The Meaning of "Contiguous and Adjoining"
Required by Maryland Annexation Law

by Kevin J. Best, Manager, Research & Information Management

A number of Maryland's municipalities have expanded their borders over the years in such a fashion that it may appear questionable whether certain annexations meet the statutory requirement that annexed land be "contiguous and adjoining."[1] What this phrase means is that a municipality should have some degree of compactness so as to assure "that delivery of government services are convenient and prevent awkward situations where, to acquire such services, individuals would have to pass under or over lands outside of a particular district."[2]

Other considerations of whether the annexation is reasonable may include (1) whether the annexation is acceptably within the city's growth path, (2) the need for planning and zoning and other municipal services in the area, and (3) whether there are natural barriers[3] between the city and the area to be annexed.[4]

Maryland annexation law can be found in Article 23A, Section 19 of the *Annotated Code of Maryland* which provides in paragraph (a):

> The legislative body, by whatever name known, of every municipal corporation in this State may enlarge its corporate boundaries as provided in this subheading, but this power shall apply only to land:
>
> (1) Which is *contiguous and adjoining* to the existing corporate area; and
>
> (2) Which does not create any unincorporated area which is bounded on all sides by real property presently within the corporate limits of the municipality…[5]

(emphasis added)

The Maryland courts have not yet interpreted the definitive meaning of "contiguous and adjoining" but the Maryland Attorney General has published an opinion on this subject.[6] This opinion originated from an inquiry from the Town of Berlin that received an annexation petition from an owner (public high school) of about 100 acres of land located approximately 2.5 miles northeast of the town's border.[7] In order to connect the parcel to the Town, a segment of Ocean City Boulevard and U.S. 50 had to be annexed.

The Attorney General found that a literal reading of the statute would permit the proposed annexation because contiguous meant "in contact" and adjoining meant, "located next to;" therefore, the proposed strip annexation met these two literal and common meanings.[8] However, the Attorney General

qualified his interpretation by examining the legislative history of the statute in order to ascertain the General Assembly's true, common sense objective in using the term "contiguous and adjoining."[9]

The term "contiguous and adjoining" was not in the original municipal annexation statute. The year after home rule was granted under Article 11E of the Maryland Constitution by statewide referendum in 1954 to Maryland's cities and towns, the legislature passed a predecessor to Section 19(a) in 1955 stating that "every municipal corporation in this State may enlarge corporate boundaries thereof as in this sub-heading provided."[10] However, two years later a separate bill was passed adding the subject term, "contiguous and adjoining." The Attorney General found it particularly significant that the word "adjoining" was added to the bill by amendment. Therefore, it was concluded that "a mere touching of the existing corporate area and the annexed land would be insufficient" according to the Maryland Attorney General. [11]

The legislative purpose of the added phrase was to ensure incorporated cities and towns were "unitary entit[ies]" consistent with the concept of a municipality.[12] Furthermore, the policy considerations for the addition of the term "contiguous and adjoining" were to ensure that municipal territory be a gathering of one mass of people politically and economically sharing the same community of interest, and capable of collectively providing an efficient package of municipal services.[13]

In general the Attorney General opined that municipal unity and common purpose could be best served when the physical connection between municipal areas are "substantial," and "not merely the terminus of a long corridor that has no relation to the municipality other than to connect a remote tract."[14] However, relying on an Alabama decision, the opinion did concede that there may be factually based exceptions in a particular case, such as Berlin's, where the annexed property is "similar and homogenous" and sharing the unitary purpose of the annexing municipality.[15]

In *City of Prattville v. City of Millbrook,*[16] the case relied on above, the City of Millbrook, Alabama annexed residential areas near neighboring Prattville which was prompted by the petition of several homeowners desiring municipal services. The annexed area was connected to the town's existing territory by a two and three-quarter mile stretch of abandoned railroad right-of-way owned by the county.[17]

