In the Matter Of:

CITY OF BLOOMINGTON

-v-

CATHERINE SMITH and STATE OF INDIANA

John Hamilton

July 21, 2023

Exhibit R-1

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

IN THE MONROE COUNTY CIRCUIT COURT

CITY OF BLOOMINGTON,)
)
Plaintiff,)
-v-) CAUSE NO.
) 53C06-2203-PL-000608
CATHERINE SMITH, IN HER) 53C06-2203-PL-000609
OFFICIAL CAPACITY AS MONROE) 53C06-2203-PL-000610
COUNTY AUDITOR,) 53C06-2203-PL-000611
) 53C06-2203-PL-000614
Defendant.) 53C06-2203-PL-000615
) 53C06-2203-PL-000616
and)
)
STATE OF INDIANA,)
)
Intervenor.)

The 30(b)(6) deposition upon oral examination of JOHN HAMILTON, a witness produced and sworn before me, Teresa Kramer, RPR, Notary Public in and for the County of Monroe, State of Indiana, taken on behalf of the Intervenor at Bloomington City Hall, 401 North Morton Street, Bloomington, Indiana, on July 21, 2023, at 9:00 a.m., pursuant to all applicable rules.

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JOHN HAMILTON,

having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BARTA:

Q Good morning, Mr. Hamilton.

A Good morning.

Q My name is James Barta. I'm an attorney with the Attorney General's Office. Thank you for taking the time to be here this morning. I know you have a dentist appointment later. We'll try to get you there for that, but I can't promise anything.

A I'm fine either way.

Q Okay. Have you given a deposition before?

A I have.

Q Well, we'll go over a few ground rules. I'm sure some of it will seem a review, but we'll do it just to make sure we're both on the same page. So the basic format, as you know, is I will ask questions. You will need to answer them. If the City's attorney objects, you'll still need to answer the question unless he tells you not to answer. Do you understand?

A I do.

Q And to make the job easier for the court reporter here, answers will need be to verbal. Shaking of the head, nodding is hard for the court reporter to capture. So let's both do our best to keep it verbal. Okay?
A Yes.
Q Great. So if at any point I ask a question you don't understand, please ask for clarification. If you answer it, I'm going to assume you understand the question. Okay?
A Yes, sir.
Q We'll both do our best not to speak over each other. Again, for the court reporter's benefit. Any reason you cannot answer my questions accurately today?
A Not that I can think of.
Q Any reason you can't understand my questions today?
A Not so far.
Q Okay. We will try to, if we go much past an hour, try to take a break. And if at any time before that you need a break, just please let me know. The only thing I ask is that you answer any question that's been asked before we break.
A Thank you very much.
Q I'd like to introduce this as Exhibit 1.

(Exhibit 1 was marked for identification.)
Q This is the Notice of 30(b)(6) Deposition we served. Have you seen this document?
A Not that I recall, no.
Q Okay.
A But I know the contents of it I guess.
Q Okay. Do you see attached to the document there is a list of topics?
A Yes.
Q Do you understand you're here to answer the topics that you've been designated for?
A Yes, I do.
Q And do you understand that you're testifying as the City's representative?
A Yes, I do.
Q And you were directed to adequately prepare to talk about these topics. Did you prepare to do so?
A I did prepare, yes.
Q Other than talk with the City's attorney, what did you do to prepare?
A I read a few materials trying to remind myself of the history of our annexation. Primarily that.
Q Anything else?
A I tried to think about things, remember, think about my City, think about our future, our past in

general terms, but that's mostly it.
Q Nothing else?
A Not that I can think of.
Q The materials you mentioned, what were those?
A I don't know if I can itemize them all. They included some litigation questions, memoranda, motions, et cetera. I looked at -- I think I read a Law Review article about annexation. I reread some of our fiscal plan, maybe just the beginning. That's what I can think of now.
Q Okay. Nothing else you remember at this point?
A Not that I specifically remember now.
Q Okay. So you're currently the Mayor of Bloomington?
A Yes.
Q How long have you been Mayor?
A Since January 1, 2016.
Q I don't think we're going to refer to this document any more, so you can feel free to put it to the side.
A Okay.
Q Have you held any other positions within the City government?
A No.
Q Do you live in the City?

A I do.
Q How long have you lived in the City?
A Since 1998.
Q So can you give me a high level description as your role as Mayor?
A Mayor is the chief executive of City government, responsible for overseeing 16 or so City departments, managing the day-to-day operations of the City, interacting with City counsel, public, and serving as the chief executive of the City government.
Q You mentioned City departments, what are those?
A Well, I'm not sure I can name them all. Is that what you're asking me, to name them all?
Q Generally what do you mean by a City department?
A Organizations within City government that deliver particular services, such as police or sanitation, for example.
Q They all report to you?
A Yes.
Q So if you're going to give me your elevator pitch for describing the City of Bloomington, what would that be?
A Bloomington is a delightful southern Indiana city of 200 years in age. Host to a Tier 1 research

university, and thriving and offering a wonderful quality of life.

Q What is the City's current population?

A Approximately 80,000.

Q Do you know how much, approximately how much land area does it cover?

A I believe it's about 23 square miles.

Q Has the City changed much over the last 25 years?

A I think the City has changed substantially over the last 25 years.

Q In what ways?

A We're talking about the City of Bloomington proper?

Q Correct.

A We have added significant employment. We have seen major investment, billions of dollars in buildings, businesses. We have seen deepening, enriching of the arts community, a beautiful new park. We have a lot of things going on.

Q Has the population changed significantly?

A In 25 years in the City of Bloomington, yes. I don't know the exact numbers, but we've seen an increase in the population in the City limits.

Q Have the issues the City's been dealing with changed significantly over the last 25 years?

A Many issues are the same. Many issues are

evolving.
Q What are some of the new challenges?
A Comparing it now to 1998?
Q Approximately.
A That's what you're asking, 25 years ago? I don't know how to answer that really. Affordable housing is a challenge, climate change is a challenge, diversity is a challenge, inclusion is a challenge, changing economy is a challenge, education systems are a challenge, healthcare is a challenge. There are a lot of challenges.
Q I would think that the City's priorities have changed too over the last 25 years?
A I mean, if you pick a level, in some level they haven't changed probably. We try to create a great quality of life for people who are here. But in specifics there is a lot of changes.
Q Just one other background question. Have there been any significant changes to the areas outside of Bloomington over the last 25 years?
A Yes, I think so. Significant population increase, construction. The community has grown, the county population has grown significantly.
Q Any other major changes come to mind?
A Climate change has been significant, I think.

Leave it at that.
Q So one of the issues I want to talk about is the mundane of sewage service. I understand the City runs a municipal sewage works; is that correct?
A We run a wastewater services division of our City of Bloomington Utilities, yes.
Q The Utilities Department is responsible for that, correct?
A Yes.
Q Why does the City run a wastewater service?
A I mean, I don't know the full history of the City of Bloomington Utilities, but it's typical in most cities that providing wastewater services is an essential need for any dense development of any city to protect health of people and the environment.
Q So is it true that any person within the City limits has a right to connect to the City's wastewater service?
A We try to provide wastewater services to every resident in the City. I don't believe we do. Sometimes practical considerations make that not possible, but we generally provide wastewater services to the majority.
Q If they'd like to connect, they can do so, correct?

