

STATE OF INDIANA) IN THE MONROE CIRCUIT COURT
)
COUNTY OF MONROE) CAUSE NO. 53C06-2203-PL-000509

COUNTY RESIDENTS AGAINST ANNEXATION, INC.,
an Indiana not for profit corporation,
Representative of Those in the Territories Sought to be
Annexed; DON CREEK, HARRY FERRIS,
WILLIAM MANWARING, DAN DOYLE, CATHERINE
DENSFORD, SCOTT S. LOMAN, ETHEL ANN SATLER,
MARILYN J. DANIELSON, DEAN E. HOKE, BERT F.
PHILLIPS, SUNNY SLATER, HOLLY HILL, DEBORAH
REED for REED QUARRIES, INC., THOMAS W. McGHIE,
RICKY FERGUSON, THOMAS E. OSBORN, JIMMIE JOHNSON,
RICHARD PEACH, KAREN LAUCELLA, BARBARA
LEININGER, CINDI LIVINGSTON, RHONDA GRAY,
ARLLYS PAPKE, JOANNA HAHN; and OTHER TERRITORY
1A AND 1B OWNERS OF LAND,
Remonstrators/Appellants/Petitioners,

vs.

THE COMMON COUNCIL of the City of Bloomington,
Monroe County, Indiana,
CITY OF BLOOMINGTON, Monroe County, Indiana,
JOHN HAMILTON in his official capacity as
Mayor of Bloomington, Monroe County, Indiana, and
CATHERINE SMITH in her official capacity as Auditor
of Monroe County, Indiana,
Respondents.

**PETITION FOR APPEAL OF ANNEXATION, FOR DECLARATORY JUDGMENT,
AND FOR DAMAGES**

Come now the undersigned, in person and by counsel, Bunger & Robertson, LLP, and for
their Petition for Appeal of Annexation, for Declaratory Judgment, and for Damages, allege and
state the following:

COUNT I

1. The undersigned are owners of real property in Monroe County, Indiana, located within annexation territory 1A as defined and described by City of Bloomington Ordinance 17-09. (“1A Remonstrators”).

2. The undersigned are owners of real property in Monroe County, Indiana, located within annexation territory 1B as defined and described by City of Bloomington Ordinance 17-10. (“1B Remonstrators”). (The 1A Remonstrators and 1B Remonstrators are collectively referred to herein as “Remonstrators”).

3. County Residents Against Annexation, Inc. is an Indiana non-profit corporation with its principal office in Bloomington, Indiana. (“CRAA”). CRAA joins this action in a representative capacity for other owners of land in Monroe County, Indiana located within territories 1A and 1B who oppose annexation.

4. John Hamilton is the Mayor of the City of Bloomington, Indiana.

5. The Common Council of the City of Bloomington, Monroe County, Indiana, is the legislative body of the City of Bloomington, Indiana (the “Common Council”). The current President of the Common Council is Susan Sandberg.

6. The City of Bloomington, Indiana is the municipality which seeks to annex territories 1A and 1B. The City of Bloomington, Indiana, John Hamilton, Mayor of Bloomington, Indiana, and the Common Council of the City of Bloomington, Monroe County, Indiana, are collectively referred to herein as “Bloomington.”

7. Catherine Smith is the duly elected Auditor of Monroe County, Indiana, and is responsible for review and certification of certain annexation proceedings in accordance with Indiana Code 36-4-3-1 et seq.

8. Remonstrators have attached hereto as **Exhibit A** the signed Petitions Requesting the Remonstrance Against Annexation of more than fifty-one percent (51%) of the owners of land in the annexation territory described in City of Bloomington Ordinance 17-09, and referred to as “Area 1A.”

9. Remonstrators have attached hereto as **Exhibit B** the signed Petitions Requesting the Remonstrance Against Annexation of more than fifty-one percent (51%) of the owners of land in the annexation territory described in City of Bloomington Ordinance 17-10, and referred to as “Area 1B.” The Petitions Requesting the Remonstrance Against Annexation from Areas 1A and 1B, and attached as Exhibits A and B, are hereby collectively referred to as “Remonstrance Petitions.”

10. Remonstrators have attached hereto as **Exhibit C** the Auditor’s Certificate for the Annexation Remonstrance for Area 1A City of Bloomington Ordinance 17-09.

