

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, ARKANSAS  
CIVIL DIVISION

CITY OF WALNUT RIDGE, ARKANSAS

PLAINTIFF

v.

CASE NO. CV 2007-89

CITY OF HOXIE, ARKANSAS  
RED WING FARMS LIMITED  
PARTNERSHIP, WILSON SCHMIDT,  
General Partner, LLOYD COX, JR.,  
and JACQUELINE COX

FILED  
JUN 10 2008  
10:55 AM  
M. L. ... Circuit Clerk  
Lawrence Co., AR  
DEFENDANTS

**ORDER GRANTING MOTIONS TO DISMISS**

On May 12, 2008, the Court conducted a hearing on the Motion to Dismiss filed by the City of Hoxie, Arkansas, and the Motion to Dismiss filed by Red Wing Farms Limited Partnership, Wilson Schmidt, General Partner, Lloyd Cox, Jr., and Jacqueline Cox. The Plaintiff, the City of Walnut Ridge, Arkansas, was represented by its attorney, Stephen R. Giles, P.A.; the City of Hoxie, Arkansas, was represented by its attorney, Robert J. Gibson of Barrett & Deacon, P.A.; and Red Wing Farms Limited Partnership, Wilson Schmidt, General Partner, Lloyd Cox, Jr., and Jacqueline Cox, were represented by its attorney, David D. Tyler of Lyons, Emerson & Cone, PLC. After consideration of the pleadings and briefs filed by the parties, statements and arguments of counsel and other matters made known to the Court, the Court finds:

1. Ordinance No. 2007-8 was adopted by the City Council of Hoxie, Arkansas, on June 28, 2007. Ordinance No. 2007-8 was passed pursuant to A.C.A. § 14-40-2001 *et seq.* regarding the detachment of property from a municipality and the annexation of the property into an adjoining municipality.

18/574

2. A.C.A. § 14-40-2004(c) requires any municipality or landowner affected by the passage of a detachment and annexation ordinance such as Ordinance No. 2007-8 to appeal the passage of the ordinance to the applicable Circuit Court within twenty (20) days from the adoption or rejection of the ordinance.

3. The City of Walnut Ridge, Arkansas, filed its Complaint in the Circuit Court of Lawrence County, Arkansas, on July 27, 2007, twenty-nine (29) days after the passage of the ordinance.

4. The appeal of the City of Walnut Ridge, Arkansas, to this Court is untimely and therefore the motions to dismiss filed by the Defendants are both granted.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that the Plaintiff's Complaint as amended is dismissed with prejudice; that the land which is the subject of Ordinance No. 2007-8 is found to be annexed into the city limits of the City of Hoxie, Arkansas; and that each party shall be responsible for its own attorneys' fees and costs.

IT IS SO ORDERED.

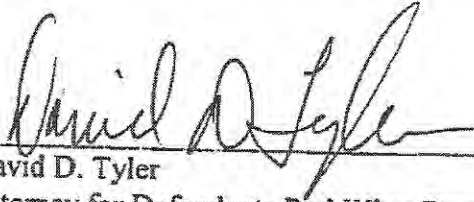
  
Circuit Judge

APPROVED:



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Robert J. Gibson  
Attorney for Defendant City of Hoxie, Arkansas



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David D. Tyler  
Attorney for Defendants Red Wing Farms Limited  
Partnership, Wilson Schmidt, General Partner,  
Lloyd Cox, Jr., and Jacqueline Cox

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Stephen R. Giles  
Attorney for City of Walnut Ridge, Arkansas

cc: Larry J. Steele

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## ORDINANCE NO. 2007-8

### A ORDINANCE REGARDING THE ANNEXATION OF LAND PRESENTLY LOCATED IN WALNUT RIDGE, ARKANSAS

BE IT ORDAINED BY THE CITY OF HOXIE, ARKANSAS:

**Section 1. Findings and Purpose:**

A. On or about June 11, 2007 a petition was filed with the City of Hoxie, Arkansas, by Red Wing Farms Partnership, Lloyd Cox, Jr. and Jacqueline Cox, asking that the following real property owned by them be annexed into the City of Hoxie, Arkansas:

All that land in the Northeast Quarter of the Southwest Quarter of Section 10, Township 16 North, Range 1 East lying North of the right-of-way of US Highway 63, containing 18 acres more or less, being subject to County Road 701 on the East side thereof and all rights-of-way and easements of record;

AND

All that land in the North Half of the Southeast Quarter of Section 10, Township 16 North, Range 1 East lying North of the right of way of US Highway 63, containing 28 acres more or less, being subject to County Road 701 on the West side and US Highway 67 on the East side thereof and all rights-of-way and easements of record.

