

STATE OF INDIANA)	IN HAMILTON SUPERIOR COURT NO. 1
) SS:	CAUSE NO. 29D01-8404-MI-497
HAMILTON COUNTY)	CAUSE NO. 29D01-8404-MI-498
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CERTAIN SOUTHEAST, NORTH, AND WEST)
GEIST, INVOLUNTARY ANNEXATION)
TERRITORY LANDOWNERS,)
Plaintiffs,)
v.)
TOWN OF FISHERS, INDIANA,)
Defendant.)

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENTS ON
TOWN OF FISHERS' ANNEXATION OF CERTAIN GEIST TERRITORIES**

This matter is before the Court by virtue of three remonstrance actions filed by the Plaintiffs, Certain Southeast (29D01-8404-MI-497), North (29D01-8404-MI-498) and West (29D01-8404-MI-499) Geist Involuntary Annexation Territory Landowners ("Remonstrators") pursuant to Ind. Code § 36-4-3-13. These three actions were consolidated pursuant to Indiana Trial Rule 42(A) on May 27, 2008. Given the predominance of common issues of law and fact in all three remonstrance actions, this Court has continued to address all issues on a consolidated basis and has rendered these Findings of Fact, Conclusions of Law and Judgments in all three actions.

Prior to the admission of evidence, the Defendant, Town of Fishers ("Fishers" or "Town") filed a Motion for Special Findings of Fact & Conclusions of Law pursuant to Indiana Trial Rule 52(A). This Court conducted a consolidated hearing on November 24-25, 2008 and final arguments were presented to the Court on December 19, 2008. Considerable evidence was admitted by stipulation, testimony in Court and some of the witnesses testified in whole or in part by video deposition

In order to expedite the trial. The Court, having heard and considered the evidence, having considered the written and oral arguments of counsel, having jurisdiction over the parties, subject matter, and issues, and being duly advised, now hereby enters the following Findings of Fact, Conclusions of Law and Judgments.

PRELIMINARY RULINGS

1. Before and during the evidentiary hearing, Remonstrators maintained a continuous relevance objection to all testimony or evidence regarding the efforts to incorporate the Towns of East and West Geist covering much of the same territory that is the subject of the annexations now before the Court. Fishers filed its Memorandum of Law in Support of Incorporation Evidence in open court on November 24, 2008. The Court granted Remonstrators additional time to file a written response and Remonstrators filed such response on December 15, 2008. The Court also heard argument from the parties during the November 24-25 hearing. The Court then took the matter under advisement and heard evidence on the issue subject to Remonstrators' continuing objection. Fishers offered the incorporation evidence on the statutory elements of significant financial impact and best interest of landowners and also to respond to allegations made in Remonstrators' case-in-chief. Having considered the arguments of the parties, the Court finds that the incorporation evidence is relevant. Data Processing Services, Inc. v. L.H. Smith Oil Corp., 492 N.E.2d 314, 321 (Ind. Ct. App. 1986) ("Evidence is relevant if it tends to disprove a material fact or if it makes an inference more probable than it would be absent the evidence."). Specifically, incorporation was the alternative presented to the Fishers Town Council by Remonstrators and was

therefore addressed in the fiscal plans that are central to Fishers' annexations. The incorporation evidence may also be considered in determining if the annexation is in the best interest of, or will cause a significant financial impact, to the Remonstrators. The objections as to any testimony are hereby overruled and such evidence is therefore admitted, including the following exhibits: 1M-652, 1M-676, 18A-18C, 18F-18I, 18K, 19, 50B, 74, 82, and 83.

2. At the conclusion of the evidentiary hearing, Fishers moved for involuntary dismissal under Indiana Trial Rule 41(B), which provides that the Court may render a judgment if "upon the weight of the evidence and the law there has been shown no right to relief," on the contention that Remonstrators had not introduced evidence to satisfy Ind. Code § 36-4-3-13(e)(2)(D). The Court heard argument from the parties at the hearing and took the matter under advisement. Fishers thereafter filed its Supplement to Oral Motion for Involuntary Dismissal Under Trial Rule 41(B). The parties further entered and the Court approved an Amendment to Revised Joint Case Management Plan and Order that provided that the Trial Rule 41(B) motion would be continued under advisement to be considered with the merits of the case. Having heard the evidence and considered the arguments of the parties and in the interests of judicial economy, the Court's ruling on the T.R. 41(B) motion will be merged into the Findings of Fact, Conclusions of Law and Judgments as set forth below.

FINDINGS OF FACT

1. On September 17, 2007, the Fishers Town Council ("Council") introduced three ordinances proposing to annex certain unincorporated territories in Fall Creek Township, Hamilton County, Indiana. These ordinances included: (1)

Ordinance No. 091707B, proposing to annex territory generally southeast of Geist Reservoir (the "Geist Southeast Annexation" annexing the "Southeast Annexation Territory"); (2) Ordinance No. 091707C, proposing to annex territory generally north of Geist Reservoir (the "Geist North Annexation" annexing the "North Annexation Territory"); and (3) Ordinance No. 091707C, proposing to annex territory generally west of Geist Reservoir (the "Geist West Annexation" annexing the "West Annexation Territory"). (These three ordinances are collectively referred to as the "Annexation Ordinances," and they collectively address the "Annexation Territories"). (Def. Ex. 3A, pp. 936-37.)

