



**Rick Davis • County Judge**

COURTHOUSE

HOT SPRINGS NATIONAL PARK, ARKANSAS 71901

501-622-3600 • FAX 501-622-3799

September 18, 2012

Mr. John Howard  
455 West Grand Avenue  
Hot Springs, AR 71901

Re: CC-11-57

Dear Mr. Howard:

Enclosed is my order regarding the Petition for Annexation of Certain Lands by the Town of Fountain Lake, Arkansas.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Rick Davis".

Rick Davis  
County Judge

Enclosure: CC-11-57

IN THE COUNTY COURT OF GARLAND COUNTY, ARKANSAS  
FILED

In The Matter Of:  
The Petition for Annexation of Certain Lands  
by the Town of Fountain Lake, Arkansas

2012 SEP 18 PM 12 36

SARAH SMITH  
GARLAND CO. CLERK

BY S. Smith CC-11-57

ORDER

On or about the 2<sup>nd</sup> day of August, 2012, came on to be heard the Petition for Annexation of Certain Lands filed on behalf of the Town of Fountain Lake, Arkansas. At the hearing, the Town of Fountain Lake, appeared by and through its Mayor, the Honorable Jack Fields, and the City Attorney, the Honorable John Howard. In response to this Petition and/or in Opposition thereto, various persons appeared at the hearing. During the course and scope of this hearing, the parties presented multiple documents, offered testimony, offered arguments, and ultimately, the city submitted a letter to the Court on or about the 4<sup>th</sup> day of September, 2012, addressing issues raised during the course and scope of the hearing.

After reviewing the testimony presented at trial, all of the evidence presented during the course of this trial, the letter from City Attorney, the Honorable John Howard, dated on or about September 4, 2012, along with other matters of law and facts, the Court is currently in a position to render a decision in this case. Based upon a review of the evidence submitted by the parties, the Court makes the following findings:

1. Located in Garland County, Arkansas, is the incorporated areas known as Fountain Lake.
2. Fountain Lake has approximately One Thousand Five Hundred Eighty-Five (1,585) acres of which approximately Four Hundred Seventy-Five (475) acres, (30%) are used for predominantly for agricultural purposes.
3. On or about the 1<sup>st</sup> day of August, 2011, the Town of Fountain Lake filed with this Court a Petition to Annex Certain Lands, in particular, the Town of Fountain Lake seeks to annex Five Hundred Fifty-Eight (585) acres into the incorporated areas. Of this Five Hundred Fifty-Eight acres, approximately Three Hundred Sixty-Seven (367) acres are owned by the persons signing this Petition for purposes of annexation.
4. The Town of Fountain Lake is attempting increase its size by Five Hundred Fifty-Eight (558) acres which is approximately a Thirty-Five percent (35%) increase in the size of the Town of Fountain Lake.
5. The Town of Fountain Lake currently offers no services with the exception of road maintenance, mowing, drainage maintenance of its road and right-of ways, and some street lighting.
6. The Town of Fountain Lake does not offer any type of planning or zoning services, sewer services, water services, electricity, or any other type of utilities related services. Furthermore, the Town of Fountain Lake does

not offer fire protection, police protection, code enforcement, or any other service that one would anticipate in a urban setting.

7. A review of the population count reflects that there has been minimal growth by way of population in the Town of Fountain Lake.
8. As previously noted, there is currently no planning department or any other attempt to manage growth within its borders nor can it enforce any type of Ordinances that the Town of Fountain Lake might pass because of the absence of any type of law enforcement activity and/or judicial system.
9. When questioned as to why the city wanted to expand, the Mayor, Jack Fields, testified that it was the desire of the city to annex along Highway 5 until it had reached the school of Fountain Lake. It was the Mayor's belief that the school of Fountain Lake should be located within the city limits of the Town of Fountain Lake.
10. Furthermore, Mayor Fields indicated that there was concern that the City of Hot Springs would exercise extra territorial jurisdiction over lands that might ultimately have an impact on the Town of Fountain Lake's ability to expand. However, the Court notes that the representatives of the City of Hot Springs have consistently advised the public that there would no active attempt to annex rural property.

