

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

COUNTY RESIDENTS AGAINST ANNEXATION,)
INC., et al.,)
)
Remonstrators,)
)
v.)
)
CITY OF BLOOMINGTON, INDIANA, et al.,)
)
Respondents.)

**RESPONDENTS’ MOTION TO REMOVE COUNTY RESIDENTS AGAINST
ANNEXATION, INC. AS A PARTY**

Respondents, the City of Bloomington, Indiana, *et al.* (collectively, “Bloomington” or “City”), by counsel, respectfully file this Motion to Remove County Residents Against Annexation, Inc. as a Party pursuant to Indiana Trial Rule 21(A), and in support, states as follows:

1. County Residents Against Annexation, Inc. (“CRAA”) is not a landowner in the annexation areas and is not a proper party in this case.¹
2. A “remonstrator's challenge to annexation is not a regular lawsuit, but rather a special proceeding that the General Assembly may control.” *Certain Martinsville Annexation Territory Landowners v. City of Martinsville*, 18 N.E.3d 1030, 1033 (Ind. Ct. App. 2014). Moreover, “[a]nnexation is a legislative function and becomes a question subject to judicial cognizance only upon review as provided by

¹ On February 23, 2023, the Court entered judgment in Bloomington’s favor on Count II of the Petition.

statute.” *Town of Lapel v. City of Anderson*, 17 N.E.3d 330, 332 (Ind. Ct. App. 2014) (quoting *City of Hobart v. Chidester*, 596 N.E.2d 1374, 1375 (Ind. 1992)). “The larger object of the annexation statute is, as it always has been, to permit annexation of adjacent urban territory.” *Bradley v. City of New Castle*, 764 N.E.2d 212, 215 (Ind. Ct. App. 2002).

3. For the reasons discussed below, (1) CRAA has not and could not bring a remonstrance in its own right, (2) CRAA cannot bring its purported representative action where CRAA has no members, and (3) even if CRAA could bring a representative action, the non-remonstrator individuals CRAA purports to represent lack standing to challenge Bloomington’s annexation of Area 1A and Area 1B.

4. The statutory framework for annexation “consists of three stages: (1) legislative adoption of an ordinance annexing of certain territory and pledging to deliver certain services within a fixed period; (2) an opportunity for remonstrance by affected landowners; and (3) judicial review.” *Town of Lapel*, 17 N.E.3d at 332. Only certain landowners have the right to seek judicial review, namely, those who timely file a petition seeking it.

5. The General Assembly has codified specific procedures on who may challenge a municipality’s annexation through the remonstrance process. *See* Ind. Code § 36-4-3-11 through Ind. Code § 36-4-3-15.7. A remonstrance petition signed by at least 51 percent but less than 65 percent of the owners of land authorizes an appeal of the annexation to the circuit court. Ind. Code § 36-4-3-11.3(c)(1). This remonstrance must be filed within 15 business days after the date the county auditor files the

certificate with the municipality as required by the Indiana Code. Ind. Code § 36-4-3-11(d). The statutory timelines for initiating a remonstrance proceeding are strictly applied. *See In re Petition to Annex into City of Jefferson*, 891 N.E. 2d 1157, 1162-63 (Ind. Ct. App. 2008) (finding trial court lacked jurisdiction to hear remonstrance when signed petitions were filed three days after the statutory deadline expired).

6. Two core principles of the annexation statutory framework are that to remonstrate against an annexation, a remonstrator needs to (1) be an owner of land within the area proposed to be annexed, and (2) timely file a remonstrance petition. CRAA fails on both grounds.

7. First, CRAA does not own any real estate at all, let alone any in Area 1A or Area 1B. Clements Dep., at 14:23-25.² Accordingly, CRAA did not file, and could not have filed, a remonstrance pursuant to the annexation statutes. *See* Ind. Code 36-4-3-11.3(c)(1) (limiting those that can bring a remonstrance to “owners of land”).

8. Margaret Clements, the President of CRAA and the driving force behind CRAA’s participation in this case, does not, herself, own any land in Area 1A or Area 1B and is not a remonstrator. *See Exhibits A and B to Petition for Appeal of Annexation, for Declaratory Judgment, and For Damages*; Clements Dep., at 6:15-17.

