

STATE OF INDIANA)
)SS:
COUNTY OF HENDRICKS)

IN THE HENDRICKS SUPERIOR COURT
CAUSE NO.: 32 P02 14-PL-2

TOWN OF BROWNSBURG,)
)
Plaintiff,)
)
v.)
)
TOWN OF AVON,)
)
Defendant.)
)

FILED
HENDRICKS COUNTY
2011 JAN 18 PM 1:42
Judy Spence

**TEMPORARY RESTRAINING ORDER AND
ORDER FOR HEARING ON PRELIMINARY INJUNCTION**

This cause comes before the Court on the Verified Complaint For Injunctive and Declaratory Relief against the Town of Avon (“Avon”) (the “Complaint”) filed by the Plaintiff Town of Brownsburg (“Brownsburg”), and on Brownsburg’s Verified Petition for Temporary Restraining Order and Preliminary Injunction (“Petition”). The Court has reviewed Brownsburg’s Complaint against Avon and the Certificate of Attorney of Brownsburg’s attorney. It appears to the Court that the adoption and enforcement of Avon Ordinance Nos. 2010-13, 2010-14, and 2010-26 to annex the Magee and Farmland Reserve Parcels, or any other unincorporated parcels located within Lincoln Township of Hendricks County, by Avon will cause immediate harm as set forth in the Complaint and Petition, and will continue to do so unless restrained by order of this Court, and that immediate and irreparable injury, loss or damage will result to Brownsburg before further notice can be given and Avon can be heard in opposition. Immediate relief is necessary to maintain the status quo to prevent Avon from putting into effect the Avon Ordinance Nos. 2010-13, 2010-14 and 2010-26 or to annex the

Magee and Farmland Reserve Parcels, or any other unincorporated parcels located with Lincoln Township of Hendricks County, until a hearing on the preliminary and permanent injunction can be held.

The Court enters the following findings as required by Trial Rule 65, and **FINDS** that the relief requested in Brownsburg's Petition for a Temporary Restraining Order should be **GRANTED**.

FINDINGS OF FACT

1. In this action, Brownsburg challenges and seeks to enjoin Avon's pending attempts to interfere with and unlawfully annex certain parcels over which Brownsburg has already acquired preliminary and paramount jurisdiction under the Indiana Government Modernization Act (Ind. Code §§ 36-1.5-1-1 et seq.) (the "Act").

2. The parcels in dispute are located in an area within Lincoln Township commonly referred to as "Nitro Alley," more particularly described as the area between County Road 300 N on the north and the Washington-Lincoln Township line on the south, and between Raceway Road on the east and a north-south line located approximately one-quarter mile west of County Road 900 E on the west.

3. Brownsburg is a municipal corporation and political subdivision of the State of Indiana located wholly within Hendricks County, generally north of Avon. Brownsburg is located primarily in Lincoln Township but reaches into portions of Brown Township to the north and minimally into a portion of Middle Township to the west.

4. Avon is a municipal corporation and political subdivision of the State of Indiana located wholly within Hendricks County, generally south of Brownsburg. Avon is located

primarily in Washington Township but minimally reaches into a small area of Lincoln Township to the north.

5. As Brownsburg and Avon have experienced growth over the past decade, their respective boundaries have expanded through annexation and have gradually approached the Washington-Lincoln Township line.

6. In mid-2009, Brownsburg took steps with both Brown and Lincoln Townships to begin the process under the Act to reorganize and consolidate all three political subdivisions into the Town of Brownsburg.

7. The Indiana Government Modernization Act generally provides that two or more political subdivisions may reorganize and consolidate to deliver governmental services to its citizens more efficiently. I.C. § 36-1.5-4-1.

8. The Act “[g]rant[s] broad powers to enable political subdivisions to operate more efficiently” and “[e]ncourage[s] efficiency by and cooperation among political subdivisions.” I.C. § 36-1.5-1-1.

9. It also gives “full and complete authority for the...[r]eorganization of political subdivisions” and “shall be liberally construed to effect [its] purposes.” I.C. § 36-1.5-1-2 and -5.

10. “A political subdivision may exercise the powers granted under [the Act] to reorganize...without complying with the provisions of any other law, statute, or rule.” I.C. § 36-1.5-1-4.

11. The Act also has preemptive effect in that “to the extent [its] provisions...are inconsistent with the provisions of any other general, special, or local law, the provisions of [the Act] are controlling....” I.C. § 36-1.5-1-6.

12. The legislative body of a political subdivision may initiate a reorganization by adopting a resolution proposing a reorganization and naming the political subdivisions that would be reorganized. I.C. § 36-1.5-4-10(a).

13. The political subdivisions named in the initiating resolution may accept the invitation to reorganize by adopting a substantially similar resolution. I.C. § 36-1.5-4-13(a)(2).

