IN THE
INDIANA SUPREME COURT

Case No.:

TOWN OF WHITESTOWN, INDIANA	)	Court of Appeals Case No.
	)	29A05-1409-MI-00437
Appellant/Respondent, Below,	)	
	)	
v.	)	
	)	Trial Court Cause No.
RURAL PERRY TOWNSHIP LANDOWNERS	)	29D01-1308-MI-008547
	)	
Appellees/Petitioners Below,	)	
	)	
	)	The Honorable Steven R. Nation,
	)	Special Judge

BRIEF OF *AMICUS CURIAE*, INDIANA AGRICULTURAL LAW FOUNDATION, INC.

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INTEREST OF AMICUS CURIAE

The Indiana Agricultural Law Foundation, Inc. IALF) is a 501(c)(3) not-for-profit organization, established by Indiana Farm Bureau, Inc., whose purpose is to promote a better understanding of legal issues facing farmers and the agricultural community. The IALF engages in education, research, and litigation support in order to further understanding of agricultural legal issues for agricultural producers, agribusiness, the judicial branch and legal community, and the public at large. This case matters to the IALF and its constituency because it implicates a fundamental interest of independent farmers and demonstrates the need for judicious and appropriate use of annexation by municipalities.

SUMMARY OF ARGUMENT

This Court should accept transfer of this case and reaffirm the trial court's determination that Whitestown had not established that annexation territory was needed and can be used by Whitestown for its development in the reasonably near future. (Ind. Code 36-4-3-13(c)(2)). This Court should establish clear standards governing the interpretation of I. C. §36-4-3-13(c)(2) in the context of the General Assembly's clear policy pronouncements favoring agricultural interests over the interests of municipalities to annex farmland without showing an imminent plan and need to develop that real estate.

ARGUMENT

When looking at the history of annexation disputes, the cases have almost exclusively involved attempts of municipalities to annex adjacent urban territory. Adjacent urban territory has the same characteristics as land already within the municipal limits and shares a need for the same types of services and use restrictions common to dense populations. The Courts have long held that the object of annexation has remained the same: "to permit annexation of adjacent

urban property." *Rogers v Mun. City of Elkhart*, 688 N. E. 2d 1238, 1242 (Ind. 1997). The agricultural community had little interest in such annexations because farmland bore very little resemblance to developed neighborhoods. The annexation of farmland generally occurred on a voluntary basis when a developer had purchased the property and was seeking city services to enable the development of the property. To the best of the IALF's knowledge, until recently, the last reported appellate decision on the involuntary annexation of farmland under I. C. §36-4-3-13(c)(2) was *Abell v. City of Seymour* 275 N.E. 2d 547 (Ind. Ct. App. 1971).

In just the last few years, annexations have changed. There have been a number of recent involuntary annexations involving farmland. Part of this may be due to the fact, that like the Whitestown annexation, farmland requires few services, so there is little additional cost incurred by the municipality by bringing that land into the city.

While adjacent "urban" property shares many of the characteristics of the property within the municipal limits, farmland does not. Ordinances regulating the conduct within more densely populated areas: such as limits on hunting, open burning, noise, lighting, smell are not appropriate for agricultural pursuits. Further, the owners of farmland, when annexed, have little voice in municipal government because votes are based on population and farms consist of hundreds of acres with little or no population.

The General Assembly has recognized the difference between farmland and other types of property in annexation and other relevant areas. The General Assembly has established a clear policy of favoring farmland over municipal control. This Court should recognize that public policy and construe I. C. §36-4-3-13(c)(2) in light of those clear policies.

1. **The context of the annexation statutes makes clear that the General Assembly intended that a municipality must establish the imminent development of an annexation territory to satisfy I.C. §36-4-3-13(c)(2) is necessary to annex agricultural land.**

The Court of Appeals in this case, cites *Town of Fortville v Certain Fortville Annexation Territory Landowners*, No 30A01-1410-MI-442 (Slip Op at 9 (Ind. Ct. App., July 2, 2015 (Pet. to Trans. Granted 10/22/2015) for the proposition that a court should allow annexation under I. C. §36-4-3-13(c)(2) even if a city does not have impending plans to build on land that it seeks to annex if that might harm its future plans for urban management of the land until the "long term inevitability" of annexation takes place. (*Town of Whitestown, Indiana v Rural Perry township Landowners*, Slip Op at 9, Ind. Ct. App. July 29, 2015) In other words, the two courts of appeals have held that the potential for the "long term inevitability" of annexation satisfies the statutory requirement that the municipality needs and can use the annexation territory for its "development in the reasonably near future." This Court has vacated the Opinion in *Town of Fortville, Supra.* and should do the same in this case since these holdings and their impact of future annexations statewide clearly conflict with the intent of the General Assembly.

This Court and the appellate courts have made it clear that in construing the words and phrases of a single section, the court must consider the entire statute in order that the spirit and purpose of the statute is carried out. (See eg. *Dreiling v Custom Builders* 756 N. E. 2d 1087, 1089 (Ind Ct App 2001)).

IC 36-4-3-13(c)(2) provides that to annex agricultural land, a municipality must establish "[T]hat the territory sought to be annexed is needed and can be used by the municipality for its development in the reasonably near future." The General Assembly has not specifically defined what is meant by the "reasonably near future," but the context of the annexation statute does provide a clear roadmap.

