

In the Matter Of:
CITY OF BLOOMINGTON

-v-

CATHERINE SMITH and STATE OF INDIANA

Jeffrey Underwood

July 25, 2023

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DEPOSITION SERVICES

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1 STATE OF INDIANA)
) SS
2 COUNTY OF MONROE)

3
4 IN THE MONROE COUNTY CIRCUIT COURT

5 CITY OF BLOOMINGTON,)
)
6 Plaintiff,)
)
7 -v-)
) CAUSE NOS.: 53C06-2203-PL-000608
8 CATHERINE SMITH, in her) 53C06-2203-PL-000609
 official capacity as) 53C06-2203-PL-000610
9 Monroe County Auditor,) 53C06-2203-PL-000611
) 53C06-2203-PL-000614
10 Defendant,) 53C06-2203-PL-000615
) 53C06-2203-PL-000616
11 and)
)
12 STATE OF INDIANA,)
)
13 Intervenor.)

14
15 The deposition upon oral examination of
16 JEFFREY UNDERWOOD, a witness produced and sworn before
17 me, Barbara Ann Bourbina, a Notary Public in and for
18 the County of Monroe, State of Indiana, taken on
19 behalf of the Intervenor, Office of the Attorney
20 General, State of Indiana, at Bloomington City Hall,
21 401 N. Morton Street, Allison Conference Room 225, on
22 the 25th day of July, 2023, commencing at 9:05 a.m.,
23 pursuant to Indiana Trial Rule 30(b)(6).
24
25

A P P E A R A N C E S

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1 J E F F R E Y U N D E R W O O D, the witness herein,
2 having been first duly sworn to tell the truth, the
3 whole truth, and nothing but the truth, was examined
4 and testified as follows:

5 DIRECT EXAMINATION,

6 QUESTIONS BY MR. BARTA:

7 Q Good Morning, Mr. Underwood.

8 A Good morning.

9 Q I'm James Barta, one of the attorneys for the State.

10 Have you given a deposition before?

11 A Yes.

12 Q Okay. Well, then, this may be a review, but just to
13 make sure we're on the same page, I'm going to go over
14 a few of, you know, just the ground rules so that
15 everything goes smoothly and we can get you out of
16 here quickly.

17 So, as you know, the basic format is I'm going
18 to ask questions, you get to answer them, and you will
19 need to answer any question unless your attorney
20 instructs you not to answer.

21 If you don't understand a question, please let
22 me know, otherwise I'm going to assume you understand
23 it. Okay?

24 A Uh-huh.

25 Q And, you know, when answering the question, please

1 make the answers verbal. Shaking of the head and
2 nodding of the head is hard for the court reporter to
3 capture. Understood?

4 A Okay.

5 Q And, you know, we'll both do our best not to speak
6 over each other, and to speak slowly since that will,
7 you know, ensure that everything we say gets taken
8 down definitively. Okay?

9 A Okay.

10 Q Great.

11 I don't think this will be very long, but if at
12 any point you need a break, please let me know. The
13 only thing I would ask is that you finish answering
14 the question before we break. Okay?

15 A Okay.

16 Q All right. Is there any reason you cannot understand
17 my questions today?

18 A I don't believe so.

19 Q Any reason you cannot answer truthfully or accurately?

20 A No.

21 Q All right.

22 MR. BARTA: So I'm going to introduce a document
23 as Exhibit 1.

24 (Intervenor's Exhibit 1 was marked for
25 identification.)

1 Q Mr. Underwood, have you seen this document before?

2 A Yes.

3 Q Okay. This is a -- what is it?

4 A It is Notice of 30(B)(6) Deposition.

5 Q Okay. And you are here testifying as the City's
6 representative today?

7 A Yes, I am.

8 Q And on the second page it says, "The City's
9 representative is adequately prepared to respond
10 accurately regarding the attached list of subjects."

11 Do you see that?

12 A Yes.

13 Q And you have seen this list of subjects?

14 A Yes.

15 Q And you prepared for the ones that the City designated
16 you to testify about?

17 A Yes.

18 Q Okay. Aside from speaking with the City's attorneys,
19 what did you do to prepare?

20 A I reviewed documents that were related to the lawsuit.

21 Q Anything else?

22 A No.

23 Q And what documents did you look at?

24 A Specifically I looked at my affidavit, I looked at
25 various court filings, I reviewed the fiscal plan that

1 was included, as well as any articles that might have
2 been included.