11. Remonstrators have attached hereto as **Exhibit D** the Auditor’s Certificate for the Annexation Remonstrance for Area 1B City of Bloomington Ordinance 17-10.

12. Remonstrators have attached hereto as **Exhibit E** City of Bloomington, Indiana Ordinance 17-09, which was adopted by the Common Council on or about September 15, 2021. Ordinance 17-09 pertains to the annexation of land particularly described therein and identified as “Area 1A.”

13. Remonstrators have attached hereto as **Exhibit F** City of Bloomington, Indiana Ordinance 17-10, which was adopted by the Common Council on or about September 22, 2021. Ordinance 17-10 pertains to the annexation of land particularly described therein and identified as “Area 1B.” (Ordinances 17-09 and 17-10 are referred to as the “Annexation Ordinances”).

14. Remonstrators object to the Annexation Ordinances.

15. Remonstrators state that annexation should not take place for reasons that include, but are not limited to, the following:

- A. Bloomington failed to meet the notice and/or public hearing requirements of Indiana Code § 36-4-3 et seq.
- B. Bloomington failed to include terms and conditions in the Annexation Ordinances that are fairly calculated to make the annexation equitable to the property owners and residents of the municipality and the annexed territory. (Indiana Code § 36-4-3-8(b)).
- C. The Annexation Ordinances do not meet the requirements of Indiana Code § 36-4-3-13(a) because:
 - 1. The residential populations of both territories sought to be annexed are less than three (3) persons per acre. (Indiana Code § 36-4-3-13(b)(2)(A));
 - 2. Less than sixty percent (60%) of the territories sought to be annexed are subdivided. (Indiana Code § 36-4-3-13(b)(2)(B));
 - 3. The territories sought to be annexed are not zoned for commercial, business, or industrial uses. (Indiana Code § 36-4-3-13(b)(2)(C));
 - 4. The territories sought to be annexed are not needed by Bloomington for its use and development in the reasonably near future. (Indiana Code § 36-4-3-13(c)(1)(B));
 - 5. The territories sought to be annexed do not involve an economic development project. (Indiana Code § 36-4-3-13(c)(2));

6. The fiscal plan identified by Bloomington in support of the Annexation Ordinances does not meet the requirements of Indiana Code § 36-4-3-13(d); and

D. The proposed annexations will have a significant adverse impact on the residents and owners of land within the territories sought to be annexed. (Indiana Code § 36-4-3-13(e)(2)(B));

E. The annexations are not in the best interest of the owners of land in the territories sought to be annexed for multiple reasons including, but not limited to, relating to police protection, sanitation service, public amenities, trash removal, and others. (Indiana Code § 36-4-3-13(e)(2)(C)); and

F. At least fifty-one percent (51%) of the owners of land in the territories sought to be annexed, or owners of sixty percent (60%) of assessed valuation of land in the territories sought to be annexed, oppose the annexations.

G. The Monroe County Commissioners, elected executives of the territories sought to be annexed, oppose the Annexation Ordinances because they will negatively impact the landowners.

16. Remonstrators request the Court to set this matter for hearing for the purpose of taking evidence on this Petition and the relief being sought herein.

17. Remonstrators have incurred attorney fees and costs of litigation and request an award of such fees and costs pursuant to Indiana Code § 36-4-3-11.6.

WHEREFORE, Remonstrators respectfully appeal the annexation of Areas 1A and 1B to the City of Bloomington, Indiana, as described in Ordinances 17-09 and 17-10 adopted by the Common Council on September 15, 2021 and September 22, 2021 respectively; request the Court

to enter judgment granting this appeal; request the Court to enter judgment determining that the annexations pursuant to Ordinances 17-09 and 17-10 not take place, are void, are null, and do not comport with Indiana law; request an award of attorney fees to Remonstrators pursuant to Indiana Code 36-4-3-11.6; and request all other just and proper relief in the premises.