Hereafter collectively referred to as the "Property."

B. The City of Hoxie finds and declares that the said Real Estate is contiguous to the territorial limits of the City of Hoxie and annexation of the Real Estate would be beneficial and advantageous to the land owners and the City of Hoxie.

C. The City of Hoxie further finds and declares that it is committed to provide city services to the Real Estate in order to develop the Real Estate consistent with its highest and best use, including:

1. Water – adequate to serve the Property which is to be developed primarily for commercial use with limited residential use;
2. Sewer – adequate to serve the Property which is to be developed primarily for commercial use with limited residential use; and
3. Fire Protection – including but not limited to, adequate water and fire hydrants to serve the Property which is to be developed primarily for commercial use with limited residential use.

Hereafter, collectively referred to as the "Services."

D. The City of Hoxie further finds and declares that the Petitioners attempted to obtain the Services from the City of Walnut Ridge, but that the City of Walnut Ridge failed to timely commit to provide such Services pursuant to Ark. Code Ann. §14-40-2002.

E. The City of Hoxie further finds and declares that it should annex the Property into the City of Hoxie, Arkansas, and provide the requested Services pursuant to Ark. Code Ann. §14-40-2002.

**Section 2. Declaration of Annexation into Hoxie, Arkansas and Detachment from Walnut Ridge, Arkansas:**

A. The City of Hoxie, Arkansas declares the Property to be detached from the City of Walnut Ridge, Arkansas and to be annexed into the City of Hoxie, Arkansas pursuant to Ark. Code Ann. §14-40-2002 (b)(3)(A).

B. The Property shall be assigned to Boas Ward III, of the City of Hoxie, Arkansas.

C. The Property shall be zoned R-1 residential, unless and until proper rezoning of the Property occurs pursuant to applicable city ordinance.

**Section 3. Provision of Services By the City of Hoxie, Arkansas:**

A. The City of Hoxie, Arkansas, by passage of this ordinance, commits to make the Services available to the Petitioners pursuant to Ark. Code Ann. §14-40-2002 (b)(3)(A).

B. The annexation shall be void and the Property returned to the City of Walnut Ridge if the City of Hoxie fails to take substantial steps within one-hundred eighty (180) days after the passage of this ordinance to make the Services available and, within each thirty day period thereafter, continues taking steps demonstrating a consistent commitment to provide the Services within a reasonable time, subject to tolling of the time periods by statute or waiver by the Petitioners, and according to the type of services requested.

**Section 4. Severability:**

A. In the event any provision of this ordinance conflicts with any prior ordinance then the provision of the prior ordinance shall be repealed unless specifically excepted above. In the event any part of this ordinance is found to be unconstitutional, it shall be severed from the remaining parts so that only the offending portion of the ordinance is eliminated.

**Section 5. Emergency:**

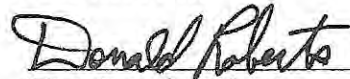
A. The City of Hoxie finds and declares that his ordinance is necessary for the preservation of the public peace, health, comfort, convenience, safety and welfare of the residents of the City of Hoxie, Arkansas, and an emergency is hereby declared to exist. Therefore, this ordinance shall be in full force and effect from the date of its adoption.

**Section 6. Recording:**

A. Upon the ordinance being final, the City Clerk of the City of Hoxie shall certify this ordinance and a plat of the Real Estate to the County Clerk of Lawrence County, Arkansas and the Arkansas Secretary of State

PASSED AND ADOPTED this 28<sup>th</sup> day of June, 2007.

APPROVED:



Hon. Donnie Roberts  
Mayor of Hoxie, Arkansas

ATTEST:



Katie Welch Smith, City Clerk