3 Q So I don't have any more questions about this, so feel
4 free to set it aside.

5 A Okay.

6 Q So I understand you're the City Controller?

7 A I am the Controller.

8 Q How long have you been Controller?

9 A September of 2014, second time.

10 Q All right. And generally speaking, what are your
11 responsibilities as Controller?

12 A I'm the Chief Fiscal Officer for the City, so it's my
13 responsibility to ensure the fiscal health of the
14 City. That includes the preparation of financial
15 statements, audits, and other related documents as
16 well.

17 Q Have you had any other jobs with the City?

18 A Yes. Prior to coming back to the City as Controller,
19 I started in 1985 with the Utilities Department. I
20 was the Fiscal Officer there. I've served also as the
21 City's CIO, Chief Information Officer, and City
22 Controller.

23 Q As Controller, does your office have any role with
24 respect to sewer extension contracts?

25 A We collect those from the Utilities Department as

1 they -- they collect those as well.

2 Q And what does your office do?

3 A Just compile them. They have a list of the ones that
4 have been signed and certified.

5 Q Okay.

6 MR. BARTA: So I'm going to introduce a document
7 as Exhibit 2.

8 (Intervenor's Exhibit 2 was marked for
9 identification.)

10 Q What is this document?

11 A Application Request For New Water or Sewer Connection
12 for Services to Single Family and Duplex Residence on
13 a Single Lot.

14 Q Does your office maintain signed copies of this sort
15 of contract?

16 A These are maintained by the Utilities Department and
17 not my office.

18 Q Okay. Why does your office not maintain these?

19 A Because this is an application for water and sewer
20 service, so any reference to that would need to be
21 down at the Utilities office and not our office.

22 Q Okay. So on the second page of this document, there's
23 a document called "Individual Customer Contract,"
24 correct?

25 A Uh-huh, yes.

1 Q Does your office maintain copies of this sort of
2 contract?

3 A It does not.

4 Q Why not?

5 A Again, this is a document that the Utilities
6 Department would need reference to, so they keep those
7 documents in their offices where they can access them
8 as needed.

9 Q Okay. So what kind of contracts does your office
10 maintain specifically?

11 A This would be contracts that other city departments
12 enter into. We keep electronic copies as well as the
13 Legal Department.

14 Q Okay. And so when it comes to sewer-related contracts
15 what type does your office maintain?

16 A It would be for services, repairs, construction, but
17 not individual customers.

18 Q Okay. When you say "services, repairs, construction,"
19 this would be contracts by the Utilities Department
20 with a contractor, for example?

21 A Yes, contractors for professional services, so rate
22 consultants and then services and supplies.

23 Q Okay. Does your office have a role related to the
24 rates and fees charged to customers of the City sewer
25 services?

1 A No, we do not.

2 Q Okay. Are you familiar with how the Utilities
3 Department is funded?

4 A Yes.

5 Q How are they funded?

6 A Through fees.

7 Q Do they receive any funding from taxes?

8 A No.

9 MR. BARTA: I'd like to introduce the next
10 document as Exhibit 3.

11 (Intervenor's Exhibit 3 was marked for
12 identification.)

13 Q What is this document?

14 A Affidavit of Jeffrey Underwood.

15 Q That's you?

16 A That is me.

17 Q Okay. Is there any way in which this affidavit is no
18 longer correct or accurate?

19 A Not that I'm aware of.

20 Q All right. So in Paragraph 4 on the first page it
21 says, "In order to guarantee the continued fiscal
22 health of the City, any agreement between the City and
23 a non-resident for the extension of municipal sewer
24 service to the non-resident must contain, as part of
25 the consideration running to the City, a provision

1 through which the non-resident waives their right to
2 contest a future annexation."

3 Did I read that correctly?

4 A Yes.

5 Q Okay. So a waiver does not create revenue for the
6 City, does it?

7 A It does not.

8 Q What is its relation to the City's continued fiscal
9 health?

10 A Well, it allows us to provide services for a future
11 promise that annexation will happen, and they will not
12 remonstrate against that annexation so that the City
13 can rightsize, bring them into the City, and provide
14 them services.

