

# City of Fayetteville

433 Hay Street  
Fayetteville, NC 28301-5537  
(910) 433-1FAY (1329)

## City Council Action Memo

File Number: 18-021

---

**Agenda Date:** 2/5/2018

**Version:** 4

**Status:** Agenda Ready

**In Control:** City Council Work Session

**File Type:** Other Items of  
Business

**Agenda Number:** 4.01

**TO:** Mayor and Members of City Council

**THRU:** Jay Reinstein, Assistant City Manager

**FROM:** David Nash, AICP, Senior Planner  
Gerald Newton, AICP, Director

**DATE:** February 5, 2018

**RE:**

Consideration of Annexation Waiver Request-Broadwell Land Company-South  
Side of Elliot Farm Road

**COUNCIL DISTRICT(S):**

1

**Relationship To Strategic Plan:**

Goal II, Diverse and Viable Local Economy

**Executive Summary:**

Broadwell Land Company (hereafter, "Broadwell") plans to develop a large, mixed-use project north of the City. The project will be developed in phases. Broadwell is considering two options for water and sewer: Harnett County and PWC. If Broadwell chooses PWC for sewer service, the property would need to be annexed and developed to City standards, pursuant to Policy 150.2. Broadwell has already had an engineering firm design Phase 1 according to Cumberland County standards. Broadwell has requested that the City Council waive the annexation requirement for Phase 1.

As part of this request, Broadwell has stated that it will submit a petition requesting annexation for the land in the remaining phases. As annexation agreements are problematic, staff recommends all of the property be annexed at the same time. At the City Council Work Session on February 5, Council members will have an opportunity to learn more about this situation and the various scenarios on how this case could unfold.

At this point, it is expected that City Council will take action on this item in late April.

No action is expected at the Work Session on February 5. However, on February 5, it is hoped that City Council will endorse the information presented and express a preference on whether to approve or deny the annexation waiver request for Phase 1. At this point, City staff recommends that City Council express a preference for denying the annexation waiver request for Phase 1 and favors slight administrative adjustments on standards due to unique circumstances.

**Background:**

**Proposed project.** Broadwell Land Company plans to develop a large, mixed-use project north of the City. The project site is located along the southern side of Elliot Farm Road and Elliot Bridge Road, west of Ramsey Street. (See *Attachment A-Vicinity Map*.) The site is at the northernmost edge of the Fayetteville Municipal Area (MIA). At full development, the project will consist of approximately 350 single-family units, 350 multi-family units, and 30 acres of commercial area fronting on Ramsey Street. (See *Attachment B-Site Plan Map*.) It is expected that the project will be developed in five phases. (See *Attachment C-Master Plan Map*.)

**Cumberland County Schools.** As shown on Attachments B and C, a future school site has been identified adjacent to the proposed project. The school is listed as a need in the School Board's 2016 Five Year Critical Needs Assessment. The school would be an elementary school with a 600 core student capacity. Funding for the project has not been identified by the School Board. A date for construction has not been determined.

**Surrounding land uses.** The general land use pattern in the vicinity is shown in *Attachment D-Existing Land Use Map*. As shown on the map, there are residential neighborhoods located west of the Broadwell Property and south of the Broadwell Property, west of Ramsey Street. The recently-opened section of the Outer Loop has probably stimulated some of this residential development. There are several large open space parcels located south of the Broadwell Property. These parcels are owned by the State of North Carolina, and they will eventually be part of the southern section of the Carvers Creek State Park.

**Site conditions.** Soils in this area present limitations for septic tanks. The Broadwell project will need water and sewer. An important factor affecting the provision of utilities, especially sewer, is topography. *Attachment E-Map of Topography and Other Natural Features*, shows that there is a significant ridge line running east-west through this area. South of the ridge line, creeks flow southward toward Fayetteville. North of the ridge line, creeks flow northward toward the Little River and Harnett County. Because sewer flows downhill by gravity, sewer lines are often installed in creek valleys.

**Utility options.** Broadwell has two options for water and sewer: Harnett County or PWC. Harnett County already provides water service to residential neighborhoods located west of the Broadwell Property. (See *Appendix F*.) Harnett County has built a water tower

nearby.

Harnett County does not provide sewer service in this area. The Harnett County sewage treatment plant is north of the property and across the ridgeline. If Broadwell decides to use Harnett County sewer, an agreement for service between Harnett County and Broadwell will be worked to extend a public sewer line from the treatment plant to the site. (See *Appendix G.*)

If Broadwell chooses Harnett County, the project would not need to be annexed into Fayetteville, and it could be developed according to Cumberland County standards.

