**THE FUTURE OF MUNICIPAL ANNEXATIONS WITHIN THE STATE OF TEXAS**

**Herschel Postert**

Herschel Poster has served as commissioner and Board President of the Bexar County Emergency Service District # 5 since 2011. Due to his years of service, Mr. Postert has gained extensive experience in the Emergency Response arena. Mr. Postert’s other qualifications include serving as Fire Chief for the Southwest VFD for approximate 15 years, recognition as Bexar County Fire Fighter of the Year in 1991, and certification as a TCFP and Advance Firefighter. Currently, Mr. Postert serves as a fire investigator for Standard Insurance.

**Robert “Woody” Wilson**

Robert “Woody” Wilson has been a licensed attorney at law since 1995. He and his former law school classmate formed the firm of Sanchez & Wilson, PLLC in 2001. Their areas of practice concentrate on the representation of political subdivisions and local governmental entities. Sanchez & Wilson has represented municipalities, counties, school districts, water districts, housing authorities and emergency services districts for over twenty years. Currently, the Firm represents approximately 10 emergency service districts in South Texas.

**A. ANNEXATION BY THE CITY OF SAN ANTONIO WITHIN THE BOUNDARIES OF BCESD 5 and BCESD 10**

In 2017, the Texas Legislature passed Senate Bill 6 which changed the annexation process by requiring municipalities to hold an election in an area proposed for annexation. The authors of this Senate Bill, Senator Donna Campbell and other legislators, confirmed this Bill was passed to address abuses by municipalities in the annexation process. Of particular concern was the practice of annexing “property rich” areas simply to increase a municipality’s tax base, while ignoring and passing over poorer areas in desperate need of services. To address this issue, the bill created a more democratic process by allowing residents to be annexed only through either an annex election or through a direct petition process. SB 6 was passed to reduce bureaucracy and expedite voluntary annexation when the City and landowners agreed.

Due to S.B 6 the City of San Antonio attempted to annex certain areas in November of 2018. The property owners overwhelming chose not to annex. The Legislature in 2019 ended most unilateral annexations by any city. Due to these developments, the City needed to find a way to annex without the burden and uncertainty of an election. The City hired the company Economic & Planning Systems, Inc. (“EPS”) from Denver, Colorado to update the City’s annexation policy and study the overall growth of the City’s ETJ. Within this study, EPS provided an analysis of all ESDs within Bexar County. However, the ESD’s found this study was factually inaccurate. Even after it was reviewed with requested revisions made, it remained inaccurate. This study provided a way for the City of San Antonio to annex through the use of development agreements that had already been signed by landowners and the City.

**B. THE DEVELOPMENT AGREEMENTS**

**Development Agreements**

In general, Development Agreements are written agreements entered between a municipality and a landowner pursuant to Texas Local Government Code §§43.035 & 212.172. In this case, the agreements between the City of San Antonio and landowners provided:

“The Property shall not be annexed and shall remain in the ETJ of the City as long as this agreement is effective, the Property is not subdivided, the Property continues to be appraised for ad valorem taxes as land for agricultural or wildlife management use under subchapter C or D Chapter 23, Texas Tax Code or as timber land under subchapter E of the chapter and the Owner is not in violation of this Agreement”

The City began investigating and researching all real properties that were the subject of these Development Agreements. The City sought to determine if there was violation of the Agreements that would allow annexation. The City alleged several possible violations of these agreements and notified landowners that their property was to be annexed due to the violations. One example of an alleged violation was a landowner allowing a fireworks stand to operate on their property. This despite the fact that the fireworks operator sold fireworks only 20 days of out the year.

As a prerequisite to annexation the City was required to provide notice to the public and hold a public hearing. The relevant statutes also required the City to provide the ESD specific notice of the annexation with information concerning how the annexation would affect tax revenue and the provision of services.

