



FREESTONE COUNTY

J. Keith Meredith
County/District Attorney

Nathan "Chad" Morgan
Assistant County Attorney

Patricia McGilvary
Crime Victim Coordinator

RECEIVED
APR 21 2006
OPEN RECORD DIVISION
Janet Rogilio
Criminal Investigator

RECEIVED
APR 25 2006
OPINION COMMITTEE

Becky Adeock
Legal Assistant

RQ-0480-GA

April 13, 2006

The Honorable Greg Abbott
Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-44758-06
I.D. # 44758

- RE:
- 1) Whether a Type A General-Law Municipality may annex land outside of its extraterritorial jurisdiction pursuant to §§ 42.021 and 43.051 of the Tex. Local Gov't Code?
 - 2) Additionally, whether a Type A General-Law Municipality may engage in strip annexation of land that is less than a 1,000 feet in width to include certain highways that run adjacent and contiguous to the Municipality pursuant to §§ 43.054 and 43.0545 of the Tex. Local Gov't Code?

Dear General Abbott:

Please accept this request for an opinion in reference to whether a Type A General-Law Municipality may annex land outside of its extraterritorial jurisdiction pursuant to §§ 42.021 and 43.051 of the Tex. Local Gov't Code and if so whether such a Municipality may engage in strip annexation of land that is less than a 1,000 feet in width to include certain highways that run adjacent and contiguous to the Municipality pursuant to §§ 43.054 and 43.0545 of the Tex. Local Gov't Code.

DISCUSSION:

The City of Wortham (hereinafter "City") is a Type A General-Law Municipality with a population, according to the last United States Census, of approximately 1,082 inhabitants that lies in the northwest corner of Freestone County, Texas. On September 12, 2000 the City passed and approved City Ordinance #543 which was entitled:

AN ORDINANCE PROVIDING FOR THE EXTENSION OF CERTAIN BOUNDARY LIMITS OF THE CITY OF WORTHAM AND THE ANNEXATION OF CERTAIN TERRITORY CONSISTING OF HIGHWAY RIGHT OF WAYS.

(See attached copy Exhibit A).

The ordinance further provides:

Section 1. That the following described highway Right of Ways lying adjacent to and adjoining the City of Wortham, Texas is hereby added and annexed to the City of Wortham, and said Right of Ways hereinafter described shall hereafter be included within the boundary limits of the City of Wortham at the various points contiguous to the area within the corporate limits of the City of Wortham, Texas. Said property being described as follows:

Beginning at the existing City Limits concrete marker and extending the City Limits approximately 8,204 ft. South to Limestone County Line and approximately 6,311 ft. North to Navarro County line on State Highway 14 and beginning at existing City Limit concrete marker and extending approximately 6,007 ft. west to Limestone County line of F.M. 27.

Section 2. The City of Wortham will not be responsible for accidents due to highway conditions, maintenance or repairs on described property.

Section 3. No tax and/or penalty is involved.

(See attached copy Exhibit A).

My office has received some complaints from citizens who live near the City in regards to the volume of policing activity from the City that occurs along the annexed portions of the above mentioned highways. It is in this respect that I am requesting clarification as to the proper interpretation of the aforementioned sections of the Tex. Local Gov't Code.

With respect to the first issue, §43.051 of the Tex. Local Gov't Code provides that "A municipality may annex area only in its extraterritorial jurisdiction unless the municipality owns the area." The municipality in this instance did not own the area proclaimed to be annexed in its ordinance and thus, according to the Code should only have been allowed to annex its extraterritorial jurisdiction.

If the foregoing is correct the next step in the process would be to determine the extraterritorial jurisdiction of the City. Section 42.021(1) of the Tex. Local Gov't Code defines the extraterritorial jurisdiction for the size of the City in issue and provides that:

"The extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located:

(1) within one-half mile of those boundaries, in the case of a municipality with fewer than 5,000 inhabitants."

