

certain towns were lobbying the legislature for a statutory exception to a city's ability to veto a town's effort to annex land close to the city's borders (when 51% of the landowners consent in writing to the town's annexation plan). At the same time, Bargersville negotiated sewer service agreements favorable to real estate developers who planned to subdivide their land into multiple lots for residential subdivisions. Included in each sewer service agreement was a remonstrance "waiver" provision and, in at least one case, a purported blanket "consent" to any future annexation.

3. Bargersville now relies on these blanket remonstrance waivers to claim that the *current landowners* in the proposed annexation territory have consented to Bargersville's annexation proposal – a proposal that most landowners never have been asked to approve, and that the developers had never seen when they signed their remonstrance waivers. This effort to disenfranchise current landowners contravenes both the terms and intent of the amended annexation statute, which requires that landowners be given a real and effective choice whether to approve or disapprove (*i.e.*, consent to) a particular annexation's terms and effects. Furthermore, as a matter of law, all that Bargersville could obtain prior to the introduction of its annexation ordinance is a waiver of the right to remonstrate, not an affirmative blanket consent to any undefined, future Bargersville annexation.

4. Recognizing its inability to rely on the "waivers" as consents, Bargersville went back to the current landowners in the territory to try and obtain direct consents to the annexation. This effort failed. Bargersville obtained new, broad consents for only thirty-nine (39) of the over nine hundred (900) parcels in the Territory and one eight-parcel request for annexation. With less than five percent (5%) of the landowners consenting to Bargersville's annexation, Bargersville must rely on its "remonstrance waivers equal annexation consents" argument.

5. Greenwood has already initiated a valid annexation process, in compliance with applicable law. Greenwood has invested substantial resources in sewer infrastructure in the annexation territory and has engaged in substantial planning to annex and provide services to that territory. Landowners have the right either to consent or object to the Bargersville proposal, with knowledge of the more favorable alternative provided by Greenwood's annexation.

6. Bargersville has shown its intention to proceed with its attempt to evade the annexation law by approving and implementing, as early as September 26, 2008, an annexation ordinance. Bargersville should not be permitted to proceed with an annexation effort that is contrary to law, and that would inflict irreparable harm on the landowners and on Greenwood.

The Parties

7. The Town of Bargersville ("Bargersville") is a municipality located in Johnson County, Indiana. Bargersville is a Town pursuant to I.C. § 36-4-1-1.

8. Plaintiff the City of Greenwood ("Greenwood") is a municipality located in Johnson County, Indiana. Greenwood is a Class three city pursuant to Ind. Code § 36-4-1-1.1. Bargersville currently seeks to annex significant territory within three miles of Greenwood's corporate limits.

9. Plaintiffs Felson and Jane Bowman (the "Bowmans") are husband and wife and residents of Johnson County, Indiana. The Bowmans own real estate in Johnson County, Indiana that Bargersville seeks to annex.

10. Plaintiff Paret LLC ("Paret") is a domestic limited liability company, owned by Jerry Engle. Paret owns real estate in Johnson County, Indiana that Bargersville seeks to annex,

and for which a sewer service agreement was signed by the developer of the land prior to Paret's ownership and without Paret's consent. A true and correct copy of that sewer service agreement is attached as Exhibit A.

11. Plaintiff Zinkan & Barker Development Company, LLC ("Zinkan & Barker") is a domestic limited liability company. Zinkan & Barker own real estate in Johnson County, Indiana that Bargersville seeks to annex.

The Proposed Annexation Territory

12. Bargersville currently seeks to annex approximately two thousand two hundred fifty three (2,253) acres of land along North State Road 135 (the "Territory"). A true and correct map showing the Territory and its relation to North State Road 135 is attached as Exhibit B.

13. Greenwood has invested substantial land use and utility planning efforts in the Territory. A large portion of the Territory is located within three miles of Greenwood's corporate limits. The Territory's geographical relationship to North State Road 135 and close proximity to Greenwood make the Territory ideal for coordinated economic development and efficient municipal service by Greenwood. The Territory will consist of mixed land uses ranging from residential to light commercial. As a result, Greenwood already provides, and has planned to provide, utility and other municipal services to the Territory.

The Citizens' And Greenwood's Objections To Bargersville

14. Recognizing the attractiveness of the Territory due to its proximity to North State Road 135 and Greenwood, Bargersville desired to annex the Territory to broaden its tax base. In 2004, Bargersville approached Greenwood to discuss the potential for Bargersville to annex

certain territory, including the Territory at issue. Under the annexation laws existing at that time, Bargersville could not annex the Territory without Greenwood's consent.