14. Within 30 days after the last political subdivision adopts a substantially similar resolution to reorganize, the participating political subdivisions appoint a Reorganization Committee to develop a comprehensive plan of reorganization (the “Reorganization Plan”). I.C. 36-1.5-4-15.

15. Under the Act, the Reorganization Committee “shall” prepare a Reorganization Plan, which must include “[a] description of the boundaries of the reorganized political subdivision.” I.C. § 36-1.5-4-18(b)(2).

16. On August 7, 2010, Brown Township adopted Resolution No. 2010-03, proposing to reorganize and consolidate the Town of Brownsburg, Brown Township, and Lincoln Township (the “Reorganizing Entities”) under the Act.

17. On August 9, 2010, Lincoln Township adopted Resolution No. 2010-02, which was substantially similar to Brown Township’s resolution and effectively accepted the invitation to reorganize and consolidate.

18. On August 12, 2010, Brownsburg adopted Resolution No. 2010-30, which was substantially similar to Brown Township’s resolution and effectively accepted the invitation to reorganize and consolidate.

19. On or before September 12, 2010, the Reorganizing Entities formed the Reorganization Committee by appointing all members of the committee.

20. The Reorganization Committee has since met on several occasions to create various subcommittees and to begin working on the Reorganization Plan.

21. On October 14, 2010, the Avon Town Council introduced Ordinance No. 2010-14 to voluntarily annex approximately 93.8 acres of real property located within Lincoln Township, commonly known as 2811 N. County Road 900 E, Indianapolis, IN 46234, with an owner of record listed as Roy H. Magee, Trust (the "Magee Parcels"), more particularly described as follows:

Part of the Northwest Quarter of Section 30, Township 16 North, Range 2 East of the Second Principal Meridian, Hendricks County, Indiana, being more particularly described as follows:

Commencing at the northwest corner of said Northwest Quarter Section; thence South along the West line of said Quarter a distance of 340.00 feet to the north right-of-way line of the former Baltimore & Ohio Railroad (now CSX Transportation, Inc and abandoned), said point being the northwest corner of a tract of land in favor of Anna Lee Magee, Kenneth E. Magee and Raymond E. Magee as Co-Trustees of the Roy H. Magee Trust as described in Order of Quieting Title and recorded in Book 497, pages 2746-2748, Instrument No. 200400006435 in the Office of the Recorder of Hendricks County, Indiana and the POINT OF BEGINNING; thence Southeasterly along the north line of said tract of land a distance of 296.68 feet to a point on the west line of a tract of land conveyed to Roy H. Trust, recorded in Book 149, pages 675-676 in said Recorder's Office, (the following five (5) courses being along the west, north and east lines of said tract of land); (1) North 159.71 feet; (2) East 165.00 feet; (3) North 264.00 feet to the North line of said Northwest Quarter Section; (4) East along said North line 483.4 feet to the northeast corner thereof; (5) South 609.67 feet to the north right-of-way line of said former railroad and the north line of the aforesaid tract of land recorded as Instrument No. 200400006435, (the following three (3) courses being along the north line of said tract of land); (1) Southeasterly 103.94 feet to the West line of the East Half of said Northwest Quarter Section; (2) South along said West line 41.61 feet; (3) Southeasterly 886.82 feet; thence South parallel with east line of said Northwest Quarter and along the east line of a parcel of land conveyed to the Roy H, Magee, Trust recorded in Book 305, Page 453-454 and Book 325, Page 870-871 in the Office of the Recorder, Hendricks County, Indiana a distance of 1739.79 feet to the South line of said Northwest Quarter; thence West along the South line of said Northwest Quarter a distance of 1888.08 feet to the Southwest corner of said Northwest Quarter; thence North along the west line of said quarter a distance of 1601.11 feet to to the southwest corner of a 1 acre exception recorded in Instrument Number 199900031858 in the

Office of the Recorder, Hendricks County, Indiana; thence East a distance of 264.00 feet to the southeast corner of said exception; thence North a distance of 165.00 feet to the northeast corner of said exception; thence west a distance of 264.00 to the west line of said Northwest Quarter; thence North along the west line of said Quarter a distance of 556.30 feet to the Point of Beginning, containing 93.8 acres, more or less.

22. The record owners of the Magee Parcels, however, never consented to Avon's "voluntary" annexation Ordinance No. 2010-14.

23. Thus, on November 18, 2010, the Avon Town Council introduced a new "involuntary" annexation Ordinance No. 2010-26 to involuntarily annex the Magee Parcels.

24. The Avon Town Council has scheduled a public hearing for the Magee Parcel involuntary annexation (Ordinance No. 2010-26) to be held on February 10, 2011 at 7:00 p.m.