PWC already provides water service to the Springfield subdivision located south of the Broadwell Property. An existing PWC water line terminates along Ramsey Street south of the Broadwell Property. (See *Appendix H.*)

PWC already provides sewer service to the Springfield subdivision located south of the Broadwell Property. PWC sewer could be extended northward through a stream valley to the site. (See *Appendix I.*)

If Broadwell chooses PWC for sewer service, the project would need to be annexed into Fayetteville and it would need to be developed according to City standards, based on Policy 150.2, as amended on February 13, 2012, and as interpreted in light of the PWC Charter Revision legislation (See *Appendix J.*).

**Observed History.** In 2012, Broadwell considered the use Harnett County utilities for public water and sewer services. We have little information between then and 2015 when activity happened at the county level.

On August 18, 2015, the Cumberland County Joint Planning Board approved a rezoning of the Broadwell site from PND to Mixed Use/CZ Conditional Zoning. One of the reasons for approving the plan was, "This development will introduce public sewer from Harnett County to this rural portion of the county." On September 21, 2015, the Cumberland County Board of Commissioners approved the rezoning.

In the fall of 2016, staff learned about a proposal to develop land on the northern side of Elliot Bridge Road. This site, which is referred to as the Hammond Tract, is across the road from the Broadwell Property. It is also in the Spring Lake Municipal Influence Area (MIA) rather than the Fayetteville MIA; this means that it is not subject to the annexation requirement of Policy 150.2.

A real estate agent representing the owners of the Hammond Tract began discussions with PWC staff about extending sewer from the south through the Broadwell Property in order to get sewer to the Hammond Tract.

On June 5, 2017, City and PWC staff members met with officials of Broadwell Land Company about the possibility of Broadwell using PWC utilities. This now seemed more possible, because of the new PWC sewer line being planned to serve the Hammond

Tract.

**Participatory History.** On June 14, 2017, the City's Technical Review Committee (TRC) discussed the Broadwell project. Prior to this meeting, the engineer firm hired by Broadwell (Crawford Design) provided updated drawings and the current Master Plan. This information showed that the engineering firm had already designed Phase 1 of the development to Cumberland County standards (rather than Fayetteville standards), and that the state had already approved stormwater permits for Phase 1.

On June 15, 2017, City staff prepared a comparison of the plan versus City requirements. (See *Appendix K.*)

On July 31, 2017, City and PWC staff members met with officials of Broadwell Land Company. A City/PWC Proposal was handed out at the meeting. (See Attachment L.) The proposal said that PWC requests that Broadwell pay \$1,000,000; this was a 50 percent reduction in PWC's previous request for this project. The proposal also noted that this site appears to be a good candidate for Low Impact Development, which might involve narrower streets than originally designed.

On October 26, 2017, Broadwell presented a Counter Proposal document to a City staff member and a PWC staff member. (See *Appendix M.*) In this document, Broadwell proposed that PWC would be the service provider to the overall mixed-use project. Broadwell said that PWC would extend water and sewer mains through the project. Broadwell proposed to pay \$500,000 for the main extensions. Broadwell also proposed that the City waive the annexation requirement for Phase 1 and for a school site located adjacent to the Broadwell property. Broadwell said the rest of the project would be annexed into Fayetteville by petition and developed according to applicable standards.

**Present Situation.** At the February 5, 2018 City Council Work Session, staff will present background on this situation. At a future Council meeting, the waiver request and annexation petition mentioned in the Counter Proposal will need to be discussed and acted upon. **As annexation agreements are problematic, staff recommends all of the property be annexed at the same time.**

It is presumed that Broadwell has already submitted the annexation waiver request for Phase 1 by mentioning it in the Counter Proposal. If this is not the case, then Broadwell will need to do so or there is nothing to act on by the City Council. Additionally, Broadwell will need to submit an annexation petition requesting annexation of the remaining land as a part of the initial request. Broadwell will also need to submit an initial zoning application for the remaining land.

If Broadwell submits those items by February 6, the Zoning Commission will be able to hold a public hearing on the initial zoning on March 13.

On April 23, the City Council would be able to act upon the initial zoning application, act upon the annexation waiver, hold an annexation public hearing, and act upon the annexation petition for the remaining land.

**Possible Scenarios-**There are at least three scenarios for how this case unfolds with current annexation policies. In each scenario, the City Council acts upon the annexation waiver first, then the Council acts upon the annexation petition.

**Scenario 1, Council Approves-** Broadwell requests an annexation waiver for Phase 1 and submits a petition requesting annexation of Phases 2-5. (This is essentially what Broadwell has outlined in their Counter Proposal of October 26.) The City Council approves the annexation waiver request for Phase 1. In response, during the annexation public hearing, Broadwell speaks in favor of the annexation of Phases 2-5. The City Council then annexes Phases 2-5. In response, Broadwell uses PWC water and PWC sewer for Phases 1-5 and develops Phases 1-5, with Phase 1 remaining outside the City and Phases 2-5 being inside the City. This scenario means that Broadwell would not need to redesign Phase 1, if Phase 1 is already engineer designed.