2. At its October 4, 2007 meeting, the Council made slight amendments to each of the Annexation Ordinances. (Def. Exs. 3B, p. 942 and 3C, p. 946.) The Council also approved Resolution Nos. 091707B, 091707C, and 091707D, which adopted a written Fiscal Plan and Definite Policy for each of the proposed annexations, namely the "Southeast Fiscal Plan" for the Geist Southeast Annexation, the "North Fiscal Plan" for the Geist North Annexation and the "West Fiscal Plan" for the Geist West Annexation (collectively the "Fiscal Plans"). (Def. Exs. 1I, 1J, and 1K.) Each of the Fiscal Plans consists of a written Narrative of over 30 pages prepared by Michael Shaver of Wabash Scientific, Inc., and a 22-page Fiscal Analysis prepared by Eric Reedy of Reedy & Peters, LLC.

3. After publishing and mailing due notice following the adoption of the Fiscal Plans, the Council conducted a public hearing on the proposed Annexation Ordinances on December 19, 2007. (Def. Exs. 3D, 5A, 5B, 5C, 5D, 5E, 5F, and 8D.)

4. On January 22, 2008, the Council adopted Resolution No. 012208E, which supplemented the Fiscal Plans to respond to matters raised during the public hearing and to correct certain typographical errors (the "Fiscal Plan Supplement"). (Def. Ex. 1M, 3E, and 8E.)

5. The Fiscal Plans were also later modified to adjust some of the assumptions concerning the receipt of County Option Income Tax ("COIT"). (Def. Ex. 88.)

6. Also on January 22, 2008, and after the adoption of Resolution No. 012208E, the Council adopted each of the Annexation Ordinances, as previously amended. (Def. Exs. 1F, 1G, 1H, and 3E.)

7. Each of the Annexation Territories is at least 25% contiguous to the existing corporate limits of Fishers and each of the Annexation Territories is at least 60% subdivided. (Def. Ex. 20; Joint Stipulation and Entry, ¶1.) Each of the respective Annexation Territories is also urban in character.

8. The Narrative portion of each Fiscal Plan analyzes each municipal department, explains how the services of that department will be extended to each Annexation Territory; compares the planned services to the existing services within the existing town limits; details when those services will begin in relation to the effective date of the respective annexation; and itemizes the costs anticipated to be incurred by each town department in providing those services. (Def. Exs. 1I, pp. 83-110, 1J, pp. 146-70, 1K, pp. 208-32.) The Fiscal Analysis portion then sets forth in Itemized format each source of funds coming in to the Town's General Fund

and other funds which are planned to be used to pay the costs of planned services. (Def. Ex. 1I, pp. 115-16, 119-20, 123-24, and 127-28 (these same pages are also included in Def. Exs. 1J and 1K.)) The notes to the Fiscal Analysis in each Fiscal Plan then explain how each funding source is calculated. (Def. Exs. 1I, pp. 131-36, 1J, and 1K.)

9. The Fiscal Plans include a \$10 million bond issue to finance a new fire station, thoroughfare improvements, and other capital projects for the Annexation Territories. In addition, the Annexation Ordinances include an "impoundment fund," whereby 75%, 50%, and 25% of the municipal property taxes collected in each of the Annexation Territories during years 1, 2 and 3, respectively, following the effective date of annexation, will be impounded into a special fund to be used to finance additional projects or services for the Annexation Territories beyond those which are identified in the Fiscal Plans.

10. Each of the Fiscal Plans shows the following:

a. The cost estimates of planned services to be furnished to the respective Annexation Territory. Each plan presents itemized estimated costs for each municipal department or agency.

b. The method or methods of financing the planned services. Each plan explains how specific and detailed expenses will be funded and indicates the taxes, grants, and other funding to be used.

c. The plan for organization and extension of services. Each plan details the specific services that will be provided and the dates those services will begin.

d. That planned services of a non-capital nature normally provided within the corporate boundaries will be provided to each Annexation Territory within one year after the effective date of annexation and that these services will

be provided in a manner equivalent in standard and scope to those non-capital services provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, and population density.

e. That services of a capital improvement nature will be provided to each Annexation Territory within 3 years after the effective date of the annexation in the same manner as those services are provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, and population density, and in a manner consistent with federal, state, and local laws, procedures, and planning criteria.

11. Each of the Fiscal Plans represents a credible commitment to provide comparable capital and non-capital services to the respective Annexation Territory. In addition, the Fiscal Plans are sufficiently detailed to explain Fishers' strategies for providing these capital and noncapital services within the time period allotted by law to allow the residents of the Annexation Territories to ascertain the future fulfillment of Fishers' commitment to provide these services.

12. Each of the Annexation Ordinances contain terms and conditions fairly calculated to make the annexations equitable to property owners and residents of both the corporate limits of Fishers and each of the Annexation Territories.