§42.021(1) Tex. Local Gov't Code.

According to the foregoing section of the Code the City should only be able to annex 2,640 feet outside its current boundary lines at the time of the annexation. However, according to the ordinance the City annexed from its current boundary lines 14,515 feet along State Highway 14 and an additional 6,007 feet along F.M. 27. Thus, per my office's reading of the Local Gov't Code the City exceeded its limits by some 15,242 feet.

With respect to the second issue, it is my understanding that strip annexation is not permitted except under limited circumstances pursuant to §43.054 Tex. Local Gov't Code. Under that provision of the code:

(a) A municipality with a population of less than 1.6 million may not annex a publicly or privately owned area, including a strip of area following the course of a road, highway, river, stream, or creek, unless the width of the area at its narrowest point is at least 1,000 feet.

(b) The prohibition established by Subsection (a) does not apply if:

(1) the boundaries of the municipality are contiguous to the area on at least two sides;

(2) the annexation is initiated on the written petition of the owners or a majority of the qualified voters of the area; or

(3) the area abuts or is contiguous to another jurisdictional boundary.

§43.054 Tex. Local Gov't Code.

Applying the foregoing section of the Local Gov't Code to the instant City it would appear that the City would be allowed to annex only those portions of its extraterritorial jurisdiction even though the strips of highway are all narrower than 1,000 feet pursuant to Subsection (b)(1). However, a problem then arises when trying to reconcile §43.054 with §43.0545.

According to §43.0545(a) Tex. Local Gov't Code, "A municipality may not annex an area that is located in the extraterritorial jurisdiction of the municipality only because the area is contiguous to municipal territory that is less than 1,000 feet in width at its narrowest point." The remaining Subsections of §43.0545 do not apply to the current situation and thus are not relevant. Therefore, in trying to ascertain whether the City is allowed to engage in strip annexation it appears that §43.0545 counteracts the language in §43.054(b)(1) which provides an apparent exception for the City. This is where our need for an opinion in reference to this matter ultimately lies.

If you have any further questions or need to contact me for any reason please do not hesitate to call me at (903) 389-3977 or you may also contact me by any other method deemed suitable to your office. I appreciate any assistance in reference to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Keith Meredith". The signature is fluid and cursive, with a large initial "J" and "M".

J. Keith Meredith
County/District Attorney
Freestone County, Texas

EXHIBIT A

ORDINANCE # 543

AN ORDINANCE PROVIDING FOR THE EXTENSION OF CERTAIN BOUNDARY LIMITS OF THE CITY OF WORTHAM AND THE ANNEXATION OF CERTAIN TERRITORY CONSISTING OF HIGHWAY RIGHT OF WAYS.

WHEREAS, because the location of said Right of Ways, described below, are difficult to be patrolled by other agencies of law enforcement and

WHEREAS, this ordinance is needed for control of traffic and/or crime on described Right of Ways.

NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WORTHAM, TEXAS :

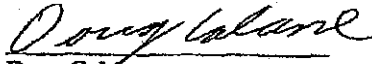
Section 1. That the following described Highway Right of Ways lying adjacent to and adjoining the City of Wortham, Texas, is hereby added and annexed to the City of Wortham, and said Right of Ways hereinafter described shall hereafter be included within the boundary limits of the City of Wortham at the various points contiguous to the area within the corporate limits of the City of Wortham, Texas. Said property being described as follows:

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Section 2. The City of Wortham will not be responsible for accidents due to highway conditions, maintenance or repairs on described property.