A Well, I believe there are people who are not connected to wastewater services, primarily because of cost, because of the physical cost it would take to provide those services, but we generally with a vast majority of people and premises inside the City receive wastewater services.
Q The City also allows persons outside the City limits to connect to the wastewater service; is that right?
A We do on occasion connect people outside the City limits to wastewater services.
Q When did the City start providing wastewater service to people outside the City limits?
A I do not know when that began. A long time ago.
Q By long time ago?
A Decades.
Q Decades ago?
A Yes.
Q Do you know approximately how many people or businesses the City provides sewer service to outside the City limits?
A Thousands of premises, but I don't know the exact number. It's easily obtainable, but I don't know it offhand.
Q All right. I'd like to introduce a document we've

marked as Exhibit 2.

(Exhibit 2 was marked for identification.)

Q Mr. Hamilton, this looks to be a map of the City of Bloomington Utility District sewer infrastructure, correct?

A It looks to be a map describing the sanitary sewer system of the Utilities Department of Bloomington, yes.

Q And on this map the blue lines represent the City boundaries; is that right?

A Let's see. That looks about right. I can't tell for sure, but yes.

Q And it looks like the green lines represent the sewer service infrastructure?

A Yes. They represent the pipes, the sanitary sewer pipes, yes.

Q The shaded gray area, does that represent the area the City provides sewer service?

A I don't know that that's -- we provide sewer service wherever those pipes go. So I don't know if those are exactly, but it's labeled Area A and Area B.

Q I see on the right-hand side it says Area A - Sewer Service Jurisdiction, correct?

A I see that.

Q What is sewer service jurisdiction?
A I believe that reflects where we do provide sewer service coverage or can with the system that we have.
Q And you also see Area B, exclusionary area?
A I do.
Q What does that mean?
A I don't know exactly.
Q I think we are done with this. Feel free to set it aside. So why does the City allow persons outside the City limits to connect to its sewer system?
A A City 205 years old, typically seeks to grow and does grow, and growth really requires generally sewer service in a City to accommodate the density of growth. And so as we grow, we like to offer sewer services to areas that are growing in exchange for them joining the City. We want the City to grow, most of us. We want it to grow with sewer service when it's technically feasible, and we want that to accommodate regular and consistent growth of the City boundaries.
Q When someone outside the City limits taps into the City's sewer system, does that provide any benefits for the City?
A By tapping into the sewer system?

Q By connecting to the sewer -- let me rephrase. When someone outside the City limits connects to the City sewer system, does that provide any benefits to the City?
A I guess I would say we benefit by having more orderly and managed in dense growth, as opposed to sprawl. And when we connect someone to the sewer system, it helps us accomplish that objective of the City.
Q How so?
A Without a sewer system connection, development will tend to be much less dense and threatening to the environment, and also diminish our ability to manage as a community, where we want to encourage planned, relatively dense growth.
Q So you mentioned one benefit to the City is it promotes more orderly growth. Are there any other benefits to the City when someone outside the City limits connects to the sewer system?
A I don't think of any immediately.
Q Does it provide more revenue for the City sewage works?
A The connection provides revenue to the City sewer system in order to serve that person. It's meant to cover those costs.

Q So I think you sort of hinted on this, but why is it important for people in unincorporated areas to be able to connect to the City's sewer system?
A It benefits people to connect to the sewer system in order to allow denser development primarily, in a more, I think, generally economical and environmentally protective way to manage wastewater as opposed to alternatives.
Q Does having denser development in unincorporated areas near the City benefit the City?
A Repeat the question. Make sure I understand it.
Q Does the City derive any benefits from having dense development nearby?
A Well, it depends on whether they become part of the City or not. The City benefits by a thriving economy, vibrant community, and a well-planned development. A City can be threatened by dense development near the City that are not part of the City also.
Q Do people who live just outside the City boundaries shop in the City of Bloomington?
A I believe very frequently they do.
Q Does having more customers allow City businesses to thrive?
A More customers can help businesses thrive.

Q Do people who live outside the City nearby work in the City?
A Many do.
Q When the City receives a request from someone outside the City limits to connect to the sewer, City sewer system, what is the City's current process for handling that request?
A A request to connect to the sewer system, the sanitary sewer system goes through a City of Bloomington Utilities process, whose detail I don't know every step of, but it's primarily an evaluation of how close are they to the system, what would it cost to do. Sometimes there are particular relationships, issues, if it's a school or a hospital, or there may be particular uses that are significant. And it's a process to evaluate technical feasibility, cost. Also we look at will they become part of the City at some point.
Q Did the City have a different process for handling the request to connect in the past?
A I'm sure that process has evolved over time. I can talk about the last few years. I don't know the details before I became Mayor.
Q Okay.
A In the last few years, it has evolved primarily

that I'm aware of, the major difference has been when the legislature proposed to change the status of waivers, which required us to reevaluate how we determine waiver relationships as sewers are extended.

Q And what change did the City make to the process?

A Well, because the legislature indicated waivers may be changed prospectively, or as they have sought to do retroactively, which we are of course contesting about now, we no longer could rely on waivers to be an enforceable agreement as going forward. So we felt rather than rely on waivers, we should generally move towards let's just annex before you get sewers as opposed to after.

Q Who at the City is responsible for determining whether a request to connect to a sewer system should be granted?

A Well, primarily that's done at the City of Bloomington Utilities. Ultimately I suppose I'm responsible, but generally that's done at the Utilities Department.

Q What does the City generally consider in deciding whether to grant a request to connect to its sewer system?

A Today?

Q Let's start with today.
A Okay. So let's just start the question again if you can so I'm thinking about today.
Q Today what does the City generally consider in deciding whether to grant a request to connect to its sewer system?
A I don't know if I'll be exhaustive, but we do consider cost, proximity to the system. We now consider whether that area may be annexed into the City directly. And there may be some other technical factors. I mentioned sometimes there are unusual circumstances for a particular potential customer that has a significant particular relationship to the City or something like that.
Q Were the considerations different in the past?
A I believe in the past, the main difference was instead of thinking can you, will you annex now, we said does it make sense to annex in the future. And if so, we will enter into a contract where we will provide sewer service to you in exchange for your agreement to join the City at a date in the future.
Q Do you know what the City generally considered in deciding whether to grant a request to connect with the sewer system before you became Mayor?

A I don't know personally, but I think generally it would involve -- again, it's how a City manages orderly growth. Orderly in the sense that it's not scattershot or inefficient development of a system that as you kind of grow it from the inside out. Orderly in the sense that it's contiguous to the City generally, appropriate naturally on the land and places where it's planned. Consistent with the City plan.

We had designated areas intended for annexation, where zoning was extended, where the City zoning extended into the county. So those were factors I think in the past.

Q You said you think. What is the basis for you thinking those were factors in the past?

A It's how cities operate. I mean, I'm familiar with this City's basic history, and I know how most cities operate generally. So I think it's an awareness looking at the system how it's been built.

Q So it's an educated guess?

A I would not call it an educated guess. I would call it an informed description of how cities generally operate, and I think Bloomington is the same.