15 Q So the revenues from future tax revenues is what
16 you're referring to?

17 A Yes, as well as the expenses associated with those
18 services.

19 Q And which services are you referring to?

20 A That would be such, and not limited to, but police,
21 fire, parks, planning, engineering, housing and
22 neighborhood development, economic sustainability, and
23 our family --

24 THE WITNESS: Community and Family Relations
25 Department?

1 MR. ROUKER: Yeah.

2 A Yeah.

3 Q So I see you did not mention sewer service on that
4 list, did you?

5 A I did not.

6 Q Why not?

7 A Well, if there's a waiver in place, the sewer service
8 has already been provided to them. It would not be an
9 additional service.

10 Q And residents would pay rates and fees for the sewer
11 service?

12 A They would continue to pay those, yes.

13 Q Okay. So I want to take a look at Paragraph 6 of your
14 affidavit.

15 A Uh-huh.

16 Q It says, "Dense development and/or a substantial
17 volume of development near the City's boundaries, but
18 still outside the City's corporate limit, creates
19 significant additional demand for Bloomington's
20 municipal services."

21 Did I read that correctly?

22 A Yes.

23 Q Does this mean that people who live near the City
24 would like additional services from the City?

25 A I can give you my opinion: some do, some don't.

1 Q So I guess what I'm trying to understand is what
2 additional demand means?

3 A Additional demand would be they live adjacent to the
4 City and they're accessing services, or we have to
5 provide -- we do provide services as a part of that,
6 that they're not paying for those services.

7 So police and fire, through interlocals, we
8 respond to those because we may have better equipment,
9 we have more people, we're better set up to provide
10 those services.

11 Q So how is demand created by people living nearby?

12 A Well, with the dense development you have more people,
13 so they're right adjacent to the City. They're coming
14 in to access all kinds of services and retail that are
15 not available to them outside the corporate limit. So
16 they're placing demands on restaurants, on retails, on
17 medical, they're using our streets, they're using the
18 Parks Department. So those are some examples.

19 Q Okay. Would any development create that demand?

20 A To a lesser extent, but the more dense it is the more
21 demand.

22 Q So the City provided services you mentioned.

23 A Uh-huh.

24 Q How are those services funded?

25 A They're funded through a number of ways. The primary

1 ways that they're funded are through property taxes
2 and local income tax.

3 Q What are the other ways they are funded?

4 A There are miscellaneous taxes. The State allows us to
5 have gasoline, alcohol, and beverage taxes, some
6 grants, interest income, miscellaneous-type things.

7 Q And the alcohol and beverage taxes would be
8 consumption taxes?

9 A Yes.

10 Q So anyone who buys alcohol or services in the City
11 would pay those taxes?

12 A Yes.

13 Q Okay. How is property tax calculated?

14 A Property taxes are based on two things: assessed
15 value and the levy, the amount of levy that a unit the
16 government is allowed to collect. So the levy divided
17 by the assessed value creates the property tax rate.

18 Q And who determines the levy?

19 A The State.

20 Q What proportion of the City's revenue comes from
21 property taxes?

22 A It's approximately 60 percent of the City's General
23 Fund. We have multiple funds at different
24 departments, but the City's General Fund is the main
25 operating account, and it's about 60 percent.

1 Q Okay. Given how property taxes are calculated, does
2 higher property value lead to more taxes for the City?

3 A No.

4 Q So how does assessed value figure into it, then?

5 A Well, you have your levy, and that's the top number.
6 You have your assessed value, and that's the bottom
7 number. That creates the rate. If assessed value
8 increases, your property tax rate would go down. As
9 your levy grows and your assessed value grows, again,
10 it's that calculation. So it's a two-part variable
11 that's dependent on the increase in your levy and the
12 growth rate of your assessed value.

13 Q So just to make sure I understand this, if you had a
14 hundred-thousand-dollar property deed, how much
15 approximately would the property owner pay?

16 A I would have to look that up. I don't know offhand.

17 Q Okay. But if it went up to \$200,000, the property
18 owner would still pay the same amount?

19 A It would depend. Each one of those calculations are
20 independent, so I can't answer that question with any
21 certainty.

22 Q Okay. Does increasing property values within the City
23 affect the City's revenue in any way?

24 A No. It will increase or decrease the actual rate for
25 that unit.

1 Q Okay. You know, a few moments ago you mentioned a
2 number of services that people outside the City limits
3 may want that the City provides, such as parks, fire,
4 and so on, right?

