

**CITY OF SHEPHERDSVILLE
SPECIAL COUNCIL MEETING MINUTES
MONDAY, January 4, 2016**

Councilwoman Gloria Taft gave the invocation.

The Pledge of Allegiance was recited.

Mayor Ellis called the meeting to order at 9:31 a.m.

Council members present: Randy Hammond, Gloria Taft, Bernie Brown, Ashley Bratcher and Larry Hatfield.

Mayor Ellis stated the purpose of the meeting was to have the second reading and public comment on Ordinance (016-Number to be assigned) on annexation 131.49 acres (more or less) to the City of Shepherdsville referred to as Miller Property: Armstrong survey of December 28, 2015 and signed by Armstrong December 30, 2015 by consent of property owners. Then we will have the zoning requests for the property owner of Mr. Miller.

City Attorney Wantland had the second reading and public comment on Ordinance (016-Number to be assigned) on annexation 131.49 acres (more or less) to the City of Shepherdsville referred to as Miller Property: Armstrong survey of December 28, 2015 and signed by Armstrong December 30, 2015 by consent of property owners. Then we will have the zoning requests for the property owner of Mr. Miller.

Mayor Ellis: At this time before the Council takes any action I will allow five minutes for Sign In Speakers and that will be the max that each speaker will get—5 minutes. If there is any kind of attack on a Council Member or anyone in the audience your time or speaking will be forfeit and you will be removed from the building.

Mr. Hank Graddy: Mr. Mayor and members of the Shepherdsville City Council my name is Hank Graddy and I'm an attorney in Versailles, Kentucky and I've been practicing planning and zoning and annexation law for many many years. I've been retained by the members of the Southeast Bullitt Community to help them oppose the proposal to rezone agricultural land in rural Bullitt County from the current agricultural designation to the designation of General Industry. Last Monday, December 28th I met with Bill Kidd and Sara Wetmore(?) and I thought I was going to be appearing before the Fiscal Court where they would make their decision tomorrow. The following day I learned that there was an effort to try to redirect this proceeding away from Fiscal Court and to the City Council. My clients were assured that would not happen and the City Council would not interfere with the normal practice of a Planning and Zoning matter and this matter would go before Fiscal Court before the City took any action. New Year's Eve I learned to the contrary that the schedule had changed and the City Council was going to hold a special meeting at 9:30 Monday; right now, to consider the annexation and the rezoning. On behalf of the property owners and residents of Southeast Bullitt County who live along Chapeze Lane and the Springs Subdivision and other residential and agricultural properties in that portion of the County we urge you #1 vote to deny the application to annex the George Miller, Miller Enterprises property where these properties do not meet the statutory criteria for annexation or table this matter until Fiscal Court has taken action on the pending rezoning applications. We make this request based upon the following considerations; the subject properties are not eligible for annexation pursuant to KRS 81A.410 so that any action taken to annex these properties would be arbitrary and we will ask that such action to be declared to be void. I've quoted the Statute and the two requirements are: it must be adjacent or contiguous to the City's boundaries at the time the annexation proceeding has begun and which by reason of population density a commercial industrial institutional or governmental use of the land or subdivision land it is urban in character or suitable for development for urban purposes without a reasonable delay. This property fails to meet either one of these criteria. I have not seen the Ordinance that was read a few minutes ago but I was provided a map over the weekend of the survey and it's clear that this is a corridor annexation and is therefore an illegal attempt to annex property that is not contiguous to the City limits of Shepherdsville. The map shows that the so called annexation boundary