Q You haven't read any document from, say, the 1990s that showed what the City considered in the 1990s?
A Well, I have read and seen documents that described areas intended for annexation, and what was referred to as the two-mile fringe. And I've seen documents that described the zoning jurisdiction being expanded beyond the City limits. I don't know for sure if they extended to the nineties, but they were certainly relevant in the aughts, I think.
Q You haven't seen a document though that sort of had an exhaustive list of what the City would consider in deciding to grant a request to connect?
MR. ROUKER: Objection, asked and answered.
A Are you talking about a document today or in the past?
Q In the past. Let me rephrase. You haven't seen a document from before your time as Mayor that lists all of the considerations the City would take into account in deciding whether to grant a request to connect to a sewer system?
MR. ROUKER: Same objection.
A I do not recall seeing such a document.
Q I'd like to mark that as Exhibit 3.
(Exhibit 3 was marked for identification.)

Q Mr. Hamilton, these are responses to interrogatories that the City provided to us. Have you seen this document before?
A I assume. I've seen a document that I think is this document, yes.
Q Could you turn to page 7, please?
A Yes.
Q At the top of page 7, it says Interrogatory 1. "During the period described in Paragraph 15 of the Complaint, describe the consideration relevant to whether the City of Bloomington would extend sewer service to unincorporated areas." Did I read that correctly?
A I believe you did.
Q And below that question there is an answer. And midway through the paragraph do you see the sentence that starts, "It is impossible for Plaintiff to identify the considerations that would have been relevant to such decision over that period of time. Without waiving the foregoing objections, it is reasonable to presume that Plaintiff earlier would have taken the following factors into consideration." Did I read those sentences correctly?
A I believe you did.

Q And underneath what I just read to you, there is 11 numbered paragraphs.
A I see those.
Q Okay. So the sentence that says, "It is reasonable to presume that Plaintiff earlier would have taken the following factors into consideration." So the answers that follow here is based off what the City presumes, correct?
A Yes, I believe so.
Q Okay. So we don't actually know what the City considered in every decision to connect to its sewer system?
A I don't believe we know what was factored into every decision of extending sewers.
Q Okay. So I have a couple of questions about the specific factors listed here. So No. 4 says, "At certain times, whether the parcel was considered part of Area A or Area B." Did I read that correctly?
A Yes.
Q The Area A and Area B refer to the areas we looked at on the map earlier this morning?
A May I ask you, what is the period described in paragraph 15 at the very top of that?
Q Let me provide that. Paragraph 15 of the City's

complaint talks about a period from the 1950s until now.

A Thank you. So from the 1950s until now, at certain times -- you're asking me about paragraph 4, Item 4, right? Whether the parcel was considered part of Area A or Area B. I believe that refers to back to this map that you shared earlier, Exhibit 2. I would want to confirm it, but I believe so.

Q Do you know when sort of Area B and Area A were drawn out?

A I'm sorry, I do not know exactly when those were drawn out.

Q Would that have been before your time as Mayor?

A I don't think so, but I don't know for sure. I'd have to check.

Q Also want to look, I have a few questions about No. 6 here. Number 6 says, "The value of the proposed development to the broader community, including but not limited to, the nature of the development's proposed use." Did I read that correctly?

A I believe you did.

Q What does it mean by value to the broader community?

A I think a City when it's deciding whether to extend services, sewer services, evaluates a lot of

factors about a proposed development, quality, location. If it's, as I mentioned before, if it's, for example, a hospital or a particular use, it may be important to the City, or it may not be important to the City. So I think in development, generally, the City often evaluates at a complicated level, what is the value to the community of this development.

Q Just so I make sure I understand. So if someone was proposing to build a hospital right outside the City, the City might take into account that the hospital may provide valuable services to City residents and the surrounding community; is that right?

A Yes. The City may evaluate do we need another hospital? Is that very valuable? Is it a big need that we have, or do we have seven hospitals and we don't need another hospital? Those kind of factors, yes.

Q So No. 7 here says, "Whether the proposed development would place significant increased burden on other, non-utility municipal services." Did I read that correctly?

A I believe you did.

Q What are other non-utility municipal services?

A I think we're referring there to the whole suite and range of municipal services that we provide from police, fire, streets, sanitation, parks, economic development, transit, housing development, public safety, all of those services.
Q And then No. 10 here says, "Whether the parcel for which service is requested is likely to be a candidate for annexation at some point in the future." Did I read that correctly?
A I believe you did.
Q Has the City ever extended sewer service to an area outside the City limits that is not a candidate for annexation?
A Has the City ever done that? I don't know.
Q Has the City ever extended sewer service to an area outside City limits without a plan in place for annexing it?
A Again, when you ask me has the City ever done that, that's a big question. I'm trying to think if I know of an area where I know we extended sewer services to an area that we did not view as a candidate for annexation in the future. Sitting here I can't identify such an example where it would not be a candidate for annexation, but I don't know for sure.

Q Do you know if the City has ever extended sewer service to an area that might be a candidate for annexation, but without concrete plans in place for annexing that area?
A Without concrete plans in place for annexing an area? I'm repeating to make sure I understand your question. Ask me again. It's a very broad question, if you would please.
Q Can you think of an instance where the City has extended sewer service to an area that may be a candidate for annexation, but does not have plans to annex that area?
A Yes, I can think of -- I don't know if I can think of exact examples, but I can imagine that sewer services have been extended to areas that while they're candidates for annexation, there may not be a specific plan to annex at the moment, at the time it's extended.
Q Okay. Can I get you, please, if you would flip the page to page 8 of the document. At the top it says Interrogatory No. 2. "Describe the considerations relevant to the City of Bloomington's decisions to extend sewer service within Areas 1A, 1B, 1C, 2, 3, 4, and 5." Did I read that correctly?
A I believe you did.

Q What are Areas 1A, 1B, 1C, 2, 3, 4, and 5?
A Those are referring to the areas which were described in the ordinances adopted by the Bloomington City Council to accomplish annexation, originally in 2017, and then again thereafter.
Q So under the section that says Answer, the sentence that says, "It is impossible for Plaintiff to identify the considerations that would have been relevant to such decisions over that period of time. Without waiving the foregoing objections, it is reasonable to presume that Plaintiff earlier would have taken, and is currently taking, the following factors into consideration." Did I read that correctly?
A I think you switch "currently" and "is", but generally, yes.
Q Thank you for the correction. Do you see under that there is again 11 factors listed here?
A I do.
Q So do you see factor 4, where it says, "At certain times, whether the parcel was considered part of Area A or Area B."
A Yes, I do.
Q That's the same factor we read for question 1?
A I believe it's referring to the same factor, yes.