9. Second, CRAA does not have any members, and it is not a member driven organization. Clements Dep., at 14:20-22. Without members, CRAA cannot represent landowners in an associational capacity. *See Hunt v. Wash. Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977) (observing an association has standing to bring

² A copy relevant portions of Margaret Clements’ (President of CRAA) deposition transcript is attached to this Motion as Exhibit A.

suit as a representative of its members, even absent an injury to the association itself, when: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”); *see also Bd. of Comm’ of Union Cnty. v. McGuinness*, 80 N.E.3d 164, 170 (Ind. 2017) (assuming without deciding that associational standing is available in Indiana under the test articulated in *Hunt*); *see also City of Boonville v. American Cold Storage*, 950 N.E.2d 764, 772 (Ind. Ct. App. 2011) (landowners adjacent to annexed territory lacked capacity to challenge the annexation).

10. CRAA also may not bring this case in a representative capacity for landowners who otherwise could not bring a remonstrance action on their own.

11. The “Petition for Appeal of Annexation, for Declaratory Judgment, and for Damages” (“Petition”) differentiates the “Remonstrators” from those persons that CRAA purports to represent in this case. Specifically, the Petition alleges as follows:

COUNT I

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

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

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

Petition, p. 2 (emphases added).

12. These allegations declare that the Remonstrators and those who CRAA seeks to represent in this action are separate groups: (1) the “undersigned” Remonstrators are those owners of land in Area 1A or Area 1B who filed remonstrance petitions; and (2) those “other owners of land” that oppose annexation that CRAA seeks to represent in this case. Based on these allegations, CRAA seeks to be “representative” of non-parties who are not its members and who either did not file remonstrance petitions during the 90-day remonstrance period or did not join the petition for judicial review of the annexation.

13. If a landowner fails to sign a remonstrance petition within the applicable remonstrance period, that same landowner may not belatedly seek to join in the remonstrance lawsuit through a corporation’s “representative” lawsuit. *See Packard v. Shoopman*, 852 N.E.2d 927, 930 (Ind. 2006) (if not timely raised, claims regarding procedural prerequisites can be waived or procedurally defaulted).

14. Moreover, the remonstrance period is a proceeding that is overseen and certified by the county auditor during the applicable remonstrance window. The proceeding before this court is a separate proceeding that can only occur after the remonstrance period has ended and the auditor has certified the petitions – namely, it is an appeal of the annexation that is otherwise complete. *Bradley*, 764 N.E.2d at

215. If CRAA were permitted to represent landowners that did not remonstrate, the strict statutory requirements for filing a remonstrance would be meaningless. *See In re Petition to Annex into City of Jefferson*, 891 N.E. 2d at 1162-63.

15. Therefore, even if CRAA could bring a representative/associational action on behalf of its undefined and unnamed “other owners of land” who oppose annexation, those landowners it seeks to represent do not have standing to challenge the annexation because they failed to properly remonstrate during the remonstrance period. *In re Remonstrance Appealing Ordinance Nos. 98-004, 98-005, 98-006, 98-007 and 98-008, of Town of Lizton*, 769 N.E.2d 622, 634 (Ind. Ct. App. 2002). (“A party seeking relief from annexation must have the proper standing.”)

16. Pursuant to Trial Rule 21(A), the court may order parties dropped or added at any stage of the action and on such terms as are just and will avoid delay. Dropping CRAA from this case prior to trial will advance the swift and efficient administration of this case, as is required in annexation cases. *See* Ind. Code 36-4-3-12(2) (noting that in annexation cases, the court must, “without delay, enter judgment on the question of the annexation.”). Meanwhile, the Remonstrators themselves will still be able to represent the interests of those that remonstrated during the remonstrance period.

17. Accordingly, CRAA should be removed as a party from this case and should otherwise be prohibited from participating in the remonstrance trial as a party.

WHEREFORE, pursuant to Indiana Trial Rule 21(A), the City of Bloomington, Indiana, *et al.*, by counsel, respectfully requests that the Court remove County Residents Against Annexation, Inc. as a party from this case.

Respectfully submitted,

/s/Stephen C. Unger

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2024, that the foregoing document was filed and served upon the following person(s) electronically via the Indiana E-Filing System (IEFS):

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/s/Stephen C. Unger _____

Bloomington.Annexation

Clements, Margaret

8/4/2022

Full-size Transcript

Prepared by:

AMM
BME

Monday, August 7, 2023

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

3
4 IN THE CIRCUIT COURT OF MONROE COUNTY

5 CAUSE NO. 53C06-2203-PL-000509

6 COUNTY RESIDENTS AGAINST)
ANNEXATION, INC., et al.,)
7)
Petitioners,)
8)
-vs-)
9)
CITY OF BLOOMINGTON, INDIANA,)
10 et al.)
)
11 Respondents.)

