

IN THE  
INDIANA COURT OF APPEALS

CASE NO. 41A05-0912-CV-00684

CITY OF GREENWOOD, et al.	)	Appeal from the
	)	Johnson Superior Court
	)	
Appellants,	)	
	)	Trial Court Cause No.
v.	)	41D01-0809-PL-00066
	)	
TOWN OF BARGERSVILLE, et al.	)	The Honorable Thomas K. Milligan,
	)	Special Judge
	)	
Appellees.	)	

**BRIEF OF AMICI CURIAE INDIANA MUNICIPAL MANAGERS ASSOCIATION,  
TOWN OF EATON, TOWN OF WHITESTOWN AND TOWN OF YORKTOWN**

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## **INTEREST OF THE AMICUS CURIAE**

Amicus Curiae the Indiana Municipal Managers Association (the "IMMA") is a non-profit association whose membership includes town managers who are charged with managing the day-to-day affairs of Indiana's towns (the "Towns"). The Town of Eaton, Town of Yorktown and the Town of Whitestown are "towns" as defined by Ind. Code § 36-1-2-21. Prior to its modification, Ind. Code § 36-4-3-9 (the "Consent Statute") allowed cities to unilaterally prevent the Towns from annexing property within three miles of the cities' borders. The General Assembly modified that statute in 2005 so as to allow landowners in the annexing territory to themselves consent to the annexation regardless of the wishes of a neighboring city. Many of the Towns are contemplating or may contemplate the annexation of territory within three miles of these cities. The Court's opinion in this matter may therefore directly affect the Town's ability to annex this property and the procedures and the means by which consent to that annexation may be obtained by members of the IMMA.

## SUMMARY OF ARGUMENT

A primary purpose of Indiana annexation law is to align municipal services with municipal boundaries. Such an alignment ensures that municipal tax revenue flows to the municipality that provides service to the landowners paying taxes. In this appeal, the landowners have agreed to allow annexation to go forward in exchange for receiving sewer service from Bargersville. The landowners do not doubt that they have consented to annexation and Greenwood's intrusion into Bargersville's annexation upsets the public policy of having municipal boundaries matched to municipal services.

The Consent Statute was added in 2005 to limit the ability to halt annexation by the Towns. To construe the statute as narrowly as Greenwood suggests would prevent the Towns from carrying out the statutory purpose of allowing annexation when landowners consent to it. The Towns and the IMMA's members should not be burdened with the hyper-technical requirements Greenwood would impose when no landowner has disputed that they gave consent. Allowing Greenwood to construe the Sewer service agreements *against* Bargersville, a party to them, puts the Towns in the position of having hundreds of their sewer services agreements subject to review by a nearby city and opens the Towns to extensive litigation if and when the Towns opt to annex property within three miles of a city's border. This control by a city over the Towns' right to annex is exactly the result the General Assembly intended to prevent in amending the Consent Statute.

This result threatens to prevent the Towns from carrying out annexations of areas where they have established sewer service. The risk that a city could later poach territory despite the terms of the sewer service agreements would discourage towns throughout the state from extending services to those who need them.

## ARGUMENT

### **I. The Public Policy Underpinnings of Indiana's Annexation Law Support Allowing A Town To Annex Territory To Which It Provides Municipal Services.**

As Indiana annexation law has evolved with time, the public policy underpinnings of annexation have remained fundamentally the same – to enable a municipality to expand its boundaries in a planned and orderly fashion, and to ensure that the residents of the entire municipality receive the package of capital and non-capital municipal services in a uniform manner. *See Bradley v. City of New Castle*, 764 N.E.2d 212, 215 (Ind. 2002) (citing *Rogers v. Mun. City of Elkhart*, 688 N.E.2d 1238, 1242 (Ind. 1997)). Property within the municipal boundaries is assessed municipal property taxes to pay for municipal services, and the municipal government receives revenue in order to pay for those services. Despite multiple amendments by the Legislature over time, these fundamental premises of public policy have remained essentially intact. The boundaries of the municipality imperfectly correspond to the municipal service area, and Ind. Code § 36-4-3-1, *et seq.* (the “Annexation Code”) provides the statutory basis for municipalities to adjust boundaries and service area.