Q So all of the questions I asked about that factor previously, you would give the same answers for this one?
A I'd have to hear the exact question, but it's referring to the same factor, which I think is relevant in the same way.
Q You can't think of a different way in which it would be relevant?
A I'm just trying to reread the question. I can't think of how exactly -- I do not think of how it would be different at this moment, no.
Q So No. 6 here says, "The value of the proposed development to the broader community, including, but not limited to, nature of the development's proposed use." Did I read that correctly?
A I believe you did.
Q Would that factor be relevant in the same way to these specific areas as to annexation generally?
A I believe it would.
Q And factor 7 says, "Whether the proposed development would place a significant increased burden on other non-utility municipal services." Did I read that correctly?
A I believe you did.
Q This factor would be relevant in the same way as

factor 7 we discussed for the other question?
A I believe it would.
Q And No. 10 here on page 9 says, "Whether the parcel for which service is requested is likely to be a candidate for annexation at some point in the future." Did I read that correctly?
A I believe you did.
Q Would this factor be relevant in the same way to question 2 as factor 10 was to question 1?
A I believe it would.
Q We're done with this document for the moment. So feel free to set it aside.
A Okay.
Q So a concept that came up earlier is waivers of the right to remonstrate against annexation. Is it okay if we refer to them and use the short-hand term waivers?
A Yes.
Q And just so I make sure we're on the same page, what's your understanding of a waiver?
A A waiver, a remonstrance waiver is an agreement entered into by a property owner in exchange for sewer services to agree not to contest a future annexation, or remonstrate against.
Q Which department or person in the City is

responsible for handling waivers?
A I think generally it's a combination between City of Bloomington Utilities and the legal department.
Q Has that arrangement ever been different in the past?
A I do not know that.
Q When did the City start seeking waivers from property owners?
A Decades ago, but I don't know the precise beginning.
Q Do you know why the City started to seek waivers from property owners?
A I believe I generally understand why the City sought waivers.
Q What's the basis for your understanding?
A I believe the City viewed the extension of sewer services as a step toward, and a part of a deal to offer services, those City services, the sewers, in exchange for those receiving the sewer service to agree to become part of the City at some future date. As opposed to doing an immediate annexation.
Q But you haven't talked to anyone who was responsible for the City's decision to start requesting waivers?
A I'm responsible for requesting waivers now, and I'm

familiar with other Mayors. I have spoken with some previous Bloomington Mayors, but I don't know when it exactly began.

Q You haven't spoken to the person who made the original decision?

A The first person? I don't know. I spoke to -- I don't know when it began.

Q So what are the reasons the City seeks waivers from property owners today?

A Similar. You just asked that. You asked me that question about why we did it in the past. I think the reasons are generally the same today. That we want to manage growth. We want to encourage an orderly expansion of the City to incorporate urbanized developed areas. And the waivers have been, as set by state law and procedure, have been an orderly way to accomplish that goal, rightsizing the City, incorporating new neighborhoods into the City.

Q Do you know if the City has ever considered anything else in deciding whether to request a waiver?

A Anything other than what I just described? I think a lot of those factors we just looked at in the last set included other factors, how appropriate,

and I think there are other factors, but I tried to describe it at a relatively high level.

Q Has the City always required a person to execute a waiver before they could connect to its sewer system?

A I do not know if the City has always done that.

Q Do you know of any instances in which there are properties outside the City limits connected to the City's sewer system for which the City does not have a waiver on file?

A I am aware that there are instances where sewers were extended and there was no waiver filed, yes.

Q How many instances?

A I don't know an exact number.

Q Can you give a ballpark estimate?

A I think it's hundreds, but not thousands. I think it's not tens, but hundreds, but that's an estimate.

Q Understood. Do you know if any of those instances are in the Areas 1A through Area 5 that the City is now seeking to annex?

A I believe there are properties in those areas you indicated that do not have waivers, yes, who receive sewer service, but do not have waivers on file.

Q Why did the City extend sewer service to properties without requiring a waiver?
A Generally I think it was an oversight.
Q Do you think the City was trying to harm itself in extending sewer service to these properties without a waiver?
A No. I think cities are not perfect actors, and sometimes we have goals that we don't achieve perfectly, but I don't think the City was seeking to harm itself.
Q I think we're about to switch to another section. Would this be a good time for a few minute break?
A I'm fine, but if you want to take a break.
MR. ROUKER: Sure.
MR. BARTA: Let's take five minutes.
(A break was taken from 9:45 to 9:51.)
Q I have a document I want to introduce as Exhibit 4.
(Exhibit 4 was marked for identification.)
Q Mr. Hamilton, do you see at the top this says City of Bloomington Utilities Application Request For New Water/Sewer Connection?
A I do.
Q Is this a request to connect to the City's water or sewer service?
A It appears to be.

Q Have you seen requests like this before?
A I don't know if I've seen a specific request document like this, but I'm aware of them conceptually.
Q So towards the top of the document, it says, "Is property for which service is being requested located within the City of Bloomington corporate limits?" Did I read that correctly?
A I believe you did.
Q And this property is outside the City limits?
A This property is marked "no."
Q So it would be outside the City limits?
A That's what it purports to say, yes.
Q And do you see that there is the box for sewer is checked a few rows down?
A I do see that that is checked.
Q So this would be a sewer request?
A I see water is checked, and sewer request is checked, which would suggest it's a request for both water and sewer service.
Q Got it. So can you turn to page 2 of the document?
A Yes.
Q Do you see there is a field that says Approved, with a checkmark next to it?
A I do.

Q And then it says "Recommendations or conditions of approval."
A I see that.
Q And it appears under that there is some technical writing; is that correct?
A It's describing what appears to be technical specifications, yes.
Q So this recommendation or condition section would be something filled out by the City?
A Again, I have to say I've not seen, that I recall, a specific, this specific document before, but conceptually that appears to be. It's a request for connection, and it's a City determination of how to respond to it, yes.
Q Do you know if there is any other evaluation request like these that are not reflected in this document?
A I do not know that.
Q Okay. Once the checkmark approved box is checked by whoever at the City signs this --
A Can I adjust that answer? You asked me do I know of any other factors. I do think that the factors that we've previously talked about that relate to determination of whether to approve a sewer connection are involved. I don't know if they're

reflected or how they're reflected in this document. But things like the factors we talked about in that list of 11 factors, I think are involved generally in determining whether to extend service.

Q Are you aware of any document where City employees go through those factors?

A I am not.

Q After one of these requests is marked approved, are there any further review steps that take place?

A I do not know the answer to that.

Q I am finished with this document.

A Okay.

Q I'd like to talk more about annexation. So are you aware that there is two ways to conduct annexations?

A I'm generally aware that the annexation can be accomplished voluntarily or through an ordinance process that we did that involves involuntary annexation, yes.

Q Do you know how many ordinance-initiated annexations the City has conducted in its history?

A I know it's in the hundreds at least, but I don't know the precise number.

Q Do you know when the City first began conducting

ordinance-based annexations?
A I do not know when the City first began conducting ordinance-based. And you repeated my word ordinance-based. I think both voluntary and involuntary involve an ordinance. So I think the City has been annexing since 1818, but I don't know the details.
Q Rather that ordinance-based, City-initiated, would that be a better term?
A I don't know. Just help me know what you mean. Are you distinguishing between two kinds of annexations?
Q I just want to make sure we're on the same page, that we have a common vocabulary. So if I say City-initiated, do you understand that means that we're not talking about voluntary annexations?
A If that's what you want it to mean, that's what it will mean to me.
Q Great.
A Involuntary annexation.
Q So if we say City-initiated or involuntary, you understand what I mean by that?
A I will try to follow that, yes.
Q Thank you. When was the City's most recent involuntary annexation?