13. On January 28, 2008, Fishers published notice of the Council's adoption of each of the Annexation Ordinances in the *Noblesville Daily Times*, and on January 30, 2008, Fishers published notice of the adoption of each of the Annexation Ordinances in the *Noblesville Ledger*. (Def. Exs. 6A, 6B and 6C.)

14. On April 24, 2008, certain landowners in the Annexation Territories filed remonstrance petitions which objected to the proposed annexation of the Geist

North, Southeast, and West Territories, respectively ("Remonstrance Petitions"). On June 11, 2008, this Court certified that the Remonstrance Petitions had been signed by more than 65% of the property owners in each of the Annexation Territories based upon Fishers' Concession as to Signatures, dated May 19, 2008.

15. The signatures on the Remonstrance Petitions were collected by a group known as Gelst United Opposition ("GUO"), which is a not-for-profit corporation limited to eleven members, each of whom is a member of the corporation's board of directors and each of whom is a resident in one of the Annexation Territories. (Def. Ex. 73, pp. 11966-67 (Deposition pages 18-21.))

16. In obtaining the signatures, GUO sent mailings to each landowner on or about January 23, 2008, and again, on or about March 10, 2008, which urged landowners to sign the petition because "[I]f Fishers is successful in its annexation attempt, we will be paying significantly higher property taxes (at least 16.45% higher) each and every year" (Def. Ex. 92, pp. 12454-12455.) Although this mailing did not achieve the necessary threshold number of signatures for remonstrance, Mr. Kirk Bidwell testified that the GUO received a very good response in the way of a large number of signed petitions in response to the first mailing. In addition to the mailings, the GUO also sent several email communications to landowners in the Annexation Territories and posted materials on the Internet warning of a tax increase from annexation. (Def. Ex. 92, pp. 12420, 12423, 12425-28, 12429-31, 12432-34, 12435, 12443-44 and 12445-46.)

17. Following the Council's adoption of the Annexation Ordinances and near the end of the 90-day remonstrance period, the Indiana General Assembly

adopted House Enrolled Act 1001 ("HEA 1001"). According to Gregory Guerrettaz, the Remonstrators' financial expert witness, HEA 1001 was the most sweeping change that he had ever seen in his 26 years of financial consulting work. While HEA 1001 fundamentally reforms the calculation of Indiana property taxes, the impact on the revenues projected by the Fiscal Plans was immaterial such that there was no need to update the Fiscal Plans. (Def. Ex. 50A; Rem. Ex. R.) Mr. Reedy testified that at its maximum potential impact, HEA 1001 would only reduce the revenues he had projected in the Fiscal Plans by an insignificant percentage such that he did not see a need to revise the Fiscal Plans. Mr. Guerrettaz did not disagree with this conclusion.

18. In addition to minor corrections to the Fiscal Plans, the Fiscal Plan Supplement included a report prepared by Mr. Shaver discussing subsidies (the "Subsidy Report"). The Subsidy Report describes municipal/suburban subsidies resulting from Indiana's property tax system, which layers municipal tax rates on top of county and all other tax rates. It also describes subsidies resulting from municipal service unbundling. (Def. Ex. 1M-291.) Mr. Shaver explained that Indiana's property tax system results in municipal residents paying for county services that they do not receive. The Subsidy Report also determines that residents within the corporate limits must pay for the entire bundle of municipal services provided by the municipality. According to the Subsidy Report, "unbundling" occurs when residents outside the corporate limits disassemble the entire bundle and use or consume only the desired "unbundled" services (such as fire, parks, and roads), for which they frequently do not pay or pay only a portion of the total cost. As a result, these residents receive municipal services for which

they do not pay. No witness disputed this analysis or the conclusions in the Subsidy Report.

19. On July 28, 2008, the Fishers Town Council adopted Resolution No. 072108A, directing the Town Manager to commence the study of all subsidies enjoyed by residents outside the corporate limits of Fishers. The resolution further provides that in the event any of the annexations proposed by the Annexation Ordinances is not successfully completed, then the Town will develop user charges for the provision of all municipal services to nonresidents other than those provided pursuant to a contract with another governmental entity. Finally, the resolution provides that to the extent surcharges acceptable to the Council cannot effectively be implemented, then such services shall no longer be provided to nonresidents. (Def. Ex. 29.)

20. One of the municipal services provided by Fishers to nonresidents is parks services. Town Manager Gary Huff testified that an active park is one that has sports playing fields, playground equipment, and/or tennis courts. A passive park, however, is one that generally only has trails and/or benches and picnic tables. Except for Fishers parks, there are no active parks in Hamilton County within several miles of any of the Annexation Territories, and beyond Fishers in any event. Fishers has 10 active parks that are regularly used by residents of the Annexation Territories. Fishers has included the Annexation Territories in the build-out area covered by its master planning for parks. As a part of that planning, Fishers conducted a survey of residents asking for input on the types of parks and

facilities that they desire. The largest number of responses to this survey came from residents in the area that includes most of the Annexation Territories.