In a perfect world, municipal boundaries would simultaneously define both the people who pay municipal taxes and those who receive the municipality's services. While the real world is less than perfect, the most efficient outcome results when municipal revenues are matched with the services the municipality provides. That circumstance can only occur when the municipality has the opportunity to annex the property it already serves.

By intervening to stop annexation by a town providing services, cities in Greenwood's position effectively seek to separate the provision of municipal services from the collection of revenue. Any action that separates municipal revenues from municipal services creates a slippery public policy slope that should be navigated with extreme care. This is particularly true in

economic environments where municipal revenues continue to dwindle, giving cities like Greenwood temptation to seek revenues that are not encumbered by a requirement to provide services.

The Towns – like Bargersville – maintain sewer service agreements that not only waive the right to remonstrate, but surrender any other right to object to annexation by the Towns. To ask the Court to interpret these sewer service agreements as providing anything other than consent to annexation by the municipality providing the sewer service runs directly counter to this sound public policy. Greenwood’s arguments create a public policy scenario where out-of-town customers receive the benefit of capital municipal services from a town while the revenues paid by those taxpayers go to a city despite the landowners promise to allow annexation by the town. At the same time, the town’s municipal taxpayers could later be put in a position to pay debt for facilities needed to provide service to the out-of-town customers who cannot be annexed under Greenwood’s view. This dispute demonstrates that situation, as Greenwood’s attempted annexation of the same territory already served by Bargersville clearly seeks to enable Greenwood to capture municipal revenues from areas to which Bargersville provides capital municipal services.

This type of situation creates confusion that is not necessary or beneficial to the public interest. To interpret a sewer service agreement that waives any right to object to annexation as providing anything other than consent to annexation by the municipality providing the capital municipal service creates a ridiculous public policy outcome, where:

- out-of-town customers of the town receive the benefit of municipal services while being excused from their obligations under the sewer service agreements;

- municipal taxpayers have the risk of later becoming liable for debt used to create the facilities needed to provide the sewer service; *and*
- another municipality is allowed to capture revenues resulting from the development of the annexed territory even though that development was only made available by the municipal services provided by the town unable to annex the property.

Indiana statutes should not be construed to reach absurd results. *In re J.J.*, 912 N.E.2d 909 (Ind. Ct. App. 2009). Because Greenwood's construction would cause this absurd result that would impede sewer service provided by towns throughout Indiana, the Court should not adopt Greenwood's self-serving construction of the Consent Statute and the sewer service agreements.

## **II. The Consent Statute Limits The Rights Of Cities To Interfere With Towns' Sewer Service Agreements When No Landowner Disputes That Consent Was Given.**

Prior to 2005, the Consent Statute required the Towns to obtain the consent of a nearby city in order to annex land within three miles of the city's borders. The General Assembly modified the Consent Statute to allow towns to annex territory within three miles of a city by obtaining the consent of the landowners in the annexation area. The Consent Statute therefore reflects a public policy in which the General Assembly decided that a town that delivers capital municipal services must have the opportunity to annex the area owned by those who agree to receive those services.

As a matter of public policy, it is clear that the Legislature *took away from cities* what was previously a unilateral authority. The Consent Statute no longer requires a town to negotiate a definition of "consent" with a nearby city. Therefore, as a matter of public policy, it appears



that the Greenwood's arguments actually seek to *reverse* the intent of the Legislature, and to *restore* to cities the power that the General Assembly had already taken away.

The public policy implications of this effort seem both simple and clear. The General Assembly removed the city's unilateral authority to block an annexation by a nearby town, and Greenwood seeks to restore the cities' effective authority to veto the town's annexation by narrowly and self-beneficially parsing the definition of "consent."