In a remonstrance action, if a municipality does not satisfy its burden of proof under I.C. §36-4-3-13(c)(2), then I. C. §36-4-3-15(b) provides that the municipality may not make further attempts to involuntarily annex the territory or any part of the territory during the four (4) years following the date of the trial court's decision or the final disposition on appeal.[1] Thus four (4) years after the remonstrators have won their case in court, the clock starts over. In this context, the General Assembly must logically have intended that the "reasonably near future" would be a period of four (4) years or less, since a municipality would be free to initiate a new involuntary annexation process, looking at the need for development afresh every four (4) years. It would make no logical sense to interpret the statute to allow consideration of long term plans for development, say ten (10) years in the future, when the municipality could have tried twice more to involuntarily annex that area under a new set of conditions each time.

2. The context of the annexation statutes makes it clear that the General Assembly intends that the annexation of agricultural land bears a different standard that the annexation of urban territory.

The General Assembly has recognized that agricultural land bears a different relationship to municipal regulation than urban land. The General Assembly has defined "urban land" in IC §36-4-3-13(b)(2) as land that meets one or more of the following:

> (2) One (1) of the following:
> (A) The resident population density of the territory sought to be annexed is at least three (3) persons per acre.
> (B) Sixty percent (60%) of the territory is subdivided.
> (C) The territory is zoned for commercial, business, or industrial uses.

In the case of annexation of "urban land" the General Assembly has imposed no motive requirements on such annexation and the General Assembly has imposed no limits the applicability of city taxes or zoning regulation on that land. The Court has held that the ultimate

[1] Note that IC 36-4-3-15(b) does not prohibit a voluntary annexation of any part of the annexation territory under Sections 5 or 5.1 at any time after entry of the judgment.

purpose of the annexation statute is to promote the annexation of adjacent urban territory. *Rogers v. Mun. City of Elkhart,* 688 N.E. 2d 1238, 1242 (Ind. 1997). However, the General Assembly has imposed quite different rules for agricultural property. IC §36-4-3-4.1 provides a completely different set of rules for the annexation of agricultural property.

A. **Agricultural property is exempt from municipal taxation.**

IC §36-4-3-4.1(b) provides that property that is zoned for agricultural purposes is exempt from municipal taxation as long as that property remains zoned agricultural. It should be noted that in 2006 the General Assembly limited this exemption to ten (10) years. (P. L 71-2006, SEC 1). However, in 2013 the General Assembly restored that exemption to an unlimited period of time as long as the property remained zoned agricultural. (P. L. 243-2013, SEC 1). It is worth noting that in 2015 the General Assembly further strengthened that exemption by granting it to property assessed as agricultural regardless of the zoning and mandating the exemption where it was arguably optional before. (P. L. 228-2015, SEC. 6).

B. **Agricultural Land is exempt from municipal zoning changes without owner consent.**

IC §36-4-3-4.1(d) provides that a municipality cannot change the zoning of agricultural land without the owner's consent. Thus, while a municipality could enact comprehensive plans and implement zoning changes for municipal growth, with or without owner consent, on all other types of property, municipalities are statutorily prohibited from changing the zoning of annexed agricultural land without the owner's consent.

C. **Agricultural Land cannot be used to establish contiguity for further involuntary annexations.**

IC §36-4-3-4.1(e) provides that annexed agricultural land cannot be used to establish contiguity for further involuntary annexations. The General Assembly has established clear policy that a municipality cannot annex agricultural land for the purpose of involuntarily annexing more agricultural land. The General Assembly has imposed clear limits and established a clear legislative policy to prohibit municipalities from using the annexation of agricultural land ever greater expansions into rural areas.

3. The General Assembly has adopted other similar policies to protect the agricultural use of land.

The General Assembly has clearly provided a different set of rules and policies in the annexation statutes when an annexation involves agricultural land. It is important for the Court to recognize this significant policy difference and to apply that policy in considering whether a municipality has met its burden of proof under IC 36-4-3-13(c)(2).

The General Assembly has adopted a rare statement of public policy regarding the interpretation of the Indiana Code as it relates to agricultural land. Ind. Code §15-11-2-6(a) provides:

> (a) The general assembly declares that it is the policy of the state to conserve, protect, and encourage the development and improvement of agriculture, agricultural businesses, and agricultural land for the production of food, fuel, fiber, and other agricultural products. The Indiana Code shall be construed to protect the rights of farmers to choose among all generally accepted farming and livestock production practices, including the use of ever changing technology.

In following this broad policy statement, the General Assembly has limited the ability of municipalities and others from bringing nuisance actions to impair existing limit farming operations. (See I.C. §32-30-6-9.) This broad statement of policy in interpreting the Indiana

Code should be given due consideration when the courts review annexation statutes impacting agricultural property.

CONCLUSION

Ind. Code §36-4-3-13-(c)(2) imposes a requirement that before a municipality may involuntarily annex agricultural land it must establish that the "That the territory sought to be annexed is needed and can be used by the municipality for its development in the reasonably near future." The General Assembly has adopted a clear public policy that agricultural land should be preserved and as a result that agricultural land given preferential treatment when faced with involuntary annexation by a municipality. This Court should accept transfer and adopt a clear standard for interpreting Ind. Code §36-4-3-13-(c)(2) going forward that will comply with and enhance the policies adopted by the General; Assembly

Respectfully submitted,

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CERTIFICATE OF SERVICE

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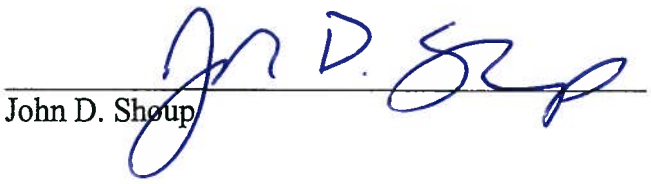

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