A Apart from the proceeding we're talking about that began in 2017?
Q Let me rephrase. When was the most recent involuntary one completed?
A I believe in 2004, since we had not completed the one we're in the midst of.
Q Why does the City generally seek to annex surrounding areas?
A You've asked me that. We seek to annex areas around us in order to accomplish orderly, efficient growth that helps the City and our whole community thrive.
Q What would be the impact of not annexing an area nearby?
A Failure to annex a developed area nearby can have serious consequences to a City. It can mean that burdens of services that are increased in a City are not -- I don't know the right way -- if a developed area nearby is not annexed, it can put serious pressure on a City over time, because nearby residents who receive services in the City, who have an impact on the City's services are not part of the community that is supporting those services.
Q What services do you have in mind?

A Cities provide a huge range of services to our residents and to our visitors and to people who come into the City to work, visit, and that ranges from public safety to infrastructure to parks to economic development, cultural development. All of those quality of life components can be diminished in that we are not able to continue to provide the level of services that will help the community thrive.

One way I think about that conceptually is if the City of Bloomington's boundaries had stayed at the 1818 boundaries, today it would be a disaster for the City. We could not be the City we are if our boundaries had not changed.

Q Is the main benefit the City seeks to obtain through annexation additional tax revenue?

A No.

Q What is it?

A I think the main benefit -- there are multiple, but the essential benefit the City seeks to obtain through annexation is to accomplish orderly growth and management of the community. Cities are urban animals with relatively dense populations that need and thrive with relatively dense services. And providing that in a symptomatic, orderly way is

very important for a city's future. And if that orderly, planned process is not allowed to proceed, that can be very threatening to a city's future.

Q How does it threaten a city's future?

A Well, as a Mayor, I look at cities where annexation, examples and images of cities where annexation has not worked, and the city has become landlocked. And the story of the last few decades can be where cities are surrounded by non-annexed components. They're hollowed out, damaged, are not able to plan an orderly development, can create stress and inefficiencies in providing services.

And again for me, the image I can use is if the City of Bloomington's boundaries were stuck at 1818 or 1860 or 1900, it would be a very difficult City to -- we would not be the City we are. We would not be able to provide the services that people need efficiently and to help them thrive.

Q Does any entity regulate development outside the City limits?

A Yes.

Q Which one?

A Many entities regulate development outside the City from the county, to the federal government. Well, I guess the state of course, would be key ones.

Q I want to introduce as Exhibit 5.

(Exhibit 5 was marked for identification.)

Q Is this a map of the areas the City is proposing to annex?

A This appears to be a map that reflects the annexation ordinances that were passed by the Bloomington City Council, yes, in 2021 I guess.

Q So blue is the current City boundaries?

A Yes, I believe so.

Q And the other colors represent the areas the City is trying to annex?

A They represent the areas reflected in the ordinances passed by the Bloomington City Council, yes.

Q How much land would these proposed annexation areas add to the City?

A I believe approximately 10,000 acres, I think.

Q How many people would that add to the City?

A I believe approximately 15,000.

Q What types of properties are in the areas that the City is trying to annex?

A A whole range of properties. Residential, commercial, industrial, medical, I think. A whole mix of different properties.

Q When were the properties in these areas developed?

A Over a wide range of times. In the last decades.
Q So multiple decades?
A Well, I think, ten, 20 years. I don't know if any were more than 20 years. Probably some were developed more than 20 years ago, and they're continuing to develop.
Q I'm finished with this document. I'd like to better understand the process that the City went through in trying to annex these areas. When did the City first start considering the annexation of these areas?
A Well, I think the City first started considering annexing well before I became Mayor. So well before 2016 many of these areas were reflected in the areas intended for annexation. That was the designation formally created. Many of these were in a two-mile fringe that were assigned to City zoning codes, if you will, in the years -- in the 2000s at least I think. And then we took action beginning in 2016.
Q What prompted the City to start taking action in 2016?
A So in 2016 I became Mayor. I looked at the growth of the City. I looked at our boundaries. I looked at things like the areas intended for annexation,

and the zoning jurisdictions, and the fact that we had a large number of urbanized neighborhoods that were contiguous to the City that were not part of the City, and I felt it was important to begin an orderly incorporation of those into our boundaries, so that we could continue the regular growth we had been on since 1818.

Q What was the decision-making process that you went through to decide that the City should annex these areas?

A Well, there is a general process of should we annex, which involved those factors that I just described. And then there is a very specific process of which areas to annex. It's a highly technical, highly defined process under state law. And that process was a very complex process of looking at boundaries, looking at density, doing physical planning, doing legal analysis that then led ultimately to the development of a set of proposals that involved the proposed annexation areas in 2017.

Q So I guess I'm curious. Since the City proposed, formally proposed annexation in 2017, has there been any development in the areas that you're seeking to annex?

A I believe so.
Q Do you know how much development?
A I do not know how much development.
Q Were some of the areas that the City is seeking to annex already far along in their development?
A Some of the areas we were seeking to annex were highly urbanized, extensively developed, yes.
Q Can you point to one or two of those areas?
A On Exhibit 5?
Q Or I guess by number. Is there one or two areas that stand out?
A I believe all of the areas reflected on this map 1A, 1B, 1C, 2, 3, 4, 5, have very substantial development included in those areas.
Q How would annexing these areas affect the City's tax base?
A Annexing these areas would incorporate them into the City's property tax base, which would increase the levy that we receive annually. As City residents they would also be subject to different income tax rates. Actually, that's not correct. Their income tax rate would be the same. I'm sorry. But the revenue would be allocated to the City as opposed to county. Those would be the main things I think. Their utility rates would go down

a little bit, I believe.
Q What is the City's property tax rate compared to the county's?
A I don't know, I'm sorry, the exact rate. The City's property tax rate is a bit higher than county residents who are not City residents, property that is not in the City limits.
Q Is it higher for both residential and businesses?
A I believe so.
Q Have there been any changes to the City's property tax rates over the last few decades?
A Well, the City's property tax rates are basically determined by the state, and every year there is a calculation that, it's a mathematical calculation based upon the levy that the state determines, that then the rate is determined by dividing the levy by the assessed value. So that changes every year.
Q How would annexing these areas affect the people who live there?
A It would affect them in a number of ways. As those who live in an area, if it becomes annexed, it becomes part of the City, they become voters. They have a whole suite of City services available to them. Things like sanitation service. We provide both maintenance and construction of infrastructure

of streets, sidewalks, paths, et cetera. They would typically also have increased park and recreational investments in the areas nearby. And also they would have sanitation pickup, both waste and free recycling, police coverage, public safety protection, housing inspections, a whole suite of services.

Q Would it affect where their children go to school?

A I don't believe it would.

Q Would it affect the regulations that businesses are subject to?

A Yes. It typically would.

Q How so?

A For example, Bloomington has a sign ordinance that governs advertising and signs by a business. We would affect a business's physical premises. We could affect them by requirements of parking or landscaping or those kinds of things under our zoning codes.

Q Has the City enacted any significant new business regulations under your term as Mayor?

