

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

IN THE HAMILTON SUPERIOR COURT
NO. 3
CAUSE NO. 29D03-0502-MI-188

CERTAIN SOUTHWEST CLAY)
TOWNSHIP ANNEXATION)
TERRITORY LANDOWNERS,)
)
Petitioners,)
)
)
v.)
)
CITY OF CARMEL, INDIANA,)
)
Respondent.)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT
GRANTING THE PETITION REMONSTRATING AGAINST THE PROPOSED
ANNEXATION OF SOUTHWEST CLAY TOWNSHIP INTO THE CITY OF CARMEL**

This cause is before the Court on the *Petition Remonstrating Against the Proposed Annexation of Southwest Clay Township into the City of Carmel* filed February 24, 2005 by Petitioners, Certain Southwest Clay Township Annexation Landowners, against Respondent, the City of Carmel. The Landowners' petition came on for final hearing on February 27, February 28, and March 1, 2006. The case became ripe for decision with the filing of all post-hearing briefs on March 20, 2006. As a preliminary matter, the Court denies Carmel's only written request for specific findings of fact and conclusions of law (file-stamped March 21, 2006) as untimely under Indiana Trial Rule 52, and the Court notes further that specific findings and conclusions are not otherwise required in annexation cases. *See Chidester v. City of Hobart*, 631 N.E.2d 908, 909 (Ind. 1994). Having considered the evidence, the oral arguments of counsel, the parties' respective post-hearing briefs, and the applicable law, the Court, being duly advised, now hereby *sua sponte* enters the following findings of fact, conclusions of law, and judgment:

FINDINGS OF FACT

1. On June 21, 2004, the Common Council of the City of Carmel approved Resolution No. 06-21-04-03, *A Resolution . . . to Adopt the Written Fiscal Plan and Definite Policy for an Area Known as Annexation Territory in Ordinance No. C-263*. The written fiscal plan and supporting net-impact projections approved by Resolution No. 06-21-04-03—both of which were dated June 10, 2004—applied to the annexation of an area called “the Southwest Clay Annexation Area.” At the same meeting on June 21, 2004, the City’s Common Council also conducted the first reading of Ordinance No. C-263, *An Ordinance . . . Annexing Certain Territory to the City of Carmel, Indiana, Placing the Same within the Corporate Boundaries Thereof and Making the Same a Part of the City of Carmel*. Ordinance No. C-263’s first recital generally identified the annexed territory as land in southwest Clay Township (“SW Clay”), with the territory more particularly described elsewhere in Ordinance No. C-263.

2. On July 2, 2004, by letter posted via certified U.S. mail, Carmel sent notice to the affected landowners in SW Clay of the annexation described by Ordinance No. C-263. The notice specifically informed recipients that a public hearing on the annexation would be held on October 4, 2004.

3. The City caused the Noblesville *Ledger* to publish notice of Ordinance No. C-263’s annexation of SW Clay. The *Ledger* published that notice on July 16, 2004.

4. On or about July 9, 2004, the City revised the fiscal plan that the Council had adopted in Resolution No. 06-21-04-03 on June 21, 2004. On or about July 22, 2004, the City also revised the original fiscal plan’s supporting net-impact projections. The Common Council never adopted either the revised fiscal plan or the revised net-impact projections.

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

5. On October 4, 2004, Carmel's Common Council conducted the second reading of Ordinance No. C-263. At the same meeting, the Council held the announced public hearing on Ordinance No. C-263. At that hearing fifteen residents of SW Clay, including Petitioner Jack Holton, expressed to the Council their opposition to the annexation.

6. At its October 4, 2004 meeting, the Common Council did not read or discuss the revised fiscal plan dated July 9, 2004 or the revised net-impact projections dated July 22, 2004.

7. At its November 15, 2004 meeting, the Common Council tabled the third reading of Ordinance No. C-263 and scheduled a special meeting of the Council for November 29, 2004 for further discussion of Ordinance No. C-263. *See* Petitioner's Exhibit No. 7 (minutes of the November 15th meeting showing a special meeting scheduled for November 29th). Also at that meeting, Petitioner Fred Yde spoke in opposition to Ordinance No. C-263.

8. On November 24, 2004—not on the previously scheduled date of November 29, 2004—Carmel's Common Council held its special meeting on Ordinance No. C-263. At that meeting, the Council's president again announced the third reading of Ordinance No. C-263. The Council then approved and adopted Ordinance No. C-263 on November 24, 2004.

9. Carmel published notice of Ordinance No. C-263's adoption after the Common Council approved and adopted the ordinance on November 26, 2004. *See* Testimony of James Brainard, Record of Final Hearing (approximately 11:56 a.m. on February 27, 2006) that the publication occurred on November 24; and Respondent's Exhibit OO (proof of publication of Ordinance No. C-263's adoption with a publication date of November 26, 2006). The discrepancy can best be explained by the fact the notice from the Carmel Clerk Treasurer was dated November 24, 2004.

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

10. On February 24, 2005, after Carmel published notice of Ordinance No. C-263's adoption, Petitioners responded to the City's adoption of Ordinance No. C-263 by timely filing their remonstrance petition against that ordinance.