21. Fishers also has an arrangement with S.P.O.R.T.S., which is a volunteer organization that oversees the scheduling and coordination of certain youth sports for children living in the Hamilton Southeastern School Corporation District. Pursuant to the arrangement with Fishers, S.P.O.R.T.S. regularly uses Fishers parks free of charge for many of its leagues and enjoys priority in scheduling the use of such playing fields. In addition, S.P.O.R.T.S. is provided access to the concession stands in Fishers parks for fund raising. S.P.O.R.T.S. and S.P.O.R.T.S. participants pay no fees to Fishers for these benefits. There are numerous families in each of the Annexation Territories who participate in S.P.O.R.T.S. (Def. Ex. 22A.) Mr. Shaver calculated a preliminary estimate of the charge for an out-of-town user for use of Fishers parks through participation in S.P.O.R.T.S., which he testified could be as high as \$500 to \$1,000 per child per sport per year. (Def. Ex. 1M-291, p. 300.) He explained that a user fee would be so high in relation to the property tax rate because the user fee must recover all of the costs attributable to that particular user and not spread any of the costs across owners who may never use the park. In addition, capital park costs when recovered through property taxes can be spread over many years since these costs can be financed with bond issues. The user fee must recover the costs attributable to that user over the length of the league season.

22. On November 12, 2008, Fishers entered into a memorandum of understanding with the City of Indianapolis related to the purchase by Fishers of

the sewer system owned by Indianapolis serving almost all of the area within the West Annexation Territory (the "MOU"). (Def. Ex. 99.) Fishers entered into the MOU so the sewer system could be rerouted to the Fishers wastewater treatment plant and so that the customers of this system could be relieved of the obligation to pay what is projected to be as much as \$100 per month sewer bills to finance the projects needed to address Indianapolis's combined sewer overflows. In the event the annexation of the West Annexation Territory is successfully completed, the MOU also relieves customers of the obligation to make payments in lieu of tax ("PILOTS") set forth in the original agreement by which the City of Indianapolis agreed to serve the area. PILOTS are payments in addition to sewer rates that are to be made to the City of Indianapolis instead of paying property taxes. The original Sewer Service Agreement between the City of Indianapolis and the real estate developer (the Shorewood Corporation) includes a requirement that any subsequent owners of lots connecting to the Indianapolis sewer must pay, in addition to the generally applicable sewer rate, a PILOT "as a part of the user fee, in the same amount as if said real estate were located within Marion County, Indiana, within the 'Lawrence Sewer Service' taxing unit, and subject to the 'Total Corporation Rate' of tax levy applicable to real estate within such taxing unit." (Def. Ex. 69, p. 9714-15 (¶7(b).) Fishers Town Council President Scott Faultless testified that this PILOT obligation would be as much as \$3,500 per year per home. This PILOT obligation is recorded in the chain of title of the customers connected, as it is cross-referenced in the subdivision plats for the various sections of Masthead which are served by this Indianapolis sewer. (Def. Ex. 79, pp. 12141 (¶18), 12166 (¶14), 12173 (¶16), 12178 (¶18), 12183 (¶14), 12187 (¶15), 12191 (¶14), 12195 (¶14),

12200 (¶13), and 12205 (¶18).) If the area served by this sewer is annexed by Fishers, however, this PILOT obligation is waived forever upon the effective date of the annexation pursuant to the MOU. (Def. Ex. 99, p. 13301 (¶5).) In addition, the MOU requires Indianapolis to waive any claims for previously uncollected PILOTS. (Id., (¶4).)

23. Fishers provides fire protection to each of the Annexation Territories pursuant to a contract with Fall Creek Township. (Def. Exs. 10A and 10B.) Fall Creek Township has no fire department, owns no fire stations, and has only a small partial ownership interest in three pieces of equipment (with Fishers owning the more significant balance of the interest in each piece). Pursuant to the contract, Fall Creek Township pays a pro rata share (based upon net assessed values) of the Fishers Fire Department's operating budget. The contract payments made by Fall Creek Township do not include compensation for any overhead or capital costs of providing fire service.

24. The Fishers Fire Department is an Internationally accredited and award-winning fire department whose personnel are highly trained. Several of the Remonstrators testified that they were satisfied with the fire protection services Fishers provides to the Annexation Territories.

25. In addition to fire protection and emergency medical services, the Fishers Fire Department provides fire safety and awareness programs in all of the Annexation Territories, and technical assistance to developers with respect to the location of fire hydrants, construction of streets, and other fire safety issues, without charge to the residents of the Annexation Territories.

26. The Fishers Fire Department also provides emergency rescue, diving and fire suppression services to homes abutting Geist Reservoir by use of a fire boat and auxiliary craft.

27. The contract between Fishers and Fall Creek Township under which Fishers provides fire service explicitly states: "Fishers agrees to furnish to Fall Creek fire protection and emergency medical service." (Def. Ex. 10b, p. 1821 (¶1).) While this contract allows Fall Creek Township to seek service from another fire department at the conclusion of its term, there are no other fire departments that could provide fire service to any of the Annexation Territories without building, staffing and equipping fire stations in or near the Annexation Territories. This is due to distance, resources and dispatching times. For instance, to dispatch a fire department from outside Hamilton County causes a delay from two to five minutes in run time just from transferring the emergency call to a non-Hamilton County dispatching center. Fishers has two fire stations that are located adjacent to the Annexation Territories, which allow its run times to meet or exceed national standards.