**Scenario 2, Council Denies and modifications to plan or standards occur.**

Broadwell requests an annexation waiver for Phase 1 and submits a petition requesting annexation of Phases 2-5. (Again, this is what Broadwell has outlined in their Counter Proposal of October 26.) The City Council denies the annexation waiver request for Phase 1. In response, during the annexation public hearing, Broadwell speaks in favor of the annexation of Phases 1-5. (Even though Broadwell requests that Phase 1 not be annexed, the denial of the request by City Council means that Phase 1 must be annexed in order to get PWC sewer. It is assumed that developing Phase 1 with septic tanks is not possible, and that developing Phase 1 with Harnett County sewer is not practical.) The City Council then annexes Phases 1-5. In response, Broadwell uses PWC water and PWC sewer for Phases 1-5 and develops Phases 1-5, with all five phases being inside the city.

This scenario provides an option of examining and working out differences of the project's design in Phase 1 to the current city regulations by both the city and Broadwell while folding in the expectations of all future phases of the project.

**Scenario 3, Council Denies and development occurs without PWC and City.**

Broadwell requests an annexation waiver for Phase 1 and submits a petition requesting annexation of Phases 2-5. (Again, this is what Broadwell outlined in their Counter Proposal of October 26.) The City Council denies the annexation waiver request for Phase 1. In response, during the annexation public hearing, Broadwell withdraws the annexation petition for Phases 2-5, and makes it clear that it does not want Phase 1 to be annexed either. The City Council would then not be able to annex anything. Broadwell's response regarding water might be to use either PWC water or Harnett County water. Broadwell's response regarding sewer might be to use Harnett County sewer. All five phases would be developed outside the City. Under this scenario, Broadwell would not need to redesign Phase 1.

**Issues/Analysis:**

**Sequence of Steps by City Council-**In cases involving both an annexation waiver

request and an annexation petition, the question arises: which step should come first? Staff believes that City Council could do either step first. However, staff believes that it is fairer from the applicant's point of view if the City Council acts upon the annexation waiver request first, and then acts upon the annexation petition. This is consistent with the way the City handles the initial zoning process. (An applicant who petitions for annexation has to go through an initial zoning process. If an applicant realizes that the City Council is not going to approve the initial zoning that is needed for a project, the applicant can withdraw the annexation petition before the City Council acts upon the annexation.) However, the disadvantage of this sequence from the City's point of view is that after an applicant obtains an annexation waiver, the applicant could then withdraw the annexation petition. This is not likely to happen, because if an applicant withdraws the annexation petition, the applicant will not be able to use PWC sewer. Policy 150.2 requires that a property be annexed before PWC sewer can be provided or expanded.

**Compliance with Satellite Annexation Standards**-Staff has determined that this area, if annexed, complies with the five statutory standards for a satellite annexation. Additionally, the sequence of accepting other portions of the project at the time of the initial action are in accord with statutes as informed by the NC School of Government.

**Impact of Extending a Major PWC Sewer Line to Serve This Project**-In order for the Broadwell project (and the Hammond project) to be developed with PWC sewer, a major sewer line needs to be extended. The natural route for this new line will be up a stream valley located west of Ramsey Street. This extension might make it possible for existing homeowners in subdivisions along the western side of Ramsey Street to connect to sewer. This extension might induce some future new residential development. However, the amount of new development to be induced will be limited by the state's acquisition of land for a new state park.

**Has PWC Previously Recognized a Need for this Major Sewer Line?** Yes. This line was shown on Figure 7-1 of the Sanitary Sewer Master Plan, prepared in May 1997 by Hobbs Upchurch for the Public Works Commission of the City of Fayetteville. (See *Attachment N.*) This line was referred to as Improvement No. 2; it was proposed for construction between 1997 and 2001. In the 1997 Plan, the total estimated project cost for this line was \$1,676,338. According to the PWC staff, over twelve years ago, a PWC staff member contacted major landowners to assess their interest in participating in the construction of this line. At that time, the level of interest was not high enough to justify proceeding with a construction project.

