

Council kills Daleville's incorporation

By COOKIE WALTER
Bulletin Staff Writer

The Anderson City Council shot an arrow through Daleville's incorporation plan Thursday when it denied its petition by a 3-5 vote.

As a result, the council faces a possible lawsuit from Daleville.

William Hughes, attorney for the Committee to Incorporate Daleville, said he would talk to his committee before taking any action and also would seek clarification as to why the council voted to deny it.

However, he said, "At the moment, the proposal (to

incorporate Daleville) is dead in the water." Hughes said he had not anticipated the negative vote, but expected the council to give it, at least, first reading approval.

"I did not think they would kill the incorporation of the town on an introductory vote," Hughes said.

Larry Swick, assistant city attorney, who told the council at its pre-meeting caucus that its approval was only a procedure step required by state statute, also said, "I was surprised."

"Your role is limited. It is to determine whether or not anything in the plans for the incorporation of Dale-

ville might cause problems for Anderson in the future," Swick said. He said the decision should be based on whether the plans conflicted with the city's comprehensive development plan (master plan) and not on the merits of the incorporation plan.

Anderson's master plan was approved in 1962 and portions of it have been called "antiquated" by several community leaders. When written, it was based on projections which predicted Anderson would be twice its size now.

"If you deny Daleville, you better have some factual
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basis for doing it," Swick advised. Charles Braddock, city attorney, agreed with that assessment.

State statute requires towns or areas planning either annexation or incorporation to obtain permission from any second- or third-class city when the proposed boundaries extend to within three miles of the city's limits.

Council members voting against the petition said they could not justify giving Daleville approval to incorporate when they had already voted to allow Chesterfield to annex. The two areas have had a running battle over 60 acres in Salem Township, Delaware County, and have included those acres in their separate plans.

Joan Wile, R-at large and council president, said, "Mainly, I voted no because I thought we couldn't do both."

Both Hughes and Delaware County Commissioner Ron Quakenbush asked the council to give its initial approval and to allow the month interval for representatives of both sides to get together and resolve the conflict.

Hughes said Delaware County and Daleville officials would be willing to "sit down and talk and work this out" with Chesterfield representatives.

Also voting against the incorpora-

er, R-at large; Robert Scharnowske, R-5th District; Robert Humphrey, R-at large; and Andrew Orbik, D-2nd District. Those voting for the approval of the petition were Don Clark, D-8th District, Greg Graham, R-3rd District, and Jack VanDyke, R-1st District. Charles Garnder, D-es Garnder, D-4th District, did not attend the meeting.

Graham said he voted to approve the petition because "It was my feeling the issue was not the issue of whether Chesterfield or Daleville should have the 60 acres, but the issue was if either was in conflict with Anderson's master plan." He said the dispute over the 60 acres was a matter to be resolved in court if it could not be worked out between the two areas and not a decision for the Anderson City Council to make.

William Kreegar, attorney for the Town Board of Chesterfield, said the council's decision should be based on more than whether Daleville's plans were in conflict with the master plan. He argued at both the caucus and the meeting that the council's approval to Chesterfield given in October 1981 was

also approval of its plans to annex the 60 acres.

Other factors to consider, Kreegar said, are that the proposed Daleville area is not urban in character and reasonably compact; it does not propose to provide all the services required by state law; a survey of the area and description in the petition are not the same; and some signatures on the petition to incorporate are in question.

Kreegar also said the 60 acres in dispute have already been annexed by Chesterfield and therefore cannot be incorporated into Daleville. Swick told the council earlier that was an issue to be decided in court.

Hughes told the council a suit was filed in Delaware County Thursday on behalf of eight of the 15 propeight of the 15 property owners in the disputed area.

Chesterfield Annexation Suit on Hold

By ELDON PITTS
Star Staff Reporter

A suit against Chesterfield's move to annex more than 60 acres of land in Delaware County still is waiting for a judge to hear the case.

The suit was filed March 11 in Delaware Superior Court 2. That was the same day the Anderson City Council refused to consider Daleville's request to incorporate.

By law, Daleville needs Anderson's approval of its incorporation petition because the proposed town is within 3 miles of Anderson's city limits.

The four issues the residents want the court to resolve are:

- Whether the proposed annexation meets the requirements of the annexation statute.

- Whether the annexation is invalid because Chesterfield failed to obtain the consent of the City of Anderson after its repeal of the initial annexation ordinance.

- Whether the purported annexation is invalid because Chesterfield failed to get the consent of Delaware County Commissioners, which apparently is required under recently-enacted Indiana Senate Bill 111.

- Whether that portion of proposed annexation in Delaware County is invalid because the county commissioners assumed jurisdiction over the area before enactment of the Chesterfield ordinance.

"We're still trying to get a judge to take the case," William Kreegar, attorney for Chesterfield, said this week.

Kreegar said the case was given to Delaware County Court 1 Judge Betty Shelton Cole. She disqualified herself, he said, and chose a panel of judges for Chesterfield to pick from.

"The judge we picked from that panel was too busy or involved in other cases and didn't want to take this one on," Kreegar said, "so she gave us another panel."

"We struck from that panel and the judge from outside Delaware County — that was left hasn't decided whether or not he's going to get involved in the case yet."

Muncie attorney Richard Reed, who represents the Daleville residents who filed the suit, had a slightly different version.

"The defendants — Chesterfield — are not happy with any of the judges so far, so we'll see if they're happy with one the supreme court appoints," Reed said.

He indicated the state's highest court is doing that now.

If the lawsuit were dismissed, according to Reed, the Chesterfield annexation would be final.

"On the other hand," he said, "if we win, there is no annexation."

The suit will answer the question of whether the legislation — which retroactively prohibits annexation of land across county lines without permission of the neighboring county commissioners — is valid in this case.

"We contend that the recent statute controls the situation," Reed said. "Of course, Chesterfield disputes that."

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One of the allegations in the suit, Kreegar said, "was that (Daleville) had a sufficient number of remonstrators. We're saying that they don't."

In fact, Kreegar said, "we're opposed to everything they said in that complaint."

Both attorneys said they don't know how long it will be before a determination is made by the court.

"If we can get a judge," Kreegar said, "I think the statute requires that he hear (the case) within 60 days."

He cautioned, however, "I have a feeling that it's going to be a while before the issue is finally resolved because either side may end up appealing it."

That, he said, "is going to mean that the decision will rest with another court."

During the March meeting of Anderson City Council, attorney William Hughes, who represented the Committee for the Incorporation of Daleville, indicated he was "willing anytime, anyplace to sit down with the town of Chesterfield

and try to resolve this" by perhaps working out a compromise on the disputed property.

In a memorandum to council, Hughes noted that neither he nor Reed had "been invited to any settlement discussions."

Likewise, Kreegar said, Chesterfield officials are willing to discuss the issue with Daleville residents.

"I think we've always had that attitude," Kreegar said.

So far, however, Kreegar said "nothing has happened."

"I don't know if (Hughes' proposal) was something that was said just for the benefit of city council, or not. We've never been contacted by Mr. Hughes or Mr. Reed concerning a compromise."

"We've always indicated to them we would be willing to sit down and do it, but the only indication we ever got was when they made that at the public meeting, and that was made to the city council."

"That's as far as it got," Kreegar said.