In order to achieve this goal, Greenwood seeks to appoint itself as arbiter of the terms of the sewer service agreements between Bargersville and landowners receiving the capital municipal services of Bargersville. Greenwood is not a party to those sewer service agreements. More importantly, the landowners subject to those agreements have not remonstrated against Bargersville over the terms of their sewer service agreements. The public policy implications of allowing third parties to interpret sewer service agreements are problematic. In this example, the principles of Occam's razor presents a viable conceptual premise for sound public policy. Occam's razor is sometimes stated as "entia non sunt multiplicanda praeter necessitandum," which translates as that "entities must not be multiplied beyond necessity." *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003).

What public policy advantage is gained by enabling/allowing a third party to interpret the terms of an agreement? Greenwood's argument puts the Towns in the position of having hundreds of their sewer services agreements subject to review by a nearby city and opens the Towns to litigation if and when the Towns opt to annex property within three miles of a city's border. This control by a city over the Towns' right to annex is exactly the result the General Assembly intended to prevent in amending the Consent Statute.

In the case at hand, the landowners received capital municipal sewer service from Bargersville, and Bargersville is carrying out its obligations under those agreements by providing those services. At the same time, the landowners are meeting their obligations not to object to or interfere with the annexation of their property as provided in the sewer service agreement. The annexation by Bargersville provides for planned and orderly growth. Violation of the tenets of Occam's razor by allowing Greenwood to intervene in defining the terms of the sewer service agreement allows Greenwood to exert an advantage to which it is not entitled, as a matter of public policy. In short, it is difficult to imagine any public good that can result from allowing an outside party to derive benefit from a self-serving interpretation of the terms of a sewer service agreement.

Moreover, allowing a city to interfere with the terms of the Towns' sewer service agreements upsets the Towns' settled expectations after expending their capital to extend municipal services to landowners outside its boundaries, something the General Assembly expressly encourages. *See* Ind. Code § 36-9-22-2 Like the Towns, Bargersville has extended capital municipal sewer service to an area within three miles of a city's boundary, and in so doing, Bargersville drafted and executed sewer service agreements with those landowners whereby the landowners would not object in any fashion to a future annexation by Bargersville. Enforcing those agreements as consent to annexation carries out the General Assembly's stated policy of encouraging municipalities to provide services where none exist and enforces the settled expectations of the Towns and the landowners.

Greenwood, however, parses the terms of the sewer service agreements to obstruct the fundamental and primary purpose of the sewer service agreements. If Greenwood's self-serving definition of "consent" is accepted by the Court, the effect is to nullify the responsibilities of the

landowner to Bargersville, and to enable Greenwood to block annexation of an area where another municipality has provided capital municipal services. More importantly, Greenwood's overlapping annexation would enable Greenwood to capture municipal revenues from an area that was developed largely as a result of Bargersville's capital municipal services. This result threatens to prevent the Towns from carrying out annexations of areas where they have established sewer service. The risk that a city could later poach territory despite the terms of the sewer service agreements would discourage towns throughout the state from extending services to those who need them.

That result is particularly true given Greenwood's belief that no consent can be given in advance under the Consent Statute. If Greenwood argument is correct, the Towns could never include "consent" to annexation as a term in a contract with landowners and could never include consent as a term in exchange for providing municipal services. Nothing in the Consent Statute compels this result. But if that requirement is read into the statute, no town would willingly provide municipal services to unincorporated territory anywhere near a city that could later poach that territory without the obligation to provide services to it. Greenwood's argument therefore places Towns and landowners back into the pre-2005 world for all practical purposes.

The simple fact is that Bargersville (and the Towns) pursued a solid public policy. It agreed to extend municipal sewer service to the annexation area in exchange for a future amicable annexation which would not be disputed by the landowners, thus assuring the planned and orderly growth of the town. (The linguistic basis of this amicable annexation was expressly noted by the trial court in explaining that the antonym of the word "consent" is "objection," which is exactly what the sewer service agreements surrender.) Greenwood's intervention attempts to disrupt this basic public purpose for the its goal of intercepting the property tax and

other revenues which accrue as a result of the planned and orderly growth made possible by Bargersville's extension of capital municipal services. Greenwood's intervention is entirely self-serving. There has been no other public benefit alleged as to Greenwood's purpose in this intervention.