Several important considerations made by the Alabama Supreme Court in upholding the annexation included: (1) there was a legitimate and valid municipal interest served because the residents had requested municipal services,[18] (2) the annexation was consistent with the town's Master Plan (3) the annexation did not create impermissible enclaves, and (4) the plaintiff city's citizenry would not be directly injured if the annexation went forward; whereas, the newly annexed citizens of Millbrook would suffer harm if they lost municipal status.[19]

9/24/2003

Maryland's incorporated cities and towns have been and currently are expanding their territories using "strip" or "roadbed" annexations.[20] Maryland's appellate courts have yet to rule on whether roadbed annexations conform to the requirement of "contiguous and adjoining," as expressed in current annexation law passed by the General Assembly. However, decisions from other state courts help predict that as long as Maryland's municipal corporations annex areas that generally share the same "unitary purpose" and are not simply a subterfuge to increase the tax base with little benefit returning to the annexed area,[21] future annexations are likely to remain unchallenged.

---

[1] My research has revealed that about a dozen municipalities in Maryland have what are known as "strip," "cherry-stem," "dumbbell," "lasso," "shoestring," "corridor, " "finger," "roadway" or "spider-web" annexations.

[2] *See* 56 Am. Jur. 2d *Municipal Corporations, Counties and Other Political Subdivisions* §51 (2000) (citing *Board of Trustees of Mokena Community Public Library Dist. v. Village of Tinley Park*, 680 N.E. 2d 743 (3d Dist. 1997). This concept is congruent with Smart Growth, which characterizes a few of the traits of sprawl as: (1) unlimited outward extension, (2) low-density residential and commercial settlements, (3) leapfrog development, and (4) widespread strip commercial development. *See* Gerald E. Frug et. al., *Local Government Law*, 504, (3d ed. 2001)

[3] *See* 56 Am. Jur. 2d *Municipal Corporations, Counties and Other Political Subdivisions* §49 (2000) Barriers such as rivers, roads or highways, railroad rights of way and unidentified land masses have been the subject of considerable annexation litigation nationwide. The courts have generally rejected the contention that a municipality could not function as a unified entity simply because annexed areas were separated by a river. *See* Erwin S. Barbre, J.D., Annotation, *What Land is Contiguous or Adjacent to Municipality so as to be Subject to Annexation,* 49 A.L.R. 3d 589 (1973).

[4] *See* 56 Am. Jur. 2d §49

[5] Enclaves are also prohibited by the same statute, but are not the focus of this paper.

[6] 82 Op. Md. Att'y Gen. (Op. No. 97-05) (1997).

[7] The school wished to obtain municipal sewer services. The annexation later also encompassed two commercial properties near U.S. 50. Discussion with Mayor Rex Hailey on October 18, 2001; and Town Manager Linda Chelton and Finance Officer Ronald Bireley on November 29, 2001.

[8] *See id*. at §II, ¶ 2. (relying on dictionary definitions found in *The Random House Dictionary of the English Language* at 439 & 25 (2d ed. 1987).

[9] *See id*. at §II.

[10] *See id*. at §II, ¶ 4. (citing Chapter 423 of the *Laws of Maryland* 1955).

[11] *See id*. at §II, ¶ 5.

[12] *See id*. at §II, ¶ 6.

[13] *See id*. at §II, ¶ 6-9.

[14] *See id*. at §III, ¶ 1.

[15] *See id.* (citing *City of Prattville v. City of Milbrook*, 621 So. 2d 267 (Ala. 1993).

[16] 621 So. 2d 267 (Ala. 1993).

[17] *See id.* at 268-69.

[18] "Unreasonable [annexation] seems to have turned on the facts that the assessed value of the utility's property would double the city's tax rolls and, due to lack of effective access and other factors, the utility would receive little in the way of urban benefits by being brought into the city, whose largest taxpayer it would become." *Department of Land Conservation and Development v. City of St. Helens*, 138 Or. App. 222, 226-27, (1995) (explaining the Oregon Supreme Court's determination of an invalid annexation in *Portland Gen. Elec. Co. v. City of Estacada*, 194 Or. 145 (1952)).