28. Fire protection and emergency medical service is not and could not be adequately furnished to any of the Annexation Territories by a provider other than Fishers. There is no fire department within Hamilton County or the areas surrounding the Annexation Territories that could provide comparable fire protection service to that provided by Fishers.

29. Police service is adequately furnished to each of the Annexation Territories by the Hamilton County Sheriff's Department and thus by a provider

other than Fishers. (Joint Stipulation and Entry, ¶3.) While existing police service is adequate, police service will be enhanced to each of the Annexation Territories upon annexation, as the Fishers Police Department will have more patrol officers available to respond to calls at any given time.

30. Most roads physically located in the Annexation Territories are maintained by the Hamilton County Highway Department ("HCHD"), but the HCHD's services are supplemented with snow removal services on thoroughfares which pass through the Annexation Territories. Fishers plows any Hamilton County thoroughfare through which Fishers' snow plows travel during the course of plowing Fishers' streets. These would include Ollo Road and 96th Street.

31. Streets and roads within Fishers have been designed, constructed, and maintained strategically to serve each of the Annexation Territories. (Def. Exs. 70 and 70 A, B, C, D, E and F.) Fishers has constructed and maintained these roads. Fishers has developed and implemented impact fees applicable only within the corporate limits. These Impact fees have been calculated to pay for road construction necessary to serve the traffic generated within the zone Improvement plan, which includes both the Fishers corporate limits and the Annexation Territories. Even though Impact fees have not been collected within the Annexation Territories, the number of projected trips from developments in the Annexation Territories and the cost of road infrastructure to serve such out-of-town traffic have been included in the calculation of the impact fee. As a result, Fishers and its citizens have paid for the share of road improvements that have been strategically designed and constructed to serve the Annexation Territories. The residents and

landowners in the Annexation Territories have not provided any of the funds to construct or maintain these roads that have been designed to serve them. Some of the street and road maintenance necessary to serve the Annexation Territories is furnished by Fishers.

32. The residents in the Annexation Territories are generally more educated and affluent than other areas in the State.

33. Remonstrators introduced evidence that the result of the annexations will be that landowners in the Annexation Territories will pay property taxes that are approximately 20% higher with annexation than without annexation. Mr. Guerrettaz computed the impact on a hypothetical average homeowner in the Annexation Territories to be approximately \$500 per year, assuming an assessed valuation of \$300,000. Mr. Guerrettaz's calculation did not compare the taxes payable after annexation to what these homeowners are presently paying (before HEA 1001). He instead compared the projected taxes payable with and without annexation, with both bills projected after full implementation of HEA 1001. In making this calculation, Mr. Guerrettaz only considered assessed value in Fall Creek Township and did not consider the portion of Fishers' assessed value located in Delaware Township. He also did not consider: (1) the effect of potential growth in assessed values consistent with what either Fishers or the Annexation Territories have typically seen; (2) the effect of an emergency fire levy appeal filed by Fall Creek Township to cover next year's fire contract; (3) the effect of increasing the cost of fire service to Fall Creek Township to include overhead and capital costs; or (4) the effect of the user fees to be implemented as a result of Resolution No.

072108A. Each of these adjustments would lower any impact suggested by Mr. Guerrettaz.

34. Mr. Guerrettaz, Carl (Pete) Peterson, Joseph Weingarten, and Kirk Bidwell all testified that the approximate 20% tax differential computed by Mr. Guerrettaz was significant. Mr. Guerrettaz did not testify that this differential would produce a significant financial impact. Indeed, no witness testified that annexation would produce a significant financial impact for landowners in any of the Annexation Territories, and no witness explained how the tax differential computed by Mr. Guerrettaz would cause a significant financial impact for any landowners.

35. Due to the fundamental tax reform accomplished by HEA 1001, most landowners in the Annexation Territories will actually see little or no tax increase after annexation compared to what they are paying in 2008. In the North Annexation Territory, 42 out of 78 parcels are projected to pay lower taxes after annexation than in 2008, and 4 are projected to see a tax increase of less than \$25. In the Southeast Annexation Territory, 671 out of 1,281 total parcels are projected to pay lower taxes after annexation than in 2008, and 268 are projected to see an increase of less than \$25. In the West Annexation Territory, 372 out of 923 total parcels are projected to pay lower taxes after annexation than in 2008, and 131 are projected to see an increase of less than \$25. (Def. Ex. 71.) These impacts from HEA 1001 on the annexations computed by Mr. Reedy were not known at the time the Remonstrance Petitions were signed.