15. For many reasons, including the close proximity of the Territory to Greenwood's city limits, Greenwood declined to consent to Bargersville's proposed annexation.

16. In addition, a large contingent of citizens within the proposed annexation Territory publicly objected to any annexation proposal by Bargersville.

17. Bargersville recognized that, under then-existing annexation law, it could not annex the Territory.

**Bargersville's Plan To Annex The Territory
Despite The Landowners' And Greenwood's Objections**

18. Despite the landowners' and Greenwood's objections, Bargersville developed a plan to annex the Territory.

19. On information and belief, certain towns were lobbying the legislature to make changes to the annexation laws, specifically for exceptions to the then-existing requirement that a town, seeking to annex territory within three miles of a city's corporate limits, obtain that city's consent.

20. In 2005, the Indiana General Assembly amended the annexation laws to provide limited exceptions to the city-consent requirement. One such exception provides that a town need not obtain the consent of the city if fifty-one percent (51%) of the landowners in the proposed annexation territory consent to the proposed annexation. *See, e.g.*, I.C. § 36-4-3-9. Under this exception, each parcel of land represents one vote. Thus, if one person owns three

parcels, that owner gets three votes on the annexation proposal. The size and/or value of each parcel is not a factor in determining how many votes any owner receives. *See* I.C. § 36-4-3-9(c).

21. Following the 2005 changes to the annexation laws, Bargersville developed a plan to claim it had acquired the requisite fifty-one percent (51%) landowner consent, *without having told landowners the actual terms of its annexation proposal*. Bargersville targeted real estate developers in the Territory (both before and after the amendments) and obtained sewer service agreements with those developers. In those agreements, Bargersville included a remonstrance “waiver” that would run with the land. A true and correct copy of an example of a remonstrance waiver provision in one of the sewer service agreements is found in Exhibit C. Ex. C at 2. In one agreement, Bargersville added purported unlimited advance “consents” to any annexation proposal that Bargersville might propose in the future. As the land was subdivided by the developers, the number of parcels multiplied, thereby multiplying the “waivers.”

22. Under Bargersville’s theory, whether a current landowner objects to a town’s proposed annexation plan is immaterial. Bargersville’s annexation ordinance is premised on the position that the 51% count for city-consent-avoidance can be made years before any annexation plan is on the table, like a proxy or blank check, through a remonstrance waiver.

23. With its theory in mind, Bargersville implemented its plan. Bargersville negotiated sewer service agreements with developers it knew intended to develop large tracts of land into residential subdivisions. Bargersville included in the sewer service agreements broad remonstrance waivers. Bargersville then waited until a sufficient number of lots had been subdivided to create a number it believed met the 51% threshold.

24. In late 2007, Bargersville introduced an ordinance to annex the Territory (the “Ordinance.”) A true and correct copy of the Ordinance is attached as Exhibit D. The Ordinance incorrectly recites that “at least fifty-one percent (51%) of the owners of land in the Annexation Territory have consented to annexation by Bargersville.” Ex. D at 1. Without its sewer service agreement “waiver” provisions, Bargersville has far less than the required 51% consent of current landowners to proceed with annexation absent Greenwood’s consent. Indeed, on its best day, absent the overly broad remonstrance “waiver,” Bargersville has the consent of *less than five percent (5%)* of current landowners in the Territory.

25. Lacking confidence in its invalid blanket “waiver” forms, Bargersville set out to determine whether the public sentiment in the Territory had changed since 2004 with respect to annexation by Bargersville. In part, Bargersville prepared and presented a broad catch-all document it presented to certain landowners that purported to consent to annexation, request annexation, and even provide Bargersville a “power of attorney” with respect to all future annexation matters. A true and correct copy of the catch-all document is attached as Exhibit E. In total, Bargersville was able to obtain the signatures for only thirty nine (39) of the more than nine hundred (900) parcels in the Territory.

26. Bargersville also sent representatives into the Territory to obtain signatures on a petition for voluntary annexation. Bargersville was able to obtain petition signatures for only eight of the parcels in the Territory.

27. Bargersville even went so far as to change the language of its sewer service agreements to include affirmative “consent” language to any future Bargersville annexation.

However, Bargersville was able to obtain only one signature on such an agreement for a parcel in the Territory.

28. Recognizing the landowners' refusal to become a part of Bargersville, Bargersville approached Greenwood again in 2008 to request its consent to the annexation. As in 2004, Greenwood declined to provide its consent.