leaves the I65 corridor with call L1 and for the next 25 calls it goes along Chapeze Lane and then for the next 25 calls it circles the Miller property and then for the following 25 calls it's on the other side of Chapeze Lane going back to I64. Clearly this is a corridor attempt to annexation and for many many years that's been declared to be illegal. If you look at page two of my letter I cite the Griffin case where Chief Justice Steven held that general Courts disfavor finding one territory to be contiguous to another territory for purposes of incorporation or annexation with the only link between the two is a narrow corridor; same thing in Rowdy v City of Owensboro in 1964 case. On page three I quote the most recent decision of the Kentucky Supreme Court on this matter. This is the City of Lebanon v Goodin. In that case the property to be annexed had a 9/10 of a mile, 4000 feet of boundary that was adjacent to the City of Lebanon and it was still attacked as a corridor zoning. The attack failed because the property annexed had almost 9/10 of a mile in common boundary with the existing City of Lebanon. But there is a lengthy discussion about corridor annexation in that opinion because the challengers Mr. Goodin asserted that it was corridor annexation. The annexation before the court in no way fits within the reasoning or facts of corridor annexation. Corridor annexations are present in the unique situation which the property to be annexed or incorporated has as the case may be is contiguous with a municipality only through a corridor or a finger or a strip of highway. That's what we have here. A strip of highway is all that there is that connect the Miller property to the City limits of Shepherdsville and therefore it is a corridor annexation and it is an illegal annexation. Now I'll let you read after you sit me down, if you turn to the bottom of the letter, page three, they talk about the second criteria. The northern boundary of the territory touches the City's current municipal boundary by 4700 feet, 9/10 of a mile. They indicate that the City of Lebanon wanted this property because it was a proposed site for a Walmart and also because the City of Lebanon had designated some of that property as part of its industrial development park. So it had already been designated for industrial use by the City of Lebanon before it was annexed. That property was suitable for development without a reasonable delay at the time of annexation and that is not the case here. This property is out in the country and is surrounded by residential property and farm land it is currently farm land it is not suitable for development without a reasonable delay. If you'll turn to page four I spoke the footnote in Gooding where it talks about Griffin and Riden; basically the same, these are still good law. Courts have repeatedly held that when the only purpose the corridor serves is to create the requisite contiguity that subterfuge cannot support incorporation or annexation. My final two points on page four, I do want to object to an inadequate notice. I've not had time to prepare for today's hearing; I learned about it over the weekend on a Holiday weekend. City Attorney Wantland: This is not a hearing. Mr. Graddy: I've had no opportunity to prepare for my presentation today other than what I was able to research over the weekend. I've not had a chance to review the file and so I do want to object that I have been denied the opportunity to prepare, my clients have been denied due process, and we don't believe that this has been given adequate notice. My final point is I want to urge the City Council to make sure that nobody votes on this with a conflict of interest; this is page six. City Attorney Wantland: That has been addressed at the first reading. Mr. Graddy: I don't know that. I attempted to read the minutes of the first reading and I couldn't find any minutes on the web after September. So I have not had access to the minutes of the first reading and that's part of what is unfair to me and my clients about this proceeding today on such short notice. I also want to urge that anybody who is kin to the developer or who will benefit financially needs to disclose that and needs to step down. City Attorney Wantland: It's been disclosed and I know no authority for any Council person to step down. Mr. Graddy: I'm asking that those who are kin to or would financially benefit step down. City Attorney Wantland: That was addressed at the first meeting. Mr. Graddy: Thank you for the opportunity for me to speak I hope you will turn down this request or table it and let Fiscal Court handle this as an ordinary zoning matter.

Several residents followed Mr. Graddy; all in opposition of the annexation. Several of the residents relinquished their time to speak to Mr. Graddy.

Mr. Miller relinquished his time to speak to his attorney Tammy Baker: Good morning, Tammy Baker on behalf of Miller Enterprises LLC and George R. Miller Irrevocable Trust, Mr. Miller is the Managing Member of Miller Enterprises and he is the Trustee of the Trust so he is the appropriate person to consent to the annexation and he did that. That should be in the file. On behalf of both of those entities Mr. Miller wants this property to be annexed; as Mr. Graddy has said there are two findings that the City has to make under the Statute; that it's adjacent or contiguous. I would argue that it is. You have the plat in front of you from

Brad Armstrong; there is the corridor that connects from 65 to this property, that's the exact same method that was used to annex the Shaw property, Zoneton Developers property, Flynn's property all out on Highway 61. City Attorney Wantland: Are you familiar that Mr. Fuentes sued the City of Shepherdsville a number of years ago and it went to the Court of Appeals and the corridor annexation along 1020 was specifically affirmed by the Court of Appeals as being proper and necessary? Tammy Baker: I think that's the precedent here. City Attorney Wantland: If you look at the case you'll be surprised who argued the case for Mr. Fuentes. Tammy Baker: I'll have to look that up. Again I would argue that it is contiguous based upon the plat that Brad Armstrong drafted. In the case of Lebanon v Goodin that Mr. Graddy eluded to that as well, the Kentucky Supreme Court said that it doesn't even have to be contiguous; the property can just be adjacent meaning nearby but again I think we need the continuity part of that Statute. Again it's the same thing that was done at Shaw, Zoneton Developers, Flynn property, the property that Mr. Wantland just spoke of. The other finding that must be made is that the property is suitable for industrial development without unreasonable delay. We would again argue that is the case. The zoning is pending at this time. The front half of this property is already zoned for IG; that's not the part being annexed, that's part of these same tracks already zoned industrial. The Comprehensive Plan which I'll show on my picture if you look at the Comprehensive Plan they call for industrial. It's on the rail, it has access to the City's sewers, it's close to Highway 245, close to I65 so it's very suitable for development and again a professional planner drafted the Comprehensive Plan and said that this property is suitable for industrial development. City Attorney Wantland: Do you know that the City spent \$18 million on their wastewater treatment facility to develop this specific area. Tammy Baker: Exactly and the sewer line runs through this property and the intent is that this property will be developed and will utilize that sewer. I'll just finish by saying your duty here on the Council is to do what is best for the residents of Shepherdsville and I would argue the annexation of this property is best for the residents, that it will bring in tax revenue and it will bring in jobs and again the Comprehensive Plan's verified planner says that this property is already appropriate for development.