### **Proposed Development Plan Impact**

**Impact of future Annexation Requests.** Should the city council determine that modifications to the city standards are appropriate for one portion of the full project to be annexed, this does not change any individual reviews which presently occur on requests. The property of the request is at the extreme edge of a watershed and is designed with an open space component in Phase I. This design, as already approved by the county, provides an element of stormwater protection that differs from the city's general stormwater management practices. However, given the location, watershed and Phase

One's blending into other portions of the overall annexation of the property, it appears there may be only minor adjustments needed to comply with the city regulations of stormwater. The impact of UDO items appears to be tied to the extent of sidewalks. As the site is adjacent to a proposed school location, the student walking issue is similarly important and one that the regulations allude to in terms of pathways. Because these represent rather unique design issues and the location represents the northernmost potential site of the city's reaches any action on this one property should be viewed as unique and not precedent setting.

**Budget Impact:**

From the City's perspective, the budget impact of annexing this project can be roughly evaluated for each of the three scenarios outlined above. **Extreme caution needs to be used in these project forecasts as much of the development is market and developer driven.** In general, there appears to be a long-term increase in revenue over expenses, if the overall project occurs as portrayed by the Broadwells.

The following scenarios are based on full build out. Further details will be shared.

Under Scenario 1, Broadwell develops Phase 1 outside the City and Broadwell develops Phases 2-5 inside the City. It is assumed that build-out will occur over a seven-year period.

Total Projected Annual Revenues	\$1,356,347
Total Projected Annual Costs	\$ 374,573
Fiscal Impact: Revenues Minus Costs	\$ 981,774

Note: Costs for Scenario 1 do not yet include costs for engineering, police protection, or travel costs for sanitation.

Under Scenario 2, Broadwell develops Phases 1-5 inside the City. It is assumed that build-out will occur over a seven-year period. The numbers will be similar to that of Scenario 1. Preliminary numbers are still being projected and will be shared as they are determined.

Total Projected Annual Revenues	\$2,087,744
Total Projected Annual Costs	\$ 564,225
Fiscal Impact: Revenues Minus Costs	\$1,523,519

Note: Revenues and costs for Scenario 2 still need to be calculated. This will be done soon using an EXCEL workbook.

Under Scenario 3, Broadwell does not develop any of the phases inside the City. It is assumed that build-out will occur over a seven-year period.

Total Projected Annual Revenues	\$0
Total Projected Annual Costs	\$0

Fiscal Impact: Revenues Minus Costs     \$0

**Options:**

The following options have been formulated in light of the scenarios provided above. Each of the actions presented involve an action of the city council at one time as previously outlined in the process of annexation requests.

1. City Council endorses the information provided, and expresses a preference for Scenario 1, which involves future approval of Broadwell's annexation waiver request for Phase 1 and the annexation of Phases 2-5.
2. City Council endorses the information provided, and expresses a preference for Scenario 2, which involves future denial of Broadwell's annexation waiver request for Phase 1, and the annexation of Phases 1-5 with a provision of working through specific items.
3. City Council endorses the information provided, and expresses a preference for Scenario 3, which involves future denial of Broadwell's annexation waiver request for Phase 1 and the likely result that none of the five phases would be annexed.

**Recommended Action:**

City staff recommends Option 2, which involves endorsement of the information provided and a preference for the future denial of Broadwell's annexation waiver request for Phase 1. This would hopefully lead to the annexation of all five phases. This avoids splitting the future development into an outside-City part (Phase 1) and an inside-City part (Phases 2-5). The preliminary fiscal impact suggests a waiver of the first phase will be a long-term gross reduction of approximately \$700,000 annually upon full build-out. While the revenue and expenditures are highly dependent on an unknown future of the developer and market, the concept of casting off one portion of an overall project and requiring separate services for it than others with city services, seems inconsistent with city practices of delivering sustainable municipal services in a cost-effective manner for all.

Although Broadwell may need to redesign (but not necessarily re-engineer) certain elements of Phase 1, the use of Low Impact Development practices, such as narrower streets and the shown open space afford a reasonable solution. This also allows PWC and the city to further discuss the annexation while addressing the public service of utilities at what would become the northernmost portion of the city.

**Attachments:**

A-Vicinity Map  
B-Site Plan Map (from County Zoning Case P15-46. August 11, 2015)  
C-Master Plan Map (prepared by Crawford Design, March 7, 2016)  
D-Map of Existing Land Use  
E-Map of Topography and Other Natural Factors  
F-Map of Harnett County Water Lines  
G-Map of Harnett County Sewer Lines



H-Map of PWC Water Lines

I-Map of PWC Sewer Lines

J-Policy 150.2 (as amended on February 13, 2012)

K-Comparison of Plan versus City Requirements (June 14, 2017)

L-City/County Proposal-Presented on July 31, 2017

M-Counter Proposal-Presented by Broadwell on October 26, 2017

N-Map (Figure 7-1) from Sanitary Sewer Master Plan, May 1997. Shows proposed Carver's Creek North Sewer Line.