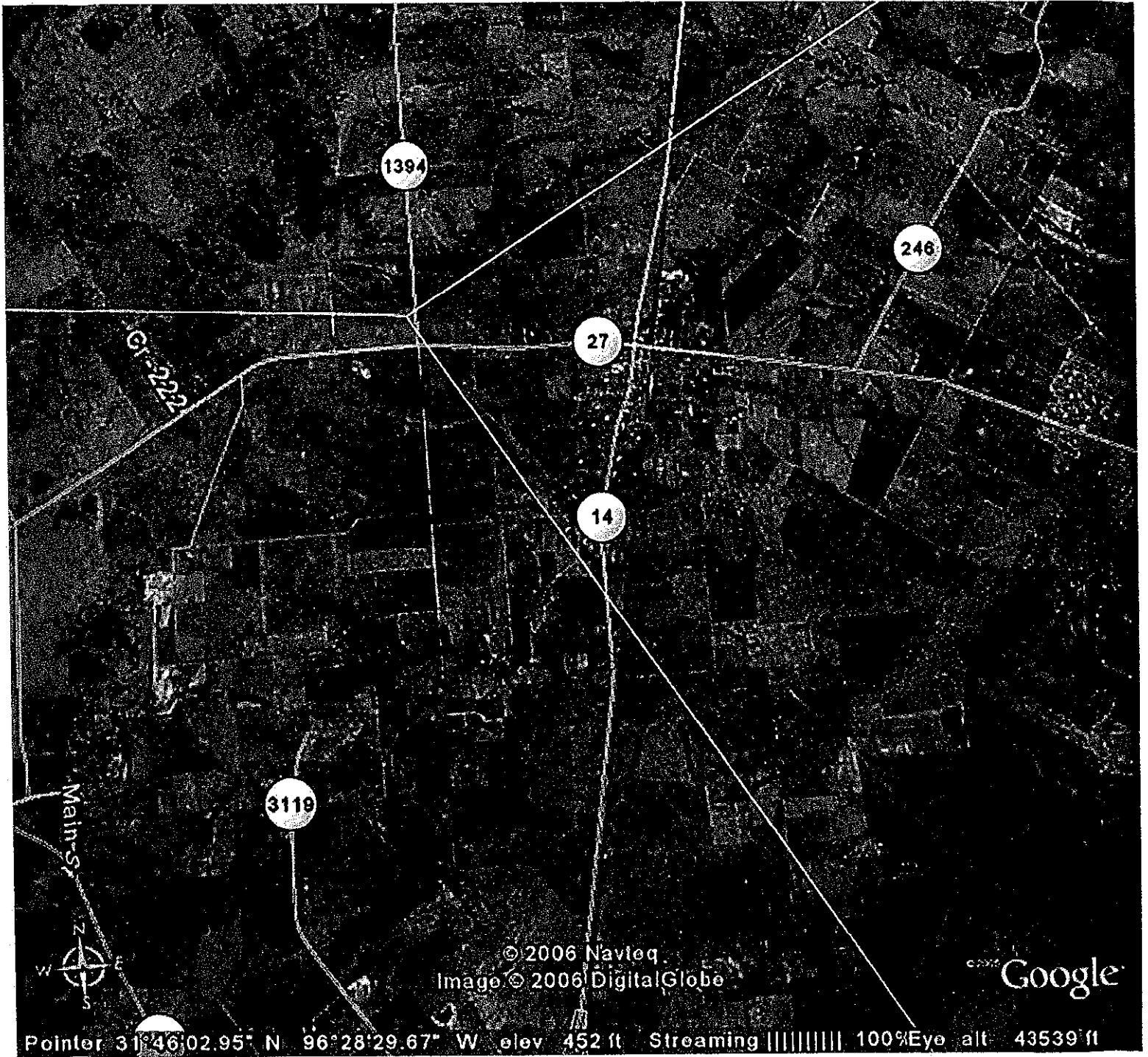
Section 3. No tax and/or penalty is involved.

PASSED AND APPROVED this the 12th day of September, 2000.


Doug Calame
Mayor, City of Wortham

ATTEST:


Sheila Awalt
Acting City Secretary



1394

246

27

14

3119

Griffin

Main St



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Google

Pointer 31°46:02.95" N 96°28:29.67" W elev 452 ft Streaming ||||| 100% Eye alt 43539 ft