A We have enacted a new Uniform Development Ordinance, so a zoning code that has a lot of components to it in terms of affecting the physical structures and operations. We have provided

services to businesses, loan programs, supported services to businesses that are located in City boundaries in my tenure. Those come to mind immediately.

Q Would residents in these areas be subject to any different ordinances or regulations?

A Yes. There are differences between City codes and non-city county resident codes they would be subject to, yes.

Q What is an example of that?

A One example is if you have rental property in the City, it can be subject to safety reviews and regulation. That's not subject in areas outside the City.

Q Have any regulations or ordinances affecting residents been added to the City's code in the last 25 years?

A I'm sure, yes.

Q Can you think of any significant once?

A No smoking affects residents. No smoking rules in public spaces and private spaces in City limits has been a change I think in the last 25 years. Maybe you can help me if you're trying to get me to think of something in particular. The City code is changing every year.

Q What about any significant new rules for businesses in the last 25 years?
A Significant new City ordinances affecting businesses?
Q Correct.
A Well, as I mentioned the Unified Development Ordinance is a very substantial fact on business, saying what buildings can be built or can't be built, where parking requirements, landscaping requirements, signage requirements substantially affect businesses. Nothing leaps to mind, but I'm sure there have been others too.
Q I understand a number of property owners in the area you're trying to annex have protested annexation, correct?
A Yes, that's correct.
Q Have residents communicated to the City why they do not want to be annexed?
A I think the City has received communications from residents, yes, about why they don't want to be annexed.
Q What have those residents told the City?
A Well, at a high level, general level I would say residents have indicated opposition to increased taxation levels. Some residents have indicated

concerns about City regulations that would change what they can do on their property. Some residents have suggested they just don't want to be associated with the City of Bloomington. Those are kind of some high level concerns.

Q Any other concerns jump to mind?

A No.

Q You mentioned new regulations. Have residents mentioned any regulation in particular?

A We've had residents express concern that they won't be able to keep the animals that they keep outside the City if they become part of the City. We've had residents express concern about open burning. I believe I've seen a concern expressed about discharging firearms. Those are some I'm aware of.

Q Can you explain what you mean by residents don't want to be associated with the City of Bloomington?

A You'd have to ask them. I don't know. I think it's a beautiful city. I love this city.

Q Can you think of any reason why they might not want to be associated?

A I have heard expressed a statement to the effect of I moved in an area that was less developed in order not to be in a city, not to be in an urbanized area, and I don't want to be in a city. I want to

live in the country.
Q Are there any political or cultural differences between the surrounding county and the City?
A Well, there are some political differences. While Monroe County is a Democratic county, if you look at voter registration and voter behavior and such. The City is more Democratic relatively than the non-City parts of the county, in aggregate. I think there is just kind of common sense cultural differences of a neighborhood where people live half a mile apart, than a neighborhood where people live 60 feet apart, and density and those kinds of things.
Q As you know, one of the things that has precipitated from this annexation is the City's current lawsuit challenging the 2019 legislation that the General Assembly passed, correct?
A Yes.
Q What is your understanding of that legislation?
A I understand the 2019 legislation that it purports to, sought to terminate waivers, as we've described them, over 15 years of age, both retroactively and that's in effect prospectively too.
Q Aside from filing the lawsuit, has the City made any other changes to its policies or practices in

response to the 2019 legislation?
A I believe the 2019 legislation changing the nature of waivers prompted us as a City to change how we think about annexation, because it caused us to view waivers as not dependable or reliable under the State's new approach. So it has encouraged us to do annexation through voluntary annexation rather than relying on waivers in the future.
Q Has the City conducted voluntary annexation since 2019?
A I'm not aware of a specific one. Sometimes very small ones happen, but I don't think so. I'm not aware of one.
Q In response to the 2019 legislation, has the City made any changes to how it records waivers?
A I'm not aware of changes. No.
Q Has the City made any changes to how it evaluates requests from people outside the City limits to connect to its sewer service?
A Yes.
Q What are those?
A As I just described, generally at a high level it caused us to shift from using waivers as a tool to, again, manage appropriately, efficiently, orderly growth to rely on voluntary annexation.

(Exhibit 6 was marked for identification.)
Q Is this a copy of the Complaint that the City filed challenging the 2019 legislation?
A It appears to be.
Q Could I ask you to flip to paragraph 18 on page 4?
A Yes.
Q Paragraph 18 says, "Bloomington also provides many services other than wastewater service that benefits residents and nonresidents alike. To identify a few, Bloomington police provide public safety services, the Bloomington Fire Department responds to emergencies, the Street Department maintains hundreds of miles of sidewalks and roads, and the Parks Department builds and maintains dozens of free and subsidized facilities and provides a broad menu of free and subsidized programming." Do you see that?
A I do.
Q So where does Bloomington provide the services listed here?
A We generally provide those services in the City, although they sometimes are extended beyond the City as well, beyond the City limits as well.
Q Which specific services are extended beyond the City limits?

A Well, police services occasionally take actions outside the City limits. The fire department provides services occasionally outside the City limits. We actually have some parks facilities that are outside, I think, the City limits. Those would be some.
Q Are there any others provided outside the City limits?
A There may be. If you have any specific questions, I'll try to respond to them.
Q Can you think of any others provided outside the City limits?
A Well, we provide animal control services that we contract to provide outside the City limits, would be another one.
Q Any others?
A There probably are. I just don't think of them immediately, but if you want to ask me specific ones, I'm happy to try to respond to them too.
Q Why does Bloomington provide services like police and fire outside the City limits?
A Part of it is the nature of public safety. Police may be involved in a case or a pursuit, or an issue that goes beyond City limits, and we don't stop at that point, or continue investigations or those

kinds of things. Fire department, similarly, either through automatic or direct aid can provide services.

A municipality like Bloomington is the center of a region. We provide a whole host of amenities and services that create benefits for people outside the City. And so our services inevitably sometimes extend beyond City limits. Most people do not know where the City boundaries are. So many people think Bloomington is different boundaries than it is. But our services naturally affect people both who live outside the area and sometimes physically extend outside the areas.

Q Does the county provide any services within City limits?

A Yes. Many.

Q What are those?

A I won't be able to name them all, but for example, the judicial system, the court system, public health system, probation system, all parts of the criminal justice system. The county is responsible for bridges, maintenance of bridges. Those are several.

Q Do police or fire departments outside the City limits ever provide help within the City limits?

A Yes, they do.
Q Are there parks outside the City limits that City residents use?
A Yes.
Q Are there other services outside the City limits provided? Let me rephrase. Are there other services that the county provides that benefit City residents?
A Absolutely. As many people often -- and I'm sure you know, all City residents are county residents and support county government, and receive many benefits from county government.
Q The next paragraph of the Complaint, paragraph 19 says, "Development directly along Bloomington's borders, and in particular the dense urbanized development that follows the voluntary extension of sewer service, creates significant additional demand for Bloomington's municipal services." Did I read that correctly?
A I believe you did.
Q And the municipal services are the ones we talked about, fire, police, parks and so on?
A Those are examples of the full range of Bloomington's municipal services, some examples of them, yes.

