

NAIOP, the Commercial Real Estate Development Association
Nashville Chapter
Annexation Presentation
Tennessee Advisory Commission on Intergovernmental Relations
Nashville, Tennessee
July 25, 2013

NAIOP, the Commercial Real Estate Development Association, is a leading trade organization for developers, owners, and related professionals in office, industrial, and mixed use real estate. Nationally, NAIOP has over 15,000 members, and locally the Nashville Chapter has over 350 members with several of our members such as Boyle Investments or Cushman Wakefield Cornerstone or CRBE having offices in the other major urban areas of the state in addition to Nashville. Also pleased to say that my law partner, Richard Warren is a member of the National NAIOP Board of Directors.

Before, we get started, what does a commercial real estate developer do? Even in a virtual world, real estate is still a factor of production, just as labor, capital, and entrepreneurship are factors of production. Our members work with the leasing and subleasing of office and industrial properties, site selection, property acquisition, project and facilities management, financing assistance, market research, demographic analysis, and appraisal services.

Finally, types of commercial real estate include office, industrial, warehouse, some retail, and apartments, and the relative new type of mixed use real estate.

NAIOP History

NAIOP, the Commercial Real Estate Development Association, began in 1967 and has retained through all these years its core group of developer members. The association began as a small group of owners and developers of industrial parks in the eastern U.S. who formed the National Association of Industrial Parks (NAIP) to facilitate a forum for the open exchange of information on development. They also had a need for standardized covenants and restrictions, building requirements, and beneficial legislation and taxation. Nine individuals first met on September 12, 1967, in Fort Washington, Pennsylvania.

Reflecting changes in membership, NAIP became NAIOP (National Association for Industrial and Office Parks) in 1976. In 2009 NAIOP dropped the words behind its acronym, which no longer reflected its current membership composition. Over the years, NAIOP has attracted members who are committed to excellence, entrepreneurial in spirit, and want to reach new heights in building excellence.

NAIOP is a leading commercial real estate industry provider of unparalleled networking opportunities, educational programs, research on trends and innovations and strong legislative representation.

NAIOP's sister organization, the NAIOP Research Foundation, is one of the industry's leading think tanks dedicated to conducting research assessing the trends, economic viability and needs of the built environment.

NAIOP Mission

NAIOP represents commercial real estate developers, owners and investors of office, industrial, retail and mixed-use properties. It provides strong advocacy, education and business opportunities, and connects its members through a powerful North American network.

NAIOP Vision Statement

Advancing responsible commercial real estate development, investment and ownership.

Tennessee History

Annexation is part of an ongoing process since the 1953 amendments to the Tennessee Constitution in Article XI, Section 9. Most folks now do not remember that Nashville's Consolidated Metropolitan Government did not pass the first time it was proposed in 1958. Today's Nashville Davidson County Government is a child of a proposed annexation of the mother of all annexation ordinances that covered 42 square miles and about 82,000 residents of Davidson County.

Ounce of history is worth a pound of logic.

1950's constitutional convention. The same section of the Tennessee Constitution that authorizes metropolitan government is the same section that says the General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered.

Generation returned from World War II and wanted to make the world a better place.

Local bills v. General Bills. (Tennessee had a colorful, but terrible history with local bills drawing city boundaries.)

Predictability

Any system or process of annexation that you design must have the element of predictability. If you attend any municipal governing body meeting, you quickly see that most of their time is occupied with land use issues. It's not racy or titillating, but it's important.

Tennessee is a long skinny state.

Any system or process of annexation that you craft must realize the difficulty of designing a one size fits all approach. Just like real estate itself, every community is unique. On the floor of the House, as many as 12 to 15 counties did not want to be included in this legislation at one point. Even Chapter 441 that establishes the moratorium on annexations and directs your study excludes counties having a metropolitan form of government. In the framework of the general law, any annexation system must allow different approaches. Our public policy and our system should not be so cumbersome as to limit our responses to industrial recruiting opportunities.

You cannot develop real estate without utility services.

Be sensitive to different size municipalities and locations and perhaps even rate of growth. Growth rate puts pressure on public infrastructure. Roads are an important part of that, but equally important are the wet utilities. We can muddle through and get reasonably priced electric power to where we want it in Tennessee, and the same is true of landline telephone service, and to a certain extent natural gas, but water, sewer and storm water service typically provide the major hurdle to development and the major capital cost that require money to be borrowed. Typically, a large public utility project is funded with long term debt with the understanding that the user base is broad enough to fund the debt repayments.

In 1998, Public Chapter 1101 introduced important new concepts to Tennessee law.

Urban Growth Boundary

Planned Growth Areas

Rural Areas, and a new purpose:

With this chapter, the general assembly intends to establish a comprehensive growth policy for this state that:

- (1) Eliminates annexation or incorporation out of fear;
- (2) Establishes incentives to annex or incorporate where appropriate;
- (3) More closely matches the timing of development and the provision of public services;

(4) Stabilizes each county's education funding base and establishes an incentive for each county legislative body to be more interested in education matters; and

(5) Minimizes urban sprawl. (Tennessee Code Annotated, Section 6-58-102.)

A purpose of your process, just as is the case with the present law, must still be the control of sprawl. Not just because it's ugly, but because it's so inefficient from a financial perspective, whether it's public safety services or utility services. It's ok to grow horizontally instead of laterally.

Chapter 441 of the Public Acts of 2013 by Carter and Watson.

Legislative Process leading to enactment of the statute can best be described as a rambunctious. Several counties sought to be excluded by population bracket which is always dicey, but it is noteworthy that the counties seeking exclusion are some of our best growth counties.

Old drafter in me says definitions in your work product will be important as you work on our annexation system.

Brownfields and Grayfields probably need incentives.

All property owners are not the same.

Be sensitive to the reality that not each parcel is the same. If one parcel is 20 acres and one parcel is 100 acres, and you have five one acre parcels, how would the referendum be structured? If the process is actually all about the money, a larger property owner would seem to have a larger stake in the annexation process. Also consider the form entity owning the property should be considered. For example, if the property is owned by a limited liability company, is each member entitled to vote? Should each property owner be a resident and registered voter to be entitled to vote?

Conclusion

Except for health and educational attainment levels, Tennessee is on a roll from an economic development perspective. It's a bit disingenuous to say our municipal government policies with respect to urban and suburban growth have not been a part of that success. Sound public policy should allow cities to grow as our state experiences population growth which requires infrastructure growth.

Annexation should be a systemic process, and not part of an isolated event. An annexation system should be predictable. Tennessee is a long skinny state with several cultural and geographic traditions. A one size fits all approach will be difficult to craft. Whatever process you decide upon, be aware that you are creating tradeoffs involving existing city residents and any proposed property to be annexed.

Closing

Thank you for the opportunity to speak to you today. We are pleased to have this opportunity to speak on behalf of responsible commercial real estate development, investment and ownership and to work with you and your staff as you work on your report to the General Assembly.

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