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January 21, 2005

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Re: Berryhill Annexation

Dear Colleagues:

Enclosed please find the Findings of Fact and Conclusions of Law entered today in this case by Chancellor D.J. Alissandratos. Pursuant to the relevant Tennessee statutory authority,

January 21, 2005

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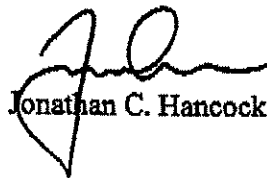
the Plaintiffs in this case must file a Notice of Appeal within thirty (30) days or the ordinance annexing the Berryhill area will become effective on the thirty-first day. In other words, absent a Notice of Appeal by the Plaintiffs, the Berryhill area will be taken within the City limits on Monday, February 21, 2005 (President's Day).

On behalf of the City, we have extended an offer to the Plaintiffs to resolve all remaining issues by agreeing to delay the effective date of the annexation ordinance of this matter until December 31, 2005 in the event the Plaintiffs do not pursue their appeal. If they do not accept this offer, we will ask that the Court of Appeals expedite the appeal so that it may be finally adjudicated by December 31, 2005. If we are successful in that effort the annexation ordinance will become effective on the date the Court of Appeals enters its Order affirming the trial court's judgment in favor of the City, assuming the Court of Appeals so opines. As with the Getwell West annexation, we will likely not have any advance notice of the exact date this ordinance will become effective. However, we will be able to predict a general time period after we have had the opportunity to present briefs and oral arguments to the court. I will let each of you know as we have more about the Plaintiffs' intentions.

It has been our great pleasure working with each of you throughout this effort and we look forward to working with you again in the near future.

Very truly yours,

GLANKLER BROWN, PLLC



Jonathan C. Hancock

JCH/kal

cc: Jeremy G. Alpert, Esq.
Ms. Misty Whitehorn

**IN THE CHANCERY COURT OF TENNESSEE FOR THE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS, SHELBY COUNTY**

JOSEPH R. NAMIE, JR., DAVID L. RANSON,)
 and JAMES A. FROMMEL, on behalf of)
 themselves and other similarly situated property)
 owners,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF MEMPHIS, TENNESSEE,)
)
 Defendant.)

No. 110241-3

FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW the Court, pursuant to Tenn. R. Civ. P. 52.01, and enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. That the Memphis City Council properly conducted a public hearing and three readings of Ordinance No. 4514 annexing the area commonly known as Berryhill.
2. That the area encompassed by Ordinance No. 4514, as adopted, encompassed 2.2 square miles existing generally east of Germantown Parkway and south of Interstate 40 in Shelby County, Tennessee.
3. That the Memphis Police Department has constructed and is operating the Northeast Precinct, which includes Ward No. 827, the boundaries of which were specifically drawn in anticipating of the annexation of the Berryhill area. The Memphis Police Department has the present ability to draw upon more resources and to provide a more urban level of police services to the annexed area than Shelby County is capable of.

4. That the Division of Fire Services of the City of Memphis has demonstrated the present ability to provide an increased level of fire services to the residents of the annexed area. The Division of Fire Services will provide more coverage for fire emergencies and routine calls than can Shelby County and the residents of the annexed area will further receive an increase in fire services from the City of Memphis more commensurate with the urban character of the area.

5. That the Division of Engineering for the City of Memphis has demonstrated a present ability to provide urban level infrastructure improvements to the annexed area including numerous road projects which will facilitate the increasing traffic demands in the area.

6. That the students in the annexed area will attend the same schools after annexation they are presently attending with the only difference being the operation of the schools by the Memphis City Schools rather than the Shelby County School System.

7. That the Division of Public Services of the City of Memphis offers thirteen different services that are otherwise unavailable to residents of unincorporated Shelby County.

8. That the City of Memphis has the present ability to provide the urban level services in the annexed area and the resulting revenue generated by the annexation is not significant.

9. That the Division of Public Works of the City of Memphis presently provides numerous services to the residents of the annexed area including extension of sewer lines.

10. That the Division of Public Works has demonstrated a present ability to provide additional urban level trash pickup services as well as services related to the urban level paving maintenance of streets and installation of street lights.

11. That the Parks and Recreation Division of the City of Memphis has a present intent and has demonstrated a willingness to operate parks in the area to be annexed including a

22 acre tract that is slated for development. Shelby County, by comparison, has demonstrated no similar commitment to the development of parks in the area and has in fact demonstrated an intent to abandon existing parkland within unincorporated Shelby County.

12. That the annexed area had a higher population density than did the City of Memphis.

13. That the annexed area is urban in character given its population density and development.

14. That the urban character of the annexed area necessitates an urban level of municipal services.

15. That the annexed area has a substantial use and need for municipal services.

16. That the City of Memphis has the present ability and intent to provide urban level services into the annexed area.

17. That the annexed area exists within the City of Memphis' reserve areas and as such is specifically designated as an area to be annexed by the City of Memphis. Because the annexed area exists in a reserve area for the City of Memphis, it is unavailable for annexation by any other municipality in Shelby County.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Court hereby enters the following conclusions of law:

1. That the annexation of the area commonly known as Berryhill by the City of Memphis pursuant to Ordinance No. 4514 was a valid act of the municipality and the ordinance was reasonable in light of the health, welfare and safety of the residents of the Berryhill area and the City of Memphis; and

2. That the passage of Ordinance No. 4514 by the City of Memphis was a valid act of the municipality and met all requirements for the passage of such an annexation ordinance provided by Tennessee law; and

3. That the residents of the Berryhill area annexed pursuant to Ordinance No. 4514 have a present need for urban level municipal services; and

4. That the City of Memphis has demonstrated a present ability and intent to provide urban level services to the residents of the annexed area; and

5. That Ordinance No. 4514 was not passed by the City of Memphis for the sole purpose of generating revenue.

6. That the Memphis City Council may amend the geographical boundaries of an annexation area "*nunc pro tunc*" through the process of approving its minutes.

7. Three factors to be taken into consideration in testing the reasonableness of an annexation ordinance. These factors are:

- a. the necessity for, or use of, municipal services;
- b. the present ability and intent of the municipality to render municipal services when and as needed;
- c. whether the annexation is for the sole purpose of increasing municipal revenue without the ability and intent to benefit the annexed area by rendering municipal services.

8. When evaluating the necessity for, or use of, municipal services, the Court considered proof related to the circumstances that existed at the time of trial.

9. When evaluating the present ability and intent of the municipality to render municipal services when and as needed, the Court considered proof related to the circumstances that existed at the time of trial.

10. When evaluating whether the annexation is for the sole purpose of increasing municipal revenue without the ability and intent to benefit the annexed area by rendering municipal services, the Court considered proof related to the circumstances that existed both at the time of trial and at the time the annexation ordinance was passed by the City of Memphis.


The Court hereby enters the following this ____ day of January, 2005.

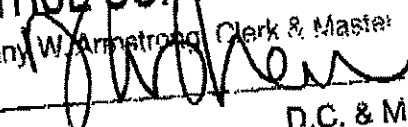
D. J. ALISSANDRATOS

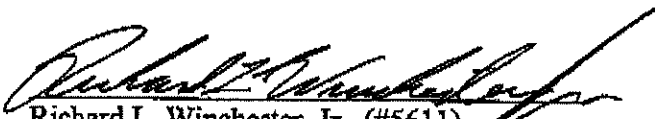
D.J. ALISSANDRATOS
CHANCELLOR

JAN 21 2005

APPROVED AS TO FORM:


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D.C. & M


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