Q What does this mean by developing and creating significant additional demand for Bloomington's municipal services?
A More people and more development naturally implicates more services, whether it's attendance at City parks -- As we've discussed, many people who live next to City boundaries spend a lot of time in the City, drive on City streets, dispose of trash in City trash cans. Again participate in parks and programs, are employed by enterprises in the City, participate in arts and cultural events in the City. All of which are part of the suite of municipal services, that as those demands increase, our need to increase those service level increases too.
Q So to make sure I get this right. The demand is created just because people want to take advantage of things the City has to offer?
A Sometimes people do bad things in the City that we have to respond to that cost public safety or other kinds of services, like that. In general, denser development, which is what cities are, increase the demand for services. That's why City services tend to be at a higher density, if you will, than unincorporated county areas. People just need more

services, from wastewater services to public safety to more dense streets, use of streets, more populated streets. And also attendance at a playground, use of a playground goes up.

Q When you say that nearby development creates demand, how close does the development need to be to the City to create demand?

A I don't think there is a simple answer to that. I think the closer the development, the more intense the development, the relatively more demand.

Q I believe you may have touched on this, but why is dense development different from non-dense development in terms of the impact on services?

A Cities develop to manage and enhance the lives of people who are more densely organized than not cities. It's kind of the nature of cities. We exist to support and enable denser development to operate than unincorporated, non-densely developed areas, which is kind of a high level common sense thing.

Q Has the county made any changes to the services it provides in response to development outside the City limits?

A I'm sure they have, yes. Increased population in the county in general requires increased services.

More roads need to be plowed.
Q Does growth within the City of Bloomington City limits affect what services the county needs to provide?
A Yes, I believe so. General population increase, new bridges, new population, criminal justice system, public health, those kind of issues.
Q I would like to talk again about Exhibit 3, the interrogatory answers. If you could flip over to page 10.
A Okay.
Q So at the top it says Interrogatory No. 4, "Explain the basis for the City of Bloomington's decision to provide any of the services identified in response to Interrogatory 3." Did I read that correctly?
A I believe you did.
Q Just so we're on the same page, can you flip back one page to Interrogatory 3?
A Yes.
Q And under the answer section it says, "Bloomington identifies the following, non-exhaustive list of municipal services Bloomington provides to unincorporated areas of Monroe County, 1, Animal shelter services throughout Monroe County; 2, Emergency dispatch services throughout Monroe

County; 3, Water service throughout Monroe County and beyond; and 4, Fire department and police department services via mutual aid throughout Monroe County and beyond." Did I read that correctly?

A Yes, I believe you did.

Q So flip back to Interrogatory 4. Under the answer section it says, "Without waiving the foregoing objections, it is reasonable to presume that Plaintiff may have considered the following non-exhaustive list of factors." Do you see that?

A I do.

Q So these are factors that the City may have considered in deciding to provide the list of services in Interrogatory 3 to areas outside the City limits?

A That is how I understand that, yes.

Q So I have a few questions about the factors. Number 2 says, "The necessity or benefit of the service to the entire community." Did I read that correctly?

A I believe you did.

Q What does this mean?

A I think this refers to a general assessment of how important is the service to the community, how much

benefit will it provide to the community, if it is provided beyond City limits.

Q Does the community here include people both inside and outside the City?

A Yes. I think so.

Q Can you give an example of how this factor would be taken into account?

A Yes. I'll try. I believe, for example, on dispatch services, this factor would suggest providing efficient and high quality dispatch services is very important to the entire community. It can be done well and better in an integrated way across the whole community, across the whole county, for example, than if they were a separate system for City and county. Might be one example.

Q Is the City legally required to take into account the benefit to people outside the City limits?

MR. ROUKER: Objection, calls for a legal conclusion.

A I don't know the answer to that question.

Q Are you aware of any that would require the City to take into account the needs of nonresidents?

MR. ROUKER: Objection. I believe that was just asked and answered.

A Am I aware of anything that requires us? I think

there may be an agreement we've made with the Corps of Engineers about Lake Monroe. That we will provide water services to the wider community as part of that general project, 50-year old project, for example.

Q Okay. So factor 3 says, "The capacity of other actors to adequately provide the requested service." Did I read that correctly?

A I believe you did.

Q Who are the other actors?

A I think we're referring here to other governmental actors, or other actors. I think an example here maybe would be in the animal services. If there were a nonprofit humane association that was providing excellent service, that would factor into how important it was to assess whether and how to provide animal services outside the City limits, would be an example.

Q So nonprofit could be one actor?

A Government, nonprofit.

Q The county could be another?

A Yes.

Q State could be another?

A Yes.

Q Four says, "Whether Bloomington is legally required

to provide the requested service." Did I read that correctly?

A I believe you did.

Q Which services is Bloomington legally required to provide outside the City limits?

MR. ROUKER: Objection, calls for a legal conclusion.

A Again, I don't know of any. If you have a specific question, I'd be happy to try to answer, but in general I'm not aware. I mentioned we may have entered into contracts, which are then legally binding on us, to provide a service that we agreed to provide, but I'm not sure if that's what you're asking about.

Q I'm just trying to understand how this factor gets taken into account. So you think contracts is the example you have in mind?

A No. I think this example is looking at, I think, for example, something like the Lake Monroe water supply, where we have, I believe, agreed in the context of that huge project to provide drinking water services to the wider community, that we may be legally required to do that.

I don't know, there may be state laws about dispatch services. If you're using public safety,

local income tax or public safety PSAP. I don't know what that stands for, P-S-A-P, there may be legal requirements for that, but I'm not aware of specifics.

Q Aside from the Lake Monroe project and dispatch services, you're not aware of anything where this factor could affect the decision?

MR. ROUKER: Same objection.

A I'm not. I'm just trying to think, for example, in public safety. I don't know if there is a state requirement or other that certain public safety situations, you may be under a mandate from the state to, emergency response or disaster response, for example, that kind of thing. I think we may be mandated to provide services like that to supplement, add services.

Q So you're not aware of any legal requirement that the City allow nonresidents to access City parks, for example.

MR. ROUKER: Same objection.

A I am not aware of a legal requirement like that.

Q So No. 5 says, "Whether or not the provision of the service is in exchange for any commitments from other parties, such as mutual aid." Did I read that correctly?

A I believe you did.
Q Which services would this factor affect?
A I believe this factor would affect public safety services, which often have mutual commitments for mutual aid in numbers of different circumstances, police and fire services.
Q Can you explain what a mutual aid agreement is?
A As is typical of fire departments, for example, often enter into mutual aid agreements under which each department, adjacent departments agree to provide support to one another in case of need.
Q I think maybe if it's all right with you, if we could take a ten-minute break. Make sure, I think we're about done.
MR. ROUKER: That sounds good.
(A break was taken from 10:42 to 10:58.)
Q I just have a few more questions.
A Okay.
Q So as a general matter, are annexations a response to development that's already occurred?
A As a general matter, annexations are a way to accomplish orderly growth of the City, incorporating areas that are developed or likely to develop.
Q Why were areas 1 through 5, 1A through 5 not

annexed before your time as Mayor?
A I do not know that.
Q So you've used this phrase a couple of times "orderly development." Help me understand it. What in your view would be disorderly development?
A Well, disorderly development would be a metropolitan area that has inconsistent, inefficient provision of services and oversight. Again, the image I may use is if the City boundaries of Bloomington had been frozen in 1950, we would not be an orderly City, because we would not be able to plan the metropolitan growth so it's consistent with road design and provision of services. An orderly development is one that the boundaries and the services of the City follow the urbanization of the land.
Q So earlier we talked about there is two types of annexation, City initiated ones and voluntary annexations, right?
A We did.
Q Why does the City need City-initiated annexation when voluntary annexations are an option?
A Why do we need it today?
Q Why do you need that for the future?
A We need to be able to plan for annexations.