29. Despite the landowners' and Greenwood's refusal to consent, Bargersville has pushed forward with its legally deficient annexation plan. Recognizing that Greenwood was in the process of annexing the Territory and additional land near Greenwood, Bargersville decided it would try to rush its own annexation. To do so, Bargersville needed to complete the annexation in 2008 because, under I.C. § 36-4-3-7(b), an annexation cannot become effective in the year preceding a decennial census. Thus, on information and belief, Bargersville knew that if it did not complete its annexation in 2008, landowners would have an informed choice, and would choose Greenwood.

30. Given the time pressures, Bargersville went forward with its first public hearing on the Ordinance on August 27, 2008. Pursuant to I.C. § 36-4-3-2.1(c), Bargersville must wait at least thirty (30) days from the public hearing on an annexation ordinance before it can adopt the ordinance.

31. On information and belief, Bargersville intends to adopt its annexation ordinance as early as September 26, 2008. This action will initiate a set of procedures that will be contrary to law and will, unless enjoined, impose substantial, irreparable harm on plaintiffs and landowners in the territory.

Count I – Declaratory Judgment

32. Plaintiffs incorporate by reference, as if fully restated herein, paragraphs 1 through 31 above.

33. A real and actual controversy exists between the parties.

34. Plaintiffs' property and other rights currently are and will be affected by the Ordinance.

35. The Ordinance's finding that fifty-one percent (51%) of the owners of land in the Territory have consented to Bargersville's proposed annexation plan is factually false, contrary to statutory annexation law, and legally invalid.

36. The Ordinance's statement that the "effective date of this annexation shall be as soon as allowed by law" is void for vagueness and contrary to law.

37. Bargersville's remonstrance "waiver" provision does not constitute legal or binding consent to any annexation of the Territory by Bargersville.

38. Based on the small number of valid expressions of consent by landowners, Bargersville must obtain Greenwood's consent to the annexation plan in the Ordinance.

39. Greenwood has not consented to, and will not consent to, the annexation plan in the Ordinance.

40. Bargersville does not have legal authority to adopt or implement the Ordinance.

41. Landowners in the Territory are entitled to a choice between Bargersville and Greenwood.

WHEREFORE, Plaintiffs the City of Greenwood, Indiana, Felson and Jane Bowman, Paret LLC, and Zinkan & Barker Development Company, LLC, pray for entry of a judgment declaring that:

- (a) Bargersville's remonstrance "waiver" provision does not constitute a consent to Bargersville's plan to annex the Territory;
- (b) Bargersville has not obtained consent to annexation by fifty-one percent (51%) of the landowners in the Territory;
- (c) Based on the current signatures of landowners in the Territory, Bargersville cannot annex the Territory without the consent of Greenwood;
- (d) Greenwood has not consented to the annexation plan in the Ordinance;
- (e) For a consent to Bargersville's proposed annexation to be valid, it must be given in relation to the specific annexation plan contained in the Ordinance;
- (f) Any written consent by a landowner in the Territory to a future or undefined annexation plan does not comply with the annexation law and is invalid; and
- (g) The Ordinance is invalid and cannot be implemented.

Plaintiffs also request the Court award Plaintiffs their costs and all other appropriate relief for Plaintiffs.

Count II – Injunctive Relief

42. Plaintiffs incorporate by reference, as if fully restated herein, paragraphs 1 through 41 above.

43. Plaintiffs seek entry of a preliminary and permanent injunction prohibiting Bargersville and all persons acting in concert with it from taking any action to implement the Ordinance in 2008, including but not limited to: recording the Ordinance in any public record, publishing or making statements to landowners concerning their rights under the Ordinance,

conducting purported remonstrance proceedings under the Ordinance, or misrepresenting that any remonstrance waiver constitutes consent to Bargersville's annexation plan.

44. Absent entry of a preliminary and permanent injunction, Plaintiffs will be irreparably harmed.

45. Plaintiffs have no adequate remedy at law and have a reasonable likelihood of prevailing on the merits.

46. The irreparable harm to Plaintiffs absent the issuance of injunctive relief outweighs any threatened harm to Defendant that injunctive relief might cause. Indeed, Defendant's unlawful conduct necessitates the requested injunctive relief.

47. The public interest will be served by the grant of injunctive relief; such relief will preserve landowners' rights to choose and Greenwood's right to withhold consent to the proposed annexation.

48. As Greenwood is a governmental entity, no security is required by Ind. Trial Rule 65(C).

WHEREFORE, Plaintiffs the City of Greenwood, Indiana, Felson and Jane Bowman, Paret LLC, and Zinkan & Barker Development Company, LLC, pray for entry of the above-described declaratory judgment, and preliminary and permanent injunctive relief, for an award of costs, and for all other appropriate relief for Plaintiffs.

Respectfully submitted,



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