Mr. Graddy: Mr. Mayor and members of the Council there are some points that I want to make in closing on behalf of the people that you've heard from and the people you did not hear from because they wanted me to wrap up our presentation to you. I live in Woodford County, and I come to Bullitt County three or four times a year in order to go to Bernheim Forest as a meeting of the Sierra Club. We meet there regularly and I consider it to be an asset of the State of Kentucky, not just an asset of Bullitt County and it is a drive that I enjoy and it is a resource that I enjoy being a part of. I believe the 112 exit that you have and that the County is the custodian of subject to what is happening today; a decision by the City, or potential decision by the City to try to reach down to that part of the County and make a portion of what is now the County a part of the City. I would ask you to not do that; to decline to annex this property. There are a number of questions that have been asked. I urge you to find that this property is not yet suitable for development. Ms. Baker said on behalf of Mr. Miller, the developer that it was suitable to develop it. And she said that there was a sewer line that went through the property. I've not been to the property; I've been hired for three days so I'm a little new to this particular neighborhood; but my clients tell me that there is not a sewer line that goes through the property and they also tell me that the sewer line in the area is owned by Jim Beam and is not available. Mayor Ellis: There is a sewer line and it belongs to the City of Shepherdsville. Mr. Graddy: I'm simply telling you what I have been told by my clients that I've not had a chance to investigate and that's frankly why I believe that I've been asked to present on too short of notice so it is kind of difficult for me to present my case. I do believe that, nobody can argue, that Chapeze Lane is not a suitable road for industrial development. It is a country road that is suitable for residential and agricultural use and all the people that have bought in that area bought in reliance upon the area being agricultural and residential. Ms. Baker mentions a Comprehensive Plan and I agree with Ms. Baker's reading of the map, that part that she showed you; which basically shows a huge area designated blue for future industrial development. What she did not discuss with you is the language in the Comprehensive Plan that requires that development in Bullitt County; this is your 2015 plan just adopted, is to be an orderly development. Orderly development to me means that you grow your development so where you have industrial you expand the industrial. Orderly development is not leap frog development. And this is precisely what you're being asked to approve by annexing this property where it is and then rezoning it; this constitutes leap frog development. Mr. Wantland may tell me in a moment there is already industrial property there. It's my understanding that was designated industrial in 1968; it is adjacent to a railroad and it's never been developed which should be an

indicator that perhaps this is not a great location for industrial use. Everything else that has happened in the area is residential and agriculture and you've heard the people that have bought homes in Springs and in the neighborhood and are counting on trying to maintain the character of that area. I would ask you to recognize that you're being asked to support a concept of leap frog development which is the opposite of orderly development. Your Comprehensive Plan urges this Community, Shepherdsville and Bullitt County to be a Community committed to orderly growth. Probably the issue that is most a question mark and as far as I can tell has not been answered is a question Mr. Kidd asked a moment ago and that is how much current industrial land zoned industrial is undeveloped; how much industrial land has been developed but is now empty, that is how many industrial facilities are not full or at capacity or not even being used; how much land has already been serviced with sewers and road and infrastructure inside the City limits already that can meet the industrial needs of this Community, in other words how much industrial land do you have that is unused and therefore how much more do you need to bring in to the City and add to your base? I don't see those numbers in the process. Again I'm new to this case; I haven't read every page of the Comprehensive Plan but those numbers are numbers that should precede your decision to annex and the decision to rezone. I gave you quotes from the Lebanon case and the Lebanon case if you read the entire case, I only gave you a couple pages of it but if you read the entire case the Supreme Court notes that when that annexation proposal came before the City of Lebanon there was a lengthy process of debate and discussion within the Community about whether the annexation was proper; not a decision over New Year's weekend; not a decision on three day's notice it was a decision that took a while and ultimately the annexation was adopted and it withstood the test of time. I believe that you are on a course today that will not stand up. Respectfully I know that Mr. Wantland says that the City has won essentially all the fights it's had; I believe this one goes too far and I would ask you to find that the Chapeze Lane corridor is exactly what the City of Lebanon case and the Griffin case and the Riding case are talking about. This is a corridor annexation the road serves no municipal purpose; it's not able to be developed; it is just a rural road and that has been frowned on and disapproved in other annexation cases. Again I think you for the opportunity to speak. I would ask you to table this action if not defeat it. First I would ask you is there a motion to deny it and if that fails I would ask that you adopt a motion to table this and let Fiscal Court precede in the way Planning and Zoning is supposed to precede and do not deny my clients a due process by not giving me an opportunity to adequately prepare and make sure my clients have proper notice and that I have proper opportunity. Thank you very much for your consideration.