[19] *See id*. at 272-273.

[20] On May 17, 2001, the City of Frostburg annexed approximately 45 acres of land owned by the State of Maryland and the City (rifle range). The properties in question lie generally one-quarter mile to the west of

the city's previous boundaries, along National Highway and were not contiguous to the city's boundaries, except by virtue of annexation of the National Highway roadbed itself. *See City of Frostburg Annexation Resolution #61*, passed 5/17/2001.

[21] *See supra* note 18 and accompanying text.
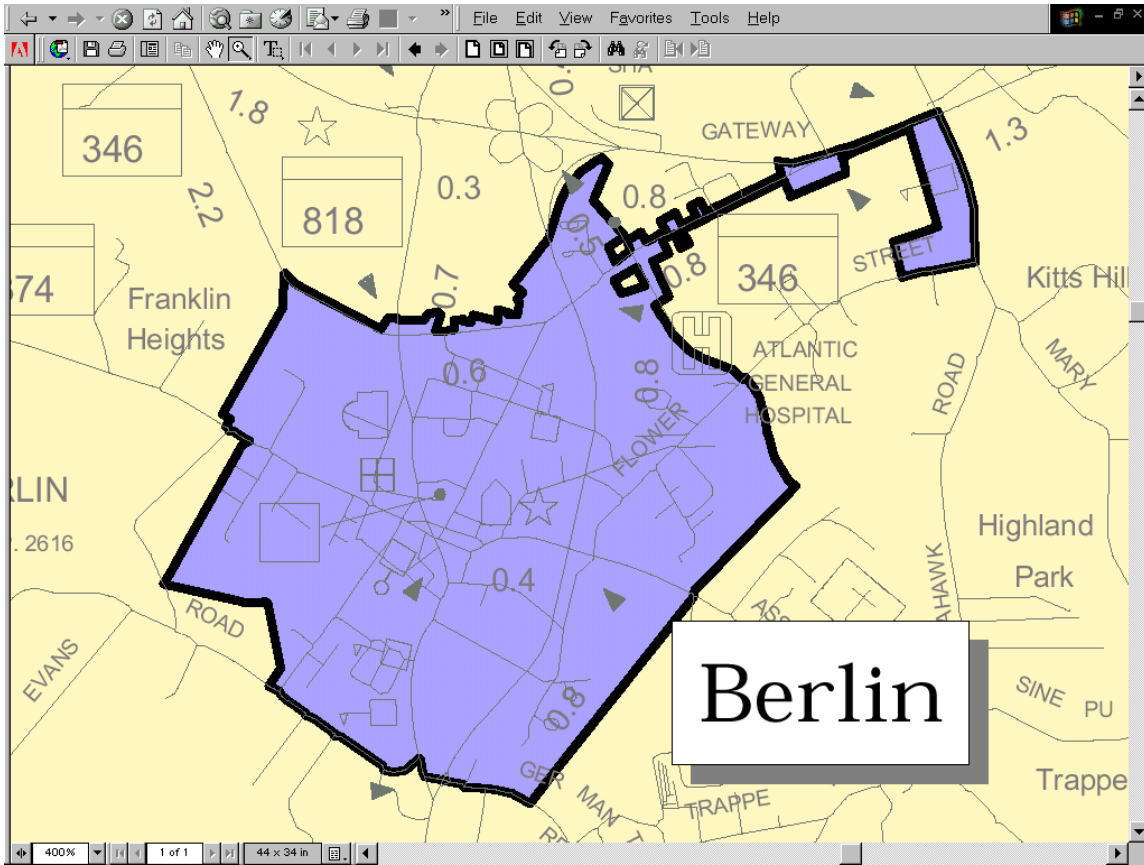
[crop out browser toolbar]
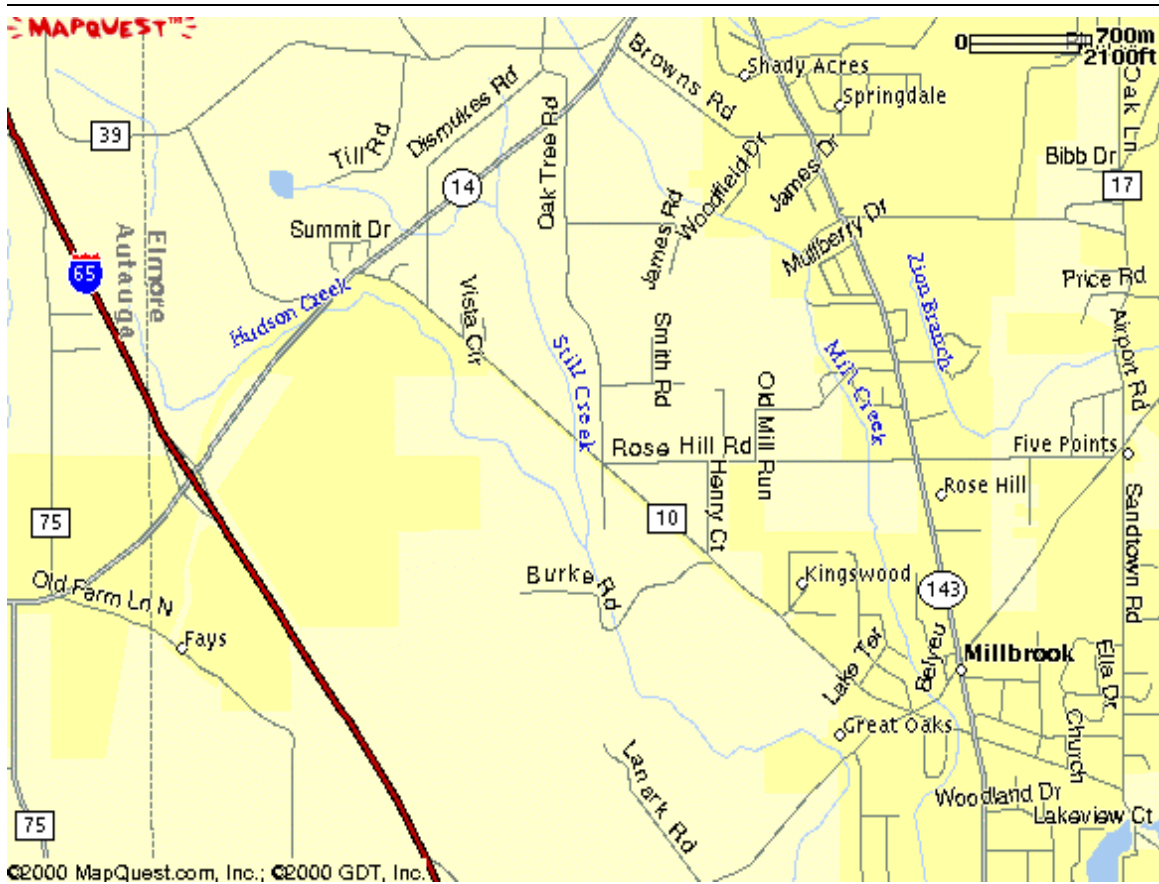
Millbrook, Alabama RR right-of-way/county roadbed annexation
[crop out logo and copyright (lower left and upper left)]
Annexed area is in darker yellow area near I-65 (and Eastern part of Prattville at intersection of Co. Rd. 75 and Old Farm Ln.) connected by RR and county roadbed delineated by Co. Rd. 10.

Internet Images (URL's) for April Article
on Annexation by Kevin J. Best

Image #1

Berlin (must then zoom in on the Worcester County map)

http://www.mdp.state.md.us/msdc/census/cen2000/maps/PLC00/worcplc.pdf

Images #2

MapQuest.com

Town of Millbrook, Alabama

9/24/2003

http://www.mapquest.com/maps/map.adp?country=US&address=&city=millbrook&state=Al&zipcode=&h
omesubmit.x=0&homesubmit.y=0

9/24/2003