25. Also on October 14, 2010, the Avon Town Council introduced Ordinance No. 2010-13 to voluntarily annex 19.5 acres of real property located within Lincoln Township, generally located on the east side of County Road 1000 E, north of Sioux Drive, with an owner of record listed as Farmland Reserve, Inc. (the "Farmland Reserve Parcel"), and more particularly described as follows:

A part of the Northwest Quarter of Section 29, Township 16 North, Range 2 East of the Second Principal Meridian. Hendricks County, Indiana, being more particularly described as follows:

Beginning at the southwest corner of said Northwest Quarter Section; thence North along the west line of said Quarter a distance of 841.08 feet to the southerly line of a tract of land conveyed to the B & O Trail Association as recorded in Instrument Number 200931849 in the office of the Recorder of Hendricks County formerly the southerly right-of-way line of the former Baltimore and Ohio Railroad; thence Southeasterly along the southerly line of said railroad a distance of 1351.86 feet; thence South parallel with the West line of said Quarter a distance of 466.74 feet to the South line of the aforesaid Northwest Quarter Section; thence West along said South line a distance of 1300.00 feet to the Point of Beginning containing 19.5 acres, more or less.

26. As early as September 2008, Brownsburg began spending considerable resources, time, and effort to create economic development incentives and engage in extensive discussions with the Farmland Reserve Parcel owners concerning annexation of the Farmland Reserve Parcel and other parcels into Brownsburg.

27. On December 2, 2010, Avon held a public hearing on the Farmland Reserve Parcel “voluntary” annexation Ordinance No. 2010-13.

28. By statute, Avon can adopt Ordinance No. 2010-13 any time after the expiration of 14 days after the public hearing. Ind. Code § 36-4-3-5.1(f).

29. Although Avon has not yet adopted Ordinance No. 2010-13, it could do so at its next regularly scheduled Town Council public meeting on January 27, 2011, or sooner on an expedited basis.

30. Avon’s attempt to annex the Magee and Farmland Reserve Parcels unlawfully interferes with Brownsburg’s prior and paramount jurisdiction that it acquired over those parcels by virtue of adopting the substantially similar reorganization resolutions and creating the Reorganization Committee.

31. Brownsburg has jurisdictional, economic, and political interests in preserving its paramount jurisdiction over the annexation and incorporation of the Magee and Farmland Reserve Parcels.

32. Avon’s actions interfere with the ability of the Reorganization Committee to prepare a Reorganization Plan on behalf of Brownsburg and the other Reorganizing Entities, including the mandatory “description of the boundaries of the reorganized political subdivision.” I.C. § 36-1.5-4-18(b)(2).

33. Brownsburg’s remedies at law are inadequate.

34. Avon's attempted annexations will cause Brownsburg, the Reorganizing Entities, and the Reorganization Committee irreparable harm because such annexation attempts interfere with or nullify Brownsburg's ability to complete the reorganization process as provided under the Act.

35. The threatened injury that Avon's pending unlawful annexations will cause to Brownsburg, the other Reorganizing Entities, and the Reorganization Committee outweighs any threatened harm to Avon from being preliminarily enjoined from its annexation proceedings until this Court rules on the legality and validity of Avon's pending annexations and the priority of jurisdictional rights as between Brownsburg and Avon under the Government Modernization Act and otherwise.

36. The public interest will not be disserved if Avon is enjoined from proceeding with its annexations within Lincoln Township, during the pendency of the process of the Lincoln Township, Brownsburg and Brown Township reorganization process under the Act.

37. The imminence of Avon's public hearings on Ordinance No. 2010-26 (the Magee involuntary annexation), including the potential to expedite the adoption of Ordinance No. 2010-13 (the Farmland Reserve "voluntary" annexation), justify emergency action by the Court to immediately enjoin and restrain Avon and all persons acting in concert therewith from any further proceedings or action on Ordinance Nos. 2010-13, 2010-14, or 2010-26.

38. All parties to this controversy are governmental authorities, and thus no security is required under Trial Rule 65(C).

39. Brownsburg's counsel has certified separately the attempt to notify Avon and counsel for Avon of the action and relief, and the need for immediate relief, thus this order has been entered without notice and without hearing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

(a) The Town of Avon and all persons acting in concert therewith is temporarily and immediately enjoined from any acts or actions of any nature to adopt, proceed with, pursue, or enforce Avon Ordinance Nos. 2010-13, 2010-14, and 2010-26 or to annex the Magee and Farmland Reserve Parcels, or any other unincorporated parcels located within Lincoln Township of Hendricks County, during the pendency of this action.

(b) The Court shall hear evidence on the Plaintiff's petition for preliminary and permanent injunctive relief at 8:00 o'clock A.M. on the 27 day of Jan, 2011, 1 (hours allotted).

(c) Pursuant to Trial Rule 65(C), as a governmental organization, Brownsburg shall post no bond as stated in Trial Rule 65(C).

(d) Service of this order shall be made on the Defendant in this matter on or before the 22 day of Jan, 2011.

This temporary restraining order was issued at 12:55 o'clock p.M. on the 18 day of Jan, 2011, and shall expire at the expiration of 10 days from entry, unless extended by further order of this Court.

David H. Coleman

JUDGE, Hendricks County Superior Court

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