES
DEED BOOK 953, PAGE 66

PROPOSED CORPORATION LINE

S 17° 35' E
720' 00"

LITTLE KANAWHA RIVER