**C. Suit Filed by Bexar County Emergency Service District No. 5 and No. 10 - Bexar County Emergency Service District No. 5 v. City of San Antonio, Texas; Cause No. 2019-CI-26125; In the 73rd Judicial District; Bexar County Texas**

On December 30, 2019, BCESD 5 filed suit in Bexar County District Court seeking a Temporary Restraining Order (“TRO”), Temporary Injunction, and Declaratory Judgment in response to the City’s annexation efforts. The TRO was heard on December 31, 2019 and was denied after the City of San Antonio agreed to pay for ad valorem tax revenue during the pendency of the litigation. The judge found that there could be no damages as a result of the stipulation by COSA.

**D. The Claims Asserted within the Lawsuit**

Claims asserted in the lawsuit generally include:

1. The City was required to offer Development Agreements to all landowners under §212.172 of the Texas Local Government Code. Some of the property was owned by several individuals. The City failed to offer Development Agreements to each landowners prior to annexation.
2. §43.9051 required the City to provide written notice to the ESD that contains a description of:
3. The area proposed for annexation;
4. Any financial impact on local public entities or political subdivisions (i.e – BCESD 5) resulting from the annexation, including any changes in the public entity’s political subdivision revenues or maintenance and operation costs; and
5. Any proposal the municipality has to abate, reduce, or limit any financial impact on the public entity (ESD) or political subdivision.

During infancy of the litigation, COSA initially argued notice was provided, but ultimately conceded it was not. Instead, the City countered that notice was not required because the ESD is not a public entity which was defined by statute as “a county, fire protection service provider, including a volunteer fire department”.

1. The landowners did not violate the Development Agreements. As mentioned above, landowners would have to violate the agreements as a prerequisite to annexation. A violation would occur if there was a loss of agriculture appraisal or the property was subdivided. There was evidence that neither of these conditions occurred at the time of the annexation. Also, the sale of fireworks 20 days out of the year by a third-party is not a violation.
2. There is certain statutory language designed to protect the landowner and to make the Development Agreements enforceable. Chapter 245 of the Texas Local Government Code defines the development agreement as a permit that “runs with the land”. In other words, once a development agreement is negotiated with a landowner, it cannot be changed or revised without the consent of the landowner. The process used by COSA was a unilateral revision which included language not in the original Development Agreements and which could not be changed without Owner agreement.
3. The Texas Health and Safety Code requires COSA to send notice after the annexation to the ESD’s Board’s Secretary. This was not done. Instead, the City sent notice to the chief or the president of the board.
4. The Development Agreements were void by their own terms. The Development Agreements, as drafted by the City, provided they were “void” if the violated by the owner. Based upon this language and the City’s claimed violations, the Development Agreement were void. By law, a “voided” agreement is a legal nullity, never existed and cannot be enforced. Because a development agreement must be offered before annexation can legally occur and none exsited, the annexation was illegal.

**E. Remedies**

BCESD 5 & 10 requested a Declaratory Judgment and declare:

1. The Annexation Ordinance void and unenforceable;
2. Annexation Ordinance was improperly passed and approved and is invalid under relevant law;
3. COSA exceeded is statutory authority when annexing the Properties;
4. Whether the Development Agreements were properly executed, contained adequate legal descriptions of the land to be annexed, were properly approved by COSA, offered and executed by the proper landowners, and were properly recorded in the real property records of Bexar County;
5. Whether proper and sufficient notice was provided to the ESD’s;
6. Whether the Development Agreements were in fact breached or violated; and a
7. Permanent Injunction;

**F. Status of the Litigation**

The lawsuit was ultimately dismissed by the District Court on the basis of jurisdiction only. The suit was appealed and is pending in the 4th Court of Appeals in San Antonio, Texas on the determination of jurisdiction. There has been no ruling by any court on the basis of the merits of the case.

Interesting side note: There was a landowner that was a party to the lawsuit as well regarding the development agreements. The court found there was no jurisdiction for the landowner to the enforce the agreements.