Mayor Ellis: I'll open the floor for Council comments at this time.

Larry Hatfield: I might as well start this ball; I don't know how we arrived to get here I've had some family problems but I know that we ran a sewer line out there and I know 8 years ago a lot of us sat here with the intention that would go industrial out through there because of the sewer line, because of the railroad, because of the interchanges, and because of Jim Beam. It's hard for me to turn Mr. Miller down when I've voted for everybody else over there industrial. I know this is not going to please you all; I know that. I hope you don't hold it against me personally but if you do that's up to you all. I understand. I've got to do what I think is best for Shepherdsville. With that being said that's all I've got to say.

Gloria Taft: As most of you know or a lot of you know that I've been in contact with you by email; I met with Mr. Kidd personally here at City Hall trying to gather as much information as I possibly could. Over the weekend I drove through your neighborhood and seen the signs where you were having your meeting at 1:00 at the Lebanon Junction Library and good for you for organizing; good for you for letting us know how you feel being a collective group to tell us as City Council people where you are at and why you feel either positively or negatively about the annexation and possibility the ultimate rezoning. The last thing I did was I pulled the Comprehensive Plan that was adopted in 2015 and the Comprehensive Plan labels this as industrial property. I'm going to reiterate what Mr. Hatfield said, we spent \$18 million of taxpayers money running a sewer line out there to Jim Beam and a lot of it was based on EPA and a lot of other factors. It was done before I was elected to the City Council. I do care how you feel. I do care that your properties are going to either grow in value or maybe be negatively impacted in value. But I have to look at the investments also that Shepherdsville City made running an \$18 million sewer line that we and our taxpayers are still paying off. In looking at what is best for the City of Shepherdsville I'm highly conflicted and I still

don't yet know how I'm going to vote but I'm going to be asked to vote. The Comprehensive Plan was adopted by Bullitt County not just the City of Shepherdsville; it was adopted by Bullitt County and the industrial recommendation was made by them back in May and June.

Bernie Brown: I'm just curious Planning and Zoning hired a professional person to help develop the Comprehensive Plan and I think that went on for well over a year; I'm just wondering how many of you people attended any of those meetings and voiced your opinion about that area being debated and discussed. Some 7 or 8 years ago and I wasn't involved at the time that this City did pay a lot of money to run a main sewer line out that way to Beam. I have not heard one objection from a resident of Shepherdsville that we should not annex this property. I see an opportunity for the City taxpayers to recover some of their money by other customers hooking on to the sewer line and eventually it could result in lowering the sewer rates here in Shepherdsville. I think that is a big issue and we have to consider; I realize that none of us want changes but changes are going to occur whether we like it or not.

Ashley Bratcher: This has been one of the absolute hardest decisions to date and I've only been here a year; I have dear friends that live back in Peaceful Valley and I also know what this could do for the City. Like I said it's been one of the most absolute hardest decisions I've ever had to make and right now I'm still kind of on the fence about it. I understand how every one of you feels. If that was my house I would probably be fighting also because I do have close friends that live in your neighborhood and are fighting. But as an elected official for the City of Shepherdsville I know that this would bring in a great deal for the City. So again I apologize if you do take this personally against me.

At this time Mayor Ellis asked for a motion to accept or deny the annexation. Larry Hatfield made motion to accept. Bernie Brown 2nd. Motion carried 5-0-1 absent.

City Attorney Wantland had first reading of zoning request of property owner (Miller) Chapeze Lane; recommendation of the Planning Commission to deny request. Mayor Ellis stated the second reading will be January 12th.

City Attorney Wantland to had first reading of zoning request of property owner (Miller) Chapeze Lane; recommendation of the Planning Commission to approve request. Mayor Ellis stated the second reading will be on January 12th at the next regularly scheduled meeting.

Larry Hatfield made motion to adjourn. Randy Hammond 2nd. Motion carried 5-0-1 absent. Meeting adjourned at 11:01 a.m.

R. Scott Ellis III, Mayor

Attest: _____
Tammy Richmond, City Clerk