Waivers were a way to plan for annexations when we could count on the deal of the waiver being implemented. Because we are not able to count -- given the State's actions, because we're not able to count on the reliability of annexation waivers, we find that voluntary annexation is the smart and prudent way to go forward. I'd leave it at that I think.

Q When you have voluntary annexation as a way to go forward, why would you need a City-initiated annexation?

A Well, one example would be some voluntary annexations are not contiguous. We have a developer who wants to get sewer service and be part of the City, by under state law they may not be allowed to. In that circumstance it's really important for us to be able to implement waiver agreements or annexation that can pull other areas into the City.

Now, going forward, I think as we've said, if the State wants to change the rules on waivers and how annexation works prospectively, we can try to make that work. I will say we're in a terrible quandary now, because if the agreed upon annexations that have been planned and agreed to

for many years are not allowed to go forward, then we don't have continuity with the next round of development that wants to happen right now. So we're stuck in the middle.

We can make voluntary annexation work if we have a decent starting place, but we've had the rug pulled out from under us in the orderly annexation plans that we've had for decades.

Q Last question. Any answers that you've given today you need to go back and correct?

A I don't believe so at this sitting.

Q I am done.

CROSS-EXAMINATION

BY MR. ROUKER:

Q We'll have just a few. So I'm giving everybody what I think we're going to call Exhibit A.

(Plaintiff's Exhibit A was marked.)

Q So I've given you what has been labeled as Exhibit A. What is this?

A This appears to be a Waiver of Protest of Annexation signed -- I don't know what year.

Q That's fine. The year is not important. Would you please look at the first paragraph of this Waiver of Protest of Annexation?

A Yes.

Q In examining that, are you able to identify the consideration that runs to the City of Bloomington in this agreement?

MR. BARTA: Objection, calls for a legal conclusion.

A Do I answer?

Q Yes.

A So when I look at this, the consideration that the City of Bloomington is receiving -- let me get the words right here -- is the owner of the property releasing the right to remonstrate against any pending or future annexation by the City of Bloomington of that real estate. That's what we're getting from this agreement.

Q It might be helpful, would you just read through that first paragraph for us.

A Sure. "The undersigned, Beverly McGuire, as owner of the real estate hereinafter described, for and in consideration of the City of Bloomington, Indiana, granting to the undersigned the right to tap into and connect to the sewer system of the City of Bloomington for the purpose of providing sewer service to the described real estate, now release the right of the undersigned as owner of the described real estate and their successors in

title to remonstrate against any pending or future annexation by the City of Bloomington, Indiana, of such described real estate."

Q What other factors are listed in this document as consideration --

MR. BARTA: Objection.

Q What other factors are listed in this document affecting whether or not the City of Bloomington can extend sewer service, and what the City receives in exchange for extending sewer service?

MR. BARTA: Objection, calls for a legal conclusion.

Q Go ahead.

A I don't see any other factors. It's only the agreement in exchange for us providing sewer service that they agree not to remonstrate against any pending or future annexation by the City of Bloomington.

Q As far as you know, has the City fulfilled its end of the bargain relating to this agreement?

MR. BARTA: Objection, calls for a legal conclusion.

A Absolutely. I know we have provided the sewer service as promised.

Q Do you believe the City has a reasonable

expectation the other side will fulfill their part of the bargain?

MR. BARTA: Objection, calls for a legal conclusion.

A I absolutely believe we have a reasonable expectation that they will fulfill their part of that bargain.

Q One other line of questioning quickly. There were some questions earlier related to whether or not municipal residents utilize services that are provided by county government. I think there were some questions about the parks, for example. Do municipal residents pay property taxes to support county services?

A Absolutely. We are county residents, as I am. I'm a City resident and a county resident.

Q Do county residents pay property taxes to the City of Bloomington to support municipal services?

A They do not.

Q I think that is all.

REDIRECT EXAMINATION

BY MR. BARTA:

Q A few questions. So you were asked about this Waiver of Protest of Annexation.

A Yes.

Q And it talks about how the owner is going to connect to the City's municipal services, correct?
A Connect to the municipal sewer service, yes.
Q When someone connects to the municipal sewer service, do they execute any other agreements with the City?
A I do not know.
Q Do you know whether they execute an agreement to pay a connection fee?
A I don't know whether they execute, but they do agree to pay service fees.
Q Do they execute an agreement to pay utility rates?
A I don't know if they execute an agreement, but they do pay for the utility services under the schedule of service and fees, yes.
Q I think those are all of my questions.
MR. ROUKER: I think we're good. We'd like signature.
MR. BARTA: Electronic copy. Ten-day turnaround is fine.
MR. ROUKER: Electronic copy.
(The deposition concluded at 11:09 a.m.)

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

IN THE MONROE COUNTY CIRCUIT COURT

CITY OF BLOOMINGTON,)
)
Plaintiff,)
-v-) CAUSE NO.
) 53C06-2203-PL-000608
CATHERINE SMITH, IN HER) 53C06-2203-PL-000609
OFFICIAL CAPACITY AS MONROE) 53C06-2203-PL-000610
COUNTY AUDITOR,) 53C06-2203-PL-000611
) 53C06-2203-PL-000614
Defendant.) 53C06-2203-PL-000615
) 53C06-2203-PL-000616
and)
)
STATE OF INDIANA,)
)
Intervenor.)

Job No. 182973

I, JOHN HAMILTON, state that I have read the foregoing transcript of the testimony given by me at my deposition on July 21, 2023, and that said transcript constitutes a true and correct record of the testimony given by me at said deposition except as I have so indicated on the errata sheets provided herein.

_____
JOHN HAMILTON

STEWART RICHARDSON & ASSOCIATES
Registered Professional Reporters
One Indiana Square, Suite 2425
Indianapolis, IN 46204
(800)869-0873

STATE OF INDIANA
COUNTY OF MONROE

I, Teresa R. Kramer, a Notary Public in and for said county and state, do hereby certify that the deponent herein was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth in the aforementioned matter;

That the foregoing deposition was taken on behalf of the Intervenor; that said deposition was taken at the time and place heretofore mentioned between 9:00 a.m. and 11:09 a.m.;

That said deposition was taken down in stenograph notes and afterwards reduced to typewriting under my direction; and that the typewritten transcript is a true record of the testimony given by said deponent;

And thereafter presented to said witness for signature; that this certificate does not purport to acknowledge or verify the signature hereto of the deponent.

I do further certify that I am a disinterested person in this cause of action; that I am not a relative of the attorneys for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 2nd day of August, 2023.

My commission expires:
August 3, 2030

Job No. 182973

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