11. The City of Hot Springs is preparing to abandon its rights under the extraterritorial jurisdiction to allow the County to exercise this authority. Therefore, the reasons offered by Mayor Fields for the necessity for this annexation are minimum at best.
12. A.C.A. § 14-40-601 et seq, provides for a procedure in which persons located outside of the city limits can petition the County Court and request permission to be added to an existing city or town.
13. In particular, this statutory scheme requires that a majority of the property owners, along with a majority of the property represented, be included in the Petition for Annexation. Furthermore, this real property must be located contiguous to the city's or town's current boundaries.
14. A.C.A § 14-40-604 (a)(2)(A) provides the following: If the court or judge hearing the proceeding shall be satisfied that the requirements for annexation as set out in this subchapter have not been complied with, that the territory proposed to be annexed is unreasonably large, or that the territory is not properly described, the court of judge shall make an order restraining any further action under the order of the county court and annulling it.
15. The current size of Town of Fountain Lake is approximately One Thousand Five Hundred Eighty-Five (1585) acres. The proposed annexation is Five Hundred Fifty-Eight (558) acres which is Thirty-Five percent (35%) of the

existing town size. In essence, the Town of Fountain Lake is attempting to add Thirty-Five percent (35%) to its borders.

16. Although it appears as though the amended Petitions submitted by the Town of Fountain Lake meets the requirements of a majority of the land owners and a majority of the real property in the proposed annexation area, the Court is extremely concerned that this area is unreasonably large.
17. The Court notes that there are a total of fifty-four (54) land owners contained in the proposed annexation area and that thirty-four (34) of those land owners signed the Petition.
18. The Court notes that there is approximately Five Hundred Fifty-Eight point Six Eight (558.68) acres in the proposed annexation area and that of that area Three Hundred Sixty-Seven point Two One (367.21) acres are represented by land owners that signed the Petition to annex into the Town of Fountain Lake.
19. As previously noted, it appears as though the Town of Fountain Lake has submitted a Petition in which a majority of the real property and a majority of the land owners have signed the Petition seeking to become part of the Town of Fountain Lake.

20. The Court notes that although it is not controlling, a good guide to use to determine if a proposed annexation is unreasonably large is to look at the requirements contained in A.C.A. § 14-40-301, et seq. Although these requirements apply to those situations in which the city or town attempts to compel a certain portion of real property into the borders of the city or town. This statutory scheme is not applicable to the case at bar; however, these statutes do provide guidance as to the reasonable size of a proposed annexation area. To begin with, A.C.A § 14-40-302 provides that the Court should determine whether the proposed annexation area is platted and held for sale or used as municipal lots, whether the property is to be sold as suburban property, and whether the property would represent actual growth of the municipality beyond its legal boundaries.
21. Additionally, A.C.A. § 14-40-302 prohibits a municipality of fewer than One Thousand (1000) people from annexing property in a given year in excess of ten percent (10%) of the municipalities current area. Again, the Court acknowledges that this statute does not apply to this case because this is voluntary annexation. However, this statute does provide guidance as to when a proposed annexation is unreasonable large. The Court is concerned that the proposed annexation area is unreasonably large when looking at all of the evidence in it's totality.
22. The Court finds that the Town of Fountain Lake has met the criteria for the majority of property owners and the majority of land area in the

proposed annexation area. The Court further finds that the proposed annexation area is contiguous to the current boundaries for the Town of Fountain Lake, however, the Court also finds that the proposed annexation area, which would cause the Town of Fountain Lake to grow by approximately thirty-five percent (35%) is an unreasonably large annexation area.

23. For the reasons stated above, the Court denies the Petition to Annex Certain Lands by the Town of Fountain Lake.


**IT IS, THEREFORE, CONSIDERED ORDERED, ADJUDGED AND DECREED,**  
that:

1. The Petition filed on behalf of the Town of Fountain Lake meets the criteria in regards to indicating that a majority of the property owners and a majority of the land represented by the proposed annexation area have requested to be annexed by the Town of Fountain Lake.
2. Furthermore, the Court finds that the proposed annexation area is contiguous to the Town of Fountain Lake's current borders.
3. The Court further finds that there are fewer than One Thousand (1000) people that live in the Town of Fountain Lake and that this proposed annexation would be in excess of Thirty-Five percent (35%) of the municipalities current area, which the Court finds to be an unreasonably large request, Therefore, for this reason the petition to annex certain property is denied.



The Court hereby denies the Petition seeking to annex Certain Lands by the  
Town of Fountain Lake for the above stated reasons.

**IT IS SO ORDERED.**

  
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**HONORABLE RICK DAVIS**  
**GARLAND COUNTY JUDGE**

Date: 9-18-12