12
13 DEPOSITION OF MARGARET CLEMENTS

14
15 The deposition upon oral examination of
16 MARGARET CLEMENTS, a witness produced and sworn
17 before me, Colleen Brady, Notary Public in and for
18 the County of Monroe, State of Indiana, taken on
19 behalf of the Respondents, at the offices of Bunger
& Robertson, 226 South College Avenue, Bloomington,
20 Monroe County, Indiana, on the 4th day of
21 August 2022, at 3:44 p.m., pursuant to the Indiana
22 Rules of Trial Procedure with written notice as to
23 time and place thereof.
24
25

1 (Time noted: 3:44 p.m.)

2 MARGARET CLEMENTS,
3 having been duly sworn to tell the truth, the whole
4 truth, and nothing but the truth relating to said
5 matter, was examined and testified as follows:

6

7 DIRECT EXAMINATION,

8 QUESTIONS BY ANDREW M. MCNEIL:

9 Q Please state your name for the record?

10 A My name a Margaret Clements.

11 Q Ms. Clements, my name is, as you know by now,
12 Andrew McNeil one of the attorneys for the City
13 of Bloomington.

14 Have you ever had your deposition taken
15 before?

16 A I don't think so.

17 Q You had the opportunity -- 'cause this is our
18 fifth deposition of the day.

19 A Yes.

20 Q Did you sit in on the other four?

21 A I did.

22 Q So you've at least seen the process.

23 A Yes.

24 Q I always try to start with the same basic ground
25 rules. So your job is to answer my questions as

1 completely and truthfully as you can.

2 Do you understand that?

3 A I do.

4 Q If you don't understand my question, will you
5 let me know?

6 A Yes.

7 Q If you need to take a break -- yours might be a
8 little bit long, I'm not sure. If you need to
9 take a break, use the restroom get something
10 else to drink, just will you let me know?

11 A Yes, I will. Thanks.

12 Q Do you know that you took an oath to tell the
13 truth today?

14 A I do.

15 Q Do you live in one of the annexation
16 territories?

17 A I do not.

18 Q So what is your involvement with this whole
19 remonstrance process?

20 A I think you're asking me how did I become
21 involved; right? And why; is that correct?

22 Q Well, ultimately. But go ahead. Answer those
23 questions.

24 A So well, first of all, I have kind of a big
25 heart. And I had become aware through some

1 involved in County Residents Against Annexation.

2 We needed a way to organize and to mobilize.

3 Q Who were the -- do you know who the current
4 officers are?

5 A Yes.

6 Q Who are they?

7 A I'm the president. I was elected president by
8 the board and the advisers, they asked me to
9 serve and I agreed. Sandy Sabbagh is the vice
10 president. Roger Stewart is the treasurer, and
11 Rhonda Gray, who was here earlier, is the
12 secretary. And there are two other officers who
13 don't -- or two other board members on the board
14 of directors who don't hold offices, but one is
15 Scott Ferris, and the other is Julie Thomas. So
16 there's six on our board of directors.

17 Q Could you please repeat the name of the
18 treasurer?

19 A The treasurer is Roger Stewart.

20 Q Thank you. Does County Residents Against
21 Annexation have members?

22 A No. We're not a member driven organization.

23 Q Does the County Residents Against Annexation own
24 any real estate?

25 A No.

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

3 I, Colleen Brady, a Notary Public in and for
4 the County of Monroe, State of Indiana at large, do
5 hereby certify that MARGARET CLEMENTS, the deponent
6 herein, was by me first duly sworn to tell the
7 truth, the whole truth, and nothing but the truth
8 in the aforementioned matter;

9 That the foregoing deposition was taken on
10 behalf of the Respondents, at the offices of Bunger
11 & Robertson, 226 South College Avenue, Bloomington,
12 Monroe County, Indiana, on the 4th day of August
13 2022, commencing at the hour of 3:44 p.m., pursuant
14 to the Indiana Rules of Trial Procedure;

15 That said deposition was taken down
16 stenographically and transcribed under my
17 direction, and that the typewritten transcript is a
18 true record of the testimony given by the said
19 deponent; and thereafter presented to said deponent
20 for her signature;

21 That the parties were represented by their
22 counsel as aforementioned.

23 I do further certify that I am a disinterested
24 person in this cause of action; that I am not a
25 relative or attorney of any party, or otherwise

1 interested in the event of this action, and am not
2 in the employ of the attorneys for any party.

3 IN WITNESS WHEREOF, I have hereunto set my
4 hand and affixed my notarial seal on this 22nd
5 day of August 2022.

6

7

8

<%25563,Signature%>
Colleen Brady

9

10

11 Seal, Notary Public
12 State of Indiana

My Commission Expires:
March 8, 2029

12

13 Colleen Brady
Commission No. NP073223

County of Residence:
Monroe

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