5 A (The witness nodded head.)

6 Q Could you answer verbally?

7 A Yes. Sorry.

8 Q Thank you.

9 So is the City required to provide those
10 services to people outside the City limits?

11 A Only if they're annexed, or if there's an agreement
12 with another unit of government to provide those
13 services.

14 Q And you also mentioned the City derives revenue from
15 income taxes. How is that income taxes assessed?

16 A Income taxes in the State of Indiana are based on
17 where you certify you lived on January 1st of the
18 current year, and that's how the State then tracks
19 those. So if you say you lived -- and they track it
20 whether it's inside a corporate boundary or not.

21 So if on January 1 I say I live in Monroe County
22 Non-City, then the County collects the income taxes
23 that I contribute over that time period.

24 Q Is there a different income tax rate for the County
25 versus the City?

1 A Local income tax?

2 Q Correct.

3 A No, it's applied directly to everybody.

4 Q So when the City annexes a surrounding area, that has
5 the effect of making the property taxes and income
6 taxes associated with that area go to the City; is
7 that right?

8 A Yes.

9 Q Okay. How does that affect the taxes that go to other
10 governmental units?

11 A That's a complicated question because there's
12 different statutory requirements on the various taxes
13 of how those get collected. So it's on a case-by-case
14 basis.

15 As an example, the County would get to continue
16 to keep their current levy, so it doesn't have an
17 impact on them.

18 It would reduce some taxes, so local income tax,
19 obviously, would change.

20 Streets and roads, those get allocated by lane
21 miles. Those would move from the City to the County.

22 It wouldn't change fire protection. That law
23 got changed a few years back.

24 So those are some examples.

25 Q Okay. Does that affect schools or libraries?

1 A I believe it does, yes.

2 Q So, as you know, the City is currently trying to annex
3 some surrounding areas. It's referred to, I think, as
4 Areas 1A through Area 5; is that correct?

5 A That's correct.

6 Q If those areas were annexed, how would that affect the
7 City's taxes, tax revenue?

8 A The tax rate would stay the same. We would collect
9 additional revenues, property taxes, and then local
10 income tax, and then some of the other taxes that I've
11 mentioned, we would get an increase in those, as well
12 as the expenses associated with providing those
13 services.

14 Q Approximately by how much would the City's tax revenue
15 go up?

16 A I think the total revenue estimate was about
17 \$13 million a year, inclusive of all the various taxes
18 that I've talked about.

19 Q And how would annexing those areas affect the amount
20 of taxes that the residents end up paying?

21 A Again, that would have an impact on a case-by-case
22 basis. And we did a property-by-property analysis of
23 what those impacts would be, and what we found is some
24 people would go up, some people would go down, and
25 some people wouldn't change.

1 Q Well, I think I only have one more question for you:
2 Are there any answers given today you need to go back
3 and correct?

4 A I don't believe so.

5 Q Okay.

6 MR. BARTA: Well, I am done with my questions.

7 MR. ROUKER: Could you give us maybe just a
8 couple of minutes to chat independently, and then
9 we'll let you know if we have any redirect. Is that
10 okay?

11 MR. BARTA: Absolutely. Take a five-minute
12 break?

13 MR. ROUKER: What time do we have?

14 MR. UNGER: 9:26.

15 MR. ROUKER: Okay.

16 Let's -- 9:32 we'll try to check in with you or
17 just be back here.

18 MR. BARTA: Sounds great. Thanks.

19

20 (AT THIS TIME THERE WAS A BRIEF RECESS TAKEN,
21 AFTER WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)

22

23 REDIRECT EXAMINATION,

24 QUESTIONS BY MR. ROUKER:

25 Q Mr. Underwood, I'm going to ask you a couple of

1 questions quickly on redirect here.

2 You've testified as to some sources of the City
3 of Bloomington's General Fund revenue. What
4 percentage of the City's General Fund revenue is
5 generated by local income tax and property taxes?

6 A Approximately 80 percent.

7 Q What portion of the City's General Fund revenue is
8 generated by alcohol and beverages taxes?

9 A Very minimal.

10 Q You also talked a little bit about assessed value and
11 the levy. What is the formula for the City's growth
12 quotient to compute the City's levy?