36. Mr. Guerrettaz testified on surrebuttal and identified what he believed was a discrepancy associated with the assessed value in one of the thousands of

parcels reviewed by Mr. Reedy. He claimed that he had reviewed the actual tax bill for that parcel, which he testified showed a higher assessed value. This actual tax bill was not offered into evidence, but Mr. Guerrettaz testified that he had concluded from his investigation that Mr. Reedy's report had used the assessed values for taxes payable in 2007 rather than 2008. Mr. Guerrettaz testified that using the assessed value for taxes payable in 2008 would be a "better calculator." Even though Mr. Reedy's reports bear dates of several months before the trial and despite that the Remonstrators bear the burden of proof on the significance of the financial impact, Mr. Guerrettaz did not present the results of a revised calculation or testify as to how such a revision would impact the overall conclusion. He did not testify that his proposed change in the calculation would produce a material difference on the tax bill in 2008 compared to the tax bill after annexation for any property owners in the Annexation Territories. Significantly, Mr. Guerrettaz did not dispute Mr. Reedy's overall conclusion that a majority of the landowners in each of the Annexation Territories will pay lower property taxes (or will pay a very minor increase of less than \$25 per year) after annexation than they will pay in 2008. In addition, Mr. Guerrettaz's disagreement was based upon a different net assessed value, yet Mr. Guerrettaz's presentation of net assessed values in Remonstrators' Exhibit R does not match the net assessed values obtained by Mr. Bidwell from the Hamilton County Auditor. (Compare Rem. Ex. R, p. 53 (last page) with Rem. Ex. L, p.1 and Rem. Ex. M, 6th page (showing almost a \$20 million difference.)) Mr. Bidwell's exhibit provides the net assessed values upon which Remonstrators rely in an effort to prove the percentage of net assessed valuation for which the owner is opposed to annexation. Finally, the conclusion that most taxpayers will see either a

decrease or no significant increase is also supported by Mr. Guerrettaz's projection of the total corporate Fishers' tax rate after annexation, which is lower than the total unincorporated Fall Creek Township rate in 2008. (Rem. Ex. Q, pp. 4 (Estimated Pay 2010 Rate) and 5 (Total Pay 2008 Rate.))

37. Remonstrators' evidence concerning the financial impact of annexation was (1) to compute the projected difference in the property taxes in 2010 with and without annexation; and (2) to present certain impact fees that would apply only to new construction after annexation and certain other fees that Mr. Guerrettaz believes will apply after annexation. While several witnesses testified on behalf of Remonstrators that the size of the tax differential was significant, no witness testified concerning the financial impact these differences would have on him/her personally or on the area in general. Mr. Peterson testified on behalf of Remonstrators that if in fact his taxes would actually be lower than they are currently, it would not be a significant financial impact for him. Mr. Weingarten testified that if his taxes were decreased after annexation from what he is paying today it would be significant in his favor. Mr. Reedy testified that his analysis confirms Messrs. Peterson's and Weingarten's taxes will both be lower with annexation than they are currently, and this conclusion was unrebutted. When most landowners are already paying at least the level of taxes that they will pay after annexation, when there has been no consideration of the costs that will be increased if the areas are not annexed, when the Fishers' tax rate is one of the lowest municipal rates in the State, and when the Annexation Territories are some of the more affluent in the State, there has not been proof of a significant financial impact on residents or owners of land in any of the Annexation Territories.

38. Remonstrators' evidence as to level of opposition to any of the annexations was Remonstrance Petitions signed prior to late April, 2008. Remonstrators' Exhibit L consisted of an analysis of the Remonstrance Petitions as of the date the remonstrance actions were filed, and it confirms that as of that date sufficient Remonstrance Petitions had been signed for this Court to have jurisdiction over each of the remonstrance actions. Between then and the trial, the additional evidence of opposition was (1) the GUO had contacted 94 additional owners who had acquired their property after the Remonstrance Petitions had been filed in order to solicit their signatures on supplemental remonstrance petitions, and approximately 11 out of those 94 new owners signed the supplemental remonstrance petition; and (2) from each Annexation Territory, one owner testified that he was opposed to annexation. (Rem. Exs. J and K.) There was no evidence of any effort to ascertain whether the remaining owners who had signed the original Remonstrance Petitions continue to oppose annexation. When landowners originally signed the Remonstrance Petitions, they were instructed by the cover letter accompanying the petition that all property owners would be paying significantly higher taxes unless sufficient signatures were obtained. (Def. Ex. 92, p. 12455.) Since the signing of those original Remonstrance Petitions, the Impact of HEA 1001 on the taxes that will be paid has become known. That Impact reveals that most property owners will actually pay lower taxes or only a small increase. Further, since the original Remonstrance Petitions were signed, Fishers has adopted a policy to develop user fees if these annexations are unsuccessful. Finally, with respect to the West Annexation Territory, Fishers has signed the MOU with the City of Indianapolis which would relieve landowners of the PILOT obligation if they are

annexed. The Court does not find that there was any evidence presented that the sentiments of 65% of the owners or the owners of 75% of the assessed valuation in any of the Annexation Territories remain opposed to annexation after the rest of the process had run its course.