COUNT II – EXTENSION OF THE REMONSTRANCE PERIOD

Come now Remonstrators and CRAA, by counsel, and for Count II of their Petition for Appeal of Annexation, for Declaratory Judgment, and for Damages, state as follows:

1. Remonstrators and CRAA incorporate paragraphs 1-17 as if fully set forth herein.
2. The Annexation Ordinances were adopted during the COVID-19 pandemic that beset the entire country, including Monroe County, Indiana.
3. Remonstrators believe, and therefore allege, that the existence of the COVID-19 pandemic prevented property owners and representatives from executing Remonstrance Petitions that would otherwise have been included within the Certifications attached hereto as **Exhibits C and D**.
4. Remonstrators seek relief in the form of an additional time in which property owners and representatives may execute Remonstrance Petitions pertaining to land within the territories sought to be annexed.
5. Remonstrators respectfully request that such Order, if granted, extend the period for Remonstrance and execution of Remonstrance Petitions by at least 90 days from the date of such Order.

WHEREFORE, Remonstrators respectfully petition the Court to enter an Order extending the period of time for Remonstrance against the Annexation Ordinances; request the Court to enter an Order granting an extension of time of not less than 90 days in which property owners and

representatives may execute Remonstrance Petitions in light of the extraordinary circumstances presented by the COVID-19 pandemic in the entire country and in Monroe County, Indiana; and requests all other just and proper relief in the premises.

COUNT III – DECLARATORY JUDGMENT

Come now Remonstrators and CRAA, by counsel, and for Count III of their Petition for Appeal of Annexation, for Declaratory Judgment, and for Damages, state as follows:

1. Remonstrators and CRAA incorporate Counts I and II as if fully set forth herein.
2. Within her Certification attached hereto as **Exhibit C**, the Auditor has disqualified, or declined to include, certain Remonstrance Petitions pertaining to Area 1A that may or should be included within her Certification.
3. Within her Certification attached hereto as **Exhibit D**, the Auditor has disqualified, or declined to include, certain Remonstrance Petitions pertaining to Area 1B that may or should be included within her Certification.
4. Remonstrators seek Judgment from the Court declaring their rights under the statute(s) or ordinance(s) on which the Auditor relied in her Certifications and under the Certifications themselves.
5. Remonstrators are persons whose rights, status, or other legal relations are affected by the statutes on which the Auditor relied in making her Certifications and by the Auditor's Certifications.

WHEREFORE, Remonstrators respectfully request the following:

- a. That the Court set this matter for evidentiary hearing as required by Indiana Code § 36-4-3 et seq.
- b. Entry of Declaratory judgment that Ordinance 17-09 is null, void, and illegal;

- c. Entry of Declaratory judgment that Ordinance 17-10 is null, void, and illegal;
- d. Entry of Judgment that Bloomington may not pass an involuntary annexation ordinance affecting any part of the annexation territory for a period of four years, as described in Indiana Code § 36-4-3-15(b);
- e. An award of all reasonable costs of this remonstrance, including reasonable attorneys' fees;
- f. Entry of Judgment declaring the rights of Remonstrators and others similarly situated under the Auditor's Certifications attached hereto; and
- g. All other just and proper relief in the premises.

SIGNATURE PAGES FOLLOW

Area 1A Remonstrators

Don Creek
Don Creek

Harry Ferris
Harry Ferris

William Manwaring
William Manwaring

Dan Doyle
Dan Doyle

CATHERINE DENSFORD
CATHERINE DENSFORD

Area 1B Remonstrators

Thomas W. McGhie
Thomas W. McGhie

Ricky L. Ferguson
Ricky Ferguson

Tom Osborn
Tom Osborn

Jimmie Johnson
Jimmie Johnson

Richard Peach
Richard Peach

Karen Laucella
Karen Laucella

Barbara Leininger
Barbara Leininger

Cindi Livingston
Cindi Livingston

SCOTT S. LOMAN

Scott S. Loman
Ethel Q. Lallis
Ethel Anna Sotter

Marilyn J. Danielson
MARILYN J. DANIELSON

DEAN E. HOFF
Joan E Hoff

DEAN E. PHILLIPS
Dee F. Phillips

Sunny Sater
Sey Sater

Holly & Hill
HOLLY HILL

Deborah Reed for
Reed Nurseries, Inc.
Deborah Reed

Rhonda Gray
Rhonda Gray

Arilys Papke
Arilys Papke

Joan Hahn
Joanna Hahn

Respectfully submitted,

/s/ William J. Beggs

William J. Beggs, # 16644-49

Michael T. Miller, #35756-41

Ryan M. Heeb, #34626-53

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