13 A That's a statewide formula that is set in statute that
14 is calculated by the State on an annual basis, and it
15 is applied to every unit of government in the same
16 fashion. So essentially we all get the same growth
17 quotient each year.

18 Q Thank you.

19 Switching topics again, does annexation
20 inevitably impact the taxes of other local government
21 units?

22 A It may, and you can find the impact on overlapping
23 units of government in the fiscal plan.

24 Q Are you referring to the City's fiscal plan
25 specifically?

1 A Yes.

2 Q You also testified that the City is not required to
3 provide services outside of its boundary; is that
4 correct?

5 A That's correct.

6 Q Just clarifying, would you say that dense development
7 just outside the City's boundary affects municipal
8 services?

9 A Yes.

10 Q How so?

11 A It increases demand for those services.

12 Q Would you say that the increased demand for services
13 has a fiscal impact on the City of Bloomington?

14 A Yes, increases the expenses and costs of those
15 programs.

16 MR. ROUKER: That's all.

17 MR. BARTA: I have no further questions.

18 THE WITNESS: Thank you, all. Have a great day.

19 MR. ROUKER: Thanks, Jeff.

20 THE WITNESS: Uh-huh.

21 MR. UNGER: Thank you, Jeff.

22 MR. ROUKER: We will read and sign. Send the
23 transcript to me for signature.

24 MR. BARTA: I will take a full-size E-Tran
25 transcript.

1 MR. ROUKER: I will take a full-size PDF
2 transcript.

3
4
5 (Deposition proceedings conclude at
6 9:45 a.m.)
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25

1 STATE OF INDIANA)
) SS
2 COUNTY OF MONROE)

3
4 IN THE MONROE COUNTY CIRCUIT COURT

5 CITY OF BLOOMINGTON,)
)
6 Plaintiff,)

7 -v-)

8 CATHERINE SMITH, in her)
 official capacity as)
9 Monroe County Auditor,)

10 Defendant,)

11 and)

12 STATE OF INDIANA,)

13 Intervenor.)

CAUSE NOS.: 53C06-2203-PL-000608
53C06-2203-PL-000609
53C06-2203-PL-000610
53C06-2203-PL-000611
53C06-2203-PL-000614
53C06-2203-PL-000615
53C06-2203-PL-000616

14 I, JEFFREY UNDERWOOD, state that I have read the
15 foregoing transcript of the testimony given by me on
16 July 25, 2023, at my deposition;

17 That said transcript constitutes a true and correct
18 record of the testimony given by me at said deposition
except as so indicated on the errata sheet(s) provided
herein.

19 FURTHER THE DEPONENT SAITH NOT

20
21 _____
JEFFREY UNDERWOOD

22
23 Dated: _____
24
25

1 STATE OF INDIANA)
) SS:
2 COUNTY OF MONROE)

3 I, Barbara Ann Bourbina, a Notary Public in and
4 for said county and state, do hereby certify that
5 JEFFREY UNDERWOOD, the deponent herein was by me first
6 duly sworn to tell the truth, the whole truth and
7 nothing but the truth in the aforementioned matter;

8 That the foregoing deposition was taken on
9 behalf of the Intervenor, Office of the Attorney
10 General, State of Indiana, at Bloomington City Hall,
11 in Bloomington, Monroe County, Indiana, on the 25th
12 day of July, 2023, pursuant to the Applicable rules;

13 That said deposition was taken down in
14 Stenograph notes and afterwards reduced to typewriting
15 under my direction, and that the typewritten
16 transcript is a true record of the testimony given by
17 said deponent;

18 And that the deposition upon oral examination
19 was taken down in Stenograph notes and afterwards
20 reduced to typewriting under my direction and
21 thereafter presented to said witness for signature;

22 I do further certify that I am a disinterested
23 person in this cause of action; that I am not a
24 relative or attorney of any of the parties.

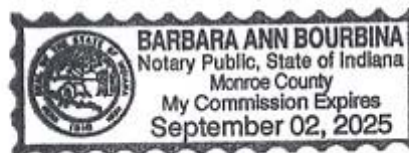
25 IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my notarial seal on this 8th day of
August, 2023.

Barbara Ann Bourbina

Barbara Ann Bourbina, Notary Public

Commission Number: NP704124

My Commission Expires:
September 2, 2025



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