39. Annexation will be in the best interests of landowners in each of the Annexation Territories. Landowners will benefit from the improvements and services to be financed with the impound fund and the bond issue provided by the Annexation Ordinances and the Fiscal Plans. Mr. Reedy computed the benefit from the impound fund and the bond issue that would be enjoyed by the hypothetical property owner that Mr. Guerrettaz had presented. Mr. Guerrettaz had projected that this hypothetical homeowner would pay property taxes that were approximately \$500 per year higher with annexation than without annexation, with both tax bills computed after full implementation of HEA 1001. Using that projection of \$500 per year, Mr. Reedy computed that it would be more than 8 years before that hypothetical homeowner will have paid municipal property taxes to Fishers equal to the value of improvements to be financed with the impound fund and bond issue. Mr. Guerrettaz did not dispute this calculation. In addition, property owners will be relieved of the responsibility to pay outside town user charges for various services they use. Police service will be enhanced with the availability of more patrol officers, and fire service will be enhanced with the construction of a new fire station as provided in the Fiscal Plans. Park services, too, will be enhanced with the construction of a new park in the vicinity of the Annexation Territories. Fishers has received the Voice of the People award, which recognizes the quality of the services that Fishers provides based upon a national

citizen survey. In general, annexation of these areas will result in greater level of services for these landowners than they will receive without annexation, and the cost to them of these services will be lower than if they attempted to obtain municipal services from another source. Further, the evidence has generally established that these areas (Fishers and each of the Annexation Territories) are in fact economically and socially joined. The trading, the business, the church life, recreation, and educational facilities are used alike by the residents of these interconnected areas. Finally, residents in the Annexation Territories will be able to vote in and run for office in municipal elections and therefore have a voice in governmental decisions that impact them.

40. To the extent any of these Findings of Fact are deemed Conclusions of Law they are hereby incorporated as additional Conclusions of Law. To the extent any of the Conclusions of Law are deemed Findings of Fact, they are hereby incorporated as additional Findings of Fact.

CONCLUSIONS OF LAW

1. Annexation is essentially a legislative process, and thus is subject to limited judicial review. Courts may not micromanage annexation or conduct a judicial audit. City of Carmel v. Certain Southwest Clay Twp. Annexation Terr. Landowners, 868 N.E.2d 793 (Ind. 2007). The overriding purpose of Ind. Code § 36-4-3-13 is to permit annexation of adjacent urban territory. *Id.* Accordingly, substantial deference is owed to Fisher's decision to annex the Annexation Territories, as that legislative function was delegated to Fishers by the General Assembly. Bradley v. City of New Castle, 764 N.E.2d 212, 216 (Ind. 2002); City of

Fort Wayne v. Certain Southwest Annexation Area Landowners, 764 N.E.2d 221, 224 (Ind. 2002).

2. This Court concludes, based upon its review of all of the evidence and the parties' stipulation, that Fishers has demonstrated that each of the proposed annexations satisfies the requirements of Ind. Code § 36-4-3-13(b) in that the Annexation Territories are each contiguous to Fishers and each is at least 60% subdivided. Fishers therefore is not required to demonstrate the requirements of Ind. Code § 36-4-3-13(c).

3. As found previously in the Findings of Fact, the evidence establishes that each of the Fiscal Plans satisfies all of the requirements of Ind. Code § 36-4-3-13(d). Fisher's Fiscal Plans establish a definite policy, and were duly adopted by the Council, in compliance with Ind. Code § 36-4-3-3.1.

4. Fishers has satisfied its burden of proof pursuant to Ind. Code § 36-4-3-13(a) with respect to each of the annexations.

5. Indiana Code § 36-4-3-13(a) requires that this Court must therefore order each of the annexations to take place unless the Court finds that all of the elements of Ind. Code § 36-4-3-13(e) ("Subsection (e)") are present.

6. Other than police service and street and road maintenance, this Court concludes that none of the elements of Subsection (e) exist. Remonstrators failed to prove that fire protection is or will be adequately furnished to any of the Annexation Territories by a provider other than Fishers. They further did not prove that any of the annexations will have a significant financial impact on the residents

or landowners in any of the Annexation Territories. Furthermore, the Remonstrators failed to prove with respect to any of the Annexation Territories that 65% of the landowners or the owners of more than 75% of the assessed valuation of the land continue to be opposed at this time to any of the proposed annexations. Finally, and while not necessary given that Remonstrators failed to prove the remaining elements of Subsection (e) on which they bear the burden of proof, Fishers proved that annexation is in the best interests of landowners in each of the Annexation Territories.

7. Indiana Code § 36-4-3-13(e)(2)(A) addresses the situation presented here, where certain municipal services, such as fire, and street and road maintenance, have been unbundled and provided to the residents of the Annexation Territories. With respect to fire protection, Remonstrators contend that Fall Creek Township is the "provider" and that Fishers only "furnishes" the service. The statutory language does not recognize this distinction. Remonstrators' argument effectively concedes that fire service is not "furnished" by the township. While Remonstrators desire to label the township a "provider," Fishers most certainly is a "provider," and fire service is "furnished" by Fishers and not the township. As a result, fire service is not adequately furnished by a provider other than Fishers.