Finally, the Annexation Code contains four types of annexation, described in sections 3, 4, 5 and 5.1. In each of these four sections, it is possible to have the consent of all or some of the landowners. For example, in cases where provisions of Ind. Code § 36-4-3-8 are applied (affording special terms for the annexation), the annexation must be performed under Ind. Code § 36-4-3-3 or 4, regardless of whether landowners have consented in any form to those terms. In Ind. Code § 36-4-3-5 and 5.1, the statute specifically used the terms "petition" and "signed." Ind. Code § 36-4-3-9 makes no such specific stipulation. The plain language of Ind. Code § 36-4-3-9 does not require a petition, and certainly makes no mention of affording the nearby, third-party city a role in interpreting the documents by which the town establishes its own public policy.

Again, as a matter of public policy, Greenwood seeks to insert itself into a position of authority to interpret the terms of Bargersville's sewer service agreement for the express intent of benefiting itself. In benefiting itself, Greenwood would deny Bargersville the opportunity to annex an area where Bargersville has already extended valuable capital municipal services. The availability of Bargersville's capital municipal sewer services has a clear and positive impact on the value of property served, therefore, Greenwood would benefit from enhanced property tax revenues (resulting from the increase in property value) resulting from services that it does not provide. To aggravate the matter further, Greenwood seeks to annex territory served by

Bargersville for the purpose of collecting revenues resulting from the development that occurred as a result of Bargersville's extension of capital municipal services.

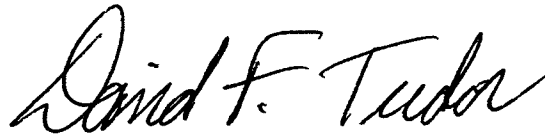
It would not be an exaggeration to say that the long-term public policy implications of Greenwood's argument are potentially disastrous. Using Greenwood's arguments, cities which are desperate for additional revenues can simply seek to re-interpret the sewer service agreements between nearby towns and landowners in a manner that allows the cities to annex areas already served by the municipal infrastructure of those nearby towns. In so doing, the cities would relieve themselves of the cost of providing the municipal capital services which the town has already provided to those landowners, thus reducing the cost of the annexation to the city. At the same time, such an annexation by a city affords the *city* the enhanced property tax and other municipal revenue streams that result from the *town's* extension of municipal capital services. In periods of constrained municipal revenues, such public policy aberrations are more likely. But in all of these cases, the prospects of planned and orderly growth of municipalities would suffer greatly under Greenwood's argument.

There is no reference in the statute that anticipates or allows the intervention of a third party that is not a landowner in the annexation area. The public policy implications of the statute are simple and direct in that the issue of annexation lies between the municipality seeking the annexation and the landowners of the annexation territory.

**CONCLUSION**

The Amici respectfully requests that the Court affirm the summary judgment entered in favor of Bargersville and against Greenwood.

Respectfully submitted,

A handwritten signature in black ink that reads "David F. Tudor". The signature is written in a cursive, flowing style.

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**WORD COURT CERTIFICATE**

I verify that the foregoing reply contains no more than 4,200 words, as determined by the word processing system used to prepare this reply (Microsoft Word XP).

David F. Tudor

## CERTIFICATE OF SERVICE

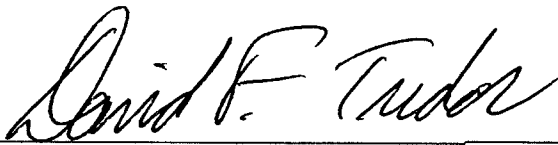
The undersigned attorney hereby certifies that a copy of the foregoing has been served this 8th day of March, 2010, by depositing a copy of the same in the United States Mail, first-class postage prepaid, and properly addressed to the following counsel of record:

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