8. With respect to street and road maintenance as to best interest and given the unique situation in which these areas are so interconnected with Fishers, the Annexation Territories depend upon the streets and roads which Fishers plans, designs, constructs and maintains for meaningful access to their properties. As a result and even though HCHD maintains many of the streets within the Annexation

Territories, street and road maintenance to the Annexation Territories depends upon Fishers to be adequate and so is not furnished exclusively and adequately by a provider other than Fishers.

9. Indiana Code § 36-4-3-13(e)(2)(B) requires proof of a significant financial impact on landowners. Proving a significant financial impact is different than proving a significant tax differential. Remonstrators' witnesses all testified as to whether a tax differential was significant, but none of them testified that annexation would cause a significant financial impact on residents or owners of land in the Annexation Territories. While the tax differential would be relevant to this analysis, many other factors also bear on the significance of the financial impact of annexation on landowners. These would include the extent to which affected landowners will be able to pay any higher costs of annexation without causing a significant change in lifestyle. In addition, relative significance may be impacted by the socioeconomic characteristics of the area, the relative magnitude of the municipal tax rate as compared to other municipalities, and the extent to which other costs will increase if the area is not annexed. In short, and as Mr. Guerrettaz testified, the significance of the financial impact is determined from "all of the details." Other than a few fees and impact fees that will only apply to new construction, Remonstrators have only offered the percentage difference in tax rate with and without annexation and the projected cost in dollars of this increase on a hypothetical homeowner. No one testified that this difference would have any impact on his/her lives or the lives of anyone in the Annexation Territories. When most of the landowners in these areas are already paying property taxes greater

than or essentially equal to what they will pay after annexation, there simply is not proof of a significant financial impact.

10. Indiana Code § 36-4-3-13(e)(2)(D) requires proof of the level of opposition by Remonstrators at the time of the trial. Remonstrators may not merely rely on the number of landowners who signed the original petitions, but they must introduce some evidence to establish that the landowners who signed the petitions continue to remain opposed to annexation at the time of the hearing. Southwest Clay, 868 N.E.2d at 800. This is especially true where, as here, the landowners were urged to sign the Remonstrance Petitions to prevent a tax increase and, as a result of the intervening change in property taxation caused by HEA 1001, most landowners will see little or no effective tax increase from annexation. The Remonstrators contend that the wording of the petition is sufficient to show that the landowners continue to oppose the annexation ordinances. In light of the fact that the same wording was not sufficient in Southwest Clay, 868 N.E.2d at 800, this Court finds that such language is not sufficient in these cases.

11. Numerous factors will bear upon whether an annexation is in the best interests of the landowners. Included within the best interests of landowners is the extent to which the annexing municipality and the annexation territory are essentially an economically and socially joined community (Smith v. Incorporated Town of Culver, 234 N.E.2d 494, 496-97 (Ind. Ct. App. 1968)), the extent to which a portion of the property taxes paid from the annexation area will be impounded and used to benefit services to the annexation areas (Baker v. City of South Bend,

268 N.E.2d 623, 625-26 (Ind. Ct. App. 1971)), the extent to which the annexing municipality is already providing services to the annexation area (Sarringhaus v. City of Shelbyville, 271 N.E.2d 471, 472 (Ind. Ct. App. 1971)), and the extent to which services will be enhanced as a result of annexation (Culver, 234 N.E.2d at 496-97; Palmer v. City of South Bend, 273 N.E.2d 302, 303 (Ind. Ct. App. 1971); Baker, 268 N.E.2d at 625-26; LeMaster v. City of Fort Wayne, 297 N.E.2d 887, 889 (Ind. Ct. App. 1973)). All of these conditions exist in each of the Annexation Territories and demonstrate that annexation is in the best interests of the landowners.

12. Because the Court finds, with respect to each Annexation Ordinance, that the requirements of Ind. Code § 36-4-3-13(b) and (d) have been established and not all of the conditions enumerated in § 36-4-3-13(e) exist, § 36-4-3-13(a) requires that the Court order each of the annexations to take place.

JUDGMENTS

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered against the Remonstrators on all three remonstrance actions, that Fishers' annexation of the Annexation Territories be, and hereby is, approved as proposed, and that costs are to be paid by Remonstrators. Accordingly, it is the judgment of this Court, that:

1. The annexation provided by the terms of Ordinance No. 091707B is affirmed and shall take place.

2. The annexation provided by the terms of Ordinance No. 091707C is affirmed and shall take place.

3. The annexation provided by the terms of Ordinance No. 091707D is affirmed and shall take place.

The Clerk is Ordered to enter these Findings of Fact, Conclusions of Law, and Judgments in Cause Numbers 29D01-0804-MI-497, 29D01-0804-MI-498, and 29D01-0804-MI-499.

ALL OF WHICH IS ORDERED the 31st day of December, 2008.

A handwritten signature in black ink that reads "Steven R. Nation". The signature is written in a cursive style with a horizontal line underneath the name.

Judge, Hamilton Superior Court No. 1

Distributed to:

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