11. On July 25, 2005, Carmel filed its *Objection* to signatures on the remonstrance petition. Attached to Carmel's *Objection* was an unpaginated 21-page document showing 806 properties in the affected territory for which Carmel contested the signatures on the petition.

12. On September 6, 2005, the City's Common Council discussed and approved a *Settlement Agreement Concerning Carmel City Ordinance No. C-263* that had been negotiated between representatives of the City and of a group of Petitioners called "No Ordinance for Annexation" ("NOAX"); NOAX, which did not represent all Petitioners, negotiated its settlement agreement with Carmel, with the assistance of counsel, over a period of several months after the filing of the remonstrance petition. Also considered at the Council's September 6th meeting was an amendment to Ordinance No. C-263 that the Council expected to discuss at its next meeting.

13. On September 19, 2005, the City's Common Council discussed what it called "Ordinance No. C-263-A," the document that purported to amend Carmel's original annexation ordinance, Ordinance No. C-263. Supporting the second ordinance were the Settlement Agreement and a document called "Exhibit C." "Exhibit C" was a composite document made up of a two-page "Net impact, SW Clay Annexation" and a nine-page "Economic and Policy Assumptions." The net-impact portion of "Exhibit C" stated that it was "revised September 15, 2005." The assumptions portion of "Exhibit C" stated that it was "revised September 14, 2005."

14. On October 7, 2005, the Common Council conducted the "second reading of Ordinance No. C-263-A." Petitioner's Exhibit No. 18 (special-meeting minutes). After amending

the title of this second ordinance to “Ordinance No. C-263, As Amended,” the Common Council adopted the ordinance.¹

15. The City caused the Noblesville *Ledger* to publish notice that “Ordinance No. C-263, As Amended” had been adopted. The *Ledger* published that notice on October 14, 2005.

16. “Ordinance No. C-263, As Amended” purported to amend Ordinance No. C-263 in at least three significant ways: by deferring the annexation’s effective date for three years, by providing a tax abatement for landowners in SW Clay, and by increasing the total funds available for road reconstruction improvements from \$25,000,000 to \$40,000,000.

17. On December 6, 2005, the Court entered its *Order of Certification*. Underlying that Order were findings that Carmel had issued proper notice for Ordinance No. C-263 and that landowners for 2,401 of the annexation territory’s total of 3,440 parcels had signed the remonstrance petition filed in response to Ordinance No. C-263. Accordingly, with landowners for more than 65% of the affected parcels having signed the petition, the Court certified the remonstrance in the December 6th certification order.

18. As of approximately two weeks before the final hearing, the signatures for eleven parcels were no longer valid. *See* Respondent’s Exhibit X (certificates from the Indiana Secretary of State confirming that the owners of eleven affected parcels—M & B Associates, Laurelwood

¹ In an extended colloquy with Carmel’s lead counsel, *see* Oral Argument of Mr. Kile, Record of Final Hearing (approximately 11:17 a.m. *et seq.* on March 1, 2006), the Court discussed whether “Ordinance No. C-263, As Amended” was truly adopted or whether the document’s own terms render it nothing more than an “executory ordinance.” *See* Paragraph No. 1, Respondent’s Exhibit A at 1. Even after that extended discussion, however, Petitioners consistently and expressly treated the amended ordinance as “adopted.” *See* Petitioners’ Post-hearing Brief at 14, at 16 (twice), and at 19 (twice). Thus, out of deference to Carmel, the Court finds that Carmel did adopt “Ordinance No. C-263, As Amended.” For reasons discussed at length later in this Order, the Court does not reach that amended ordinance because Carmel’s failure to comply with I.C. 36-4-3-3.1 forecloses such review.

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

Property Owners Association, Fairmeadow Farms, Garrison Holdings, and EC Holdings—had been administratively dissolved). Accordingly, as of the final hearing, the total number of parcels represented by valid signatures on the remonstrance petition filed against Ordinance No. C-263 was 2,390—or 70% of the total number of affected parcels.

19. At the final hearing, Carmel introduced what its lead counsel called “a number of . . . certified documents,” Record of Final Hearing (approximately 8:34 a.m. on February 28, 2006), that were copies of recorded covenants and restrictions for an unspecified number of properties. *See* Respondent’s Exhibits CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, and MM. Besides moving to introduce those documents into evidence, however, Carmel offered the Court no assistance at all in determining which parcels listed in the City’s July 25, 2005 *Objection* are arguably implicated by the covenants and restrictions. Also missing from Carmel’s presentation was any assistance at all in determining which specific portions of the several recorded covenants and restrictions themselves could arguably be at issue in these proceedings. Because Carmel introduced the several recorded covenants and restrictions at the same time it introduced Respondent’s Exhibit X (certificates of administrative dissolution from the Secretary of State), the Court finds that Carmel introduced the covenants and restrictions to challenge other unspecified signatures on the remonstrance petition. Moreover, the Court specifically finds that the following portions of Respondent’s Exhibits CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, and MM at least arguably implicate the validity of some unspecified number of signatures:

- Respondent’s Exhibit CC at 35 (“25. Annexation. Each Owner, by the acceptance of a deed to a Lot in Ashbrooke, shall be deemed to have waived such Owner’s right to remonstrate against annexation of all or any portion of the Tract by the City of Carmel.”);

- Respondent’s Exhibit DD at 5 (“**Each Owner of a Lot in *Camden Walk*[,] by the acceptance of a deed thereto, shall be deemed to have waived such owner’s right to remonstrate against annexation of all or any portion of *Camden Walk* by the City of Carmel at any time.**”) (bold-faced emphasis in the original);
- Respondent’s Exhibit EE at 17 (“(i) Annexation. Each Owner, by the acceptance of a deed to a lot in (Subdivision) [*sic*], shall be deemed to have waived such Owner’s right to remonstrate against annexation of all or any portion of (Subdivision) [*sic*] by the City of Carmel.”);
- Respondent’s Exhibit FF at 10 (unpaginated) (“43. Owners and Association shall not object to annexation if requested by the City of Carmel.”);
- Respondent’s Exhibit GG at 20 (“25. Annexation. Each Owner by acceptance of a deed to a Lot waives the right to remonstrate or oppose annexation of the Tract to the City of Carmel, Indiana.”);
- Respondent’s Exhibit HH at 12 (“43. Owners and Association shall not object to annexation if requested by the City of Carmel.”);
- Respondent’s Exhibit II at 7 (unpaginated) (“No owner of any lot shown herein shall have the right to remonstrate against annexation of that lot to the City of Carmel.”);
- Respondent’s Exhibit JJ at 5 (“**Each Owner of a Lot in *Treesdale*[,] by the acceptance of a deed thereto, shall be deemed to have waived such owner’s right to remonstrate against annexation of all or any portion of *Treesdale* by the City of Carmel at any time.**”) (bold-faced emphasis in the original);
- Respondent’s Exhibit KK at 41 (“Annexation. Each Owner, by the acceptance of a deed to a Lot in Weston Place, shall be deemed to have waived such Owner’s right to

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

remonstrate against annexation of all or any part of Weston Place by the City of Carmel, Indiana.”);

- Respondent’s Exhibit LL at 1 (incorporating “the covenants and restrictions contained in” Respondent’s Exhibit KK); and
- Respondent’s Exhibit MM at 1 (incorporating “the covenants and restrictions contained in” Respondent’s Exhibit KK).

20. On December 27, 2006, the Court set the final hearing in this cause for January 31 and February 1, 2006 in accordance with I.C. 36-4-3-11(c)’s requirement that the final hearing be held within sixty days after entry of the certification order.

21. On January 17, 2006, over Carmel’s objection the Court granted the Petitioners’ motion to continue the final hearing to accommodate the appearance in this cause filed January 11, 2006 by new counsel for Petitioners Ewbank, Holton, and Thomas. Accordingly, by entry dated January 20, 2006, the Court reset the final hearing for February 27 and 28, 2006.

22. Petitioners incurred substantial injuries from the negotiation of Ordinance No. C-263 and its fiscal plan after Carmel published notice of the ordinance’s adoption. Petitioners’ injuries included, without limitation, the greatly increased time and expense required to negotiate the terms of a fair and equitable fiscal plan after Carmel published notice that Ordinance No. C-263 had been adopted.

23. The territory that Carmel seeks to annex is more than 50% contiguous to Carmel and more than 60% subdivided. Additionally, Carmel needs the SW Clay territory and can use it for the City’s development in the reasonably near future.

24. The fiscal plan adopted by the Common Council in Resolution No. 06-21-04-03 in support of Ordinance No. C-263 fails to “explain how specific and detailed expenses will be

funded and [to] indicate the taxes, grants, and other funding to be used.” I.C. 36-4-3-13(d)(2). For that reason, but without limitation by the findings and conclusions stated in this Order, Carmel’s fiscal plan does not “represent[] a *credible* commitment by the municipality to provide the annexed area with comparable capital and non-capital services.” *Bradley v. City of New Castle*, 764 N.E.2d 212, 216 (Ind. 2002) (emphasis added).

25. Adequate police and fire protection, and adequate street and road maintenance, are already provided to SW Clay by a provider other than the City of Carmel.

26. The annexation will have a significant financial impact on the residents or owners of land in SW Clay.

27. The annexation under Ordinance No. C-263 is not in the best interests of the owners of land in SW Clay.

28. At least 65% of the owners of land in SW Clay oppose the annexation of SW Clay under Carmel’s Ordinance No. C-263.

29. Any conclusion of law that is more properly denominated a finding of fact is hereby incorporated into these findings as if it were fully stated herein.

CONCLUSIONS OF LAW

1. Any finding of fact that is more properly denominated a conclusion of law is hereby incorporated into these conclusions as if it were fully stated herein.

2. At the threshold, the Court again concludes that it has subject-matter jurisdiction. That element of jurisdiction depends, in part, on the remonstrance petition having been signed by the owners of at least 65% of the affected parcels in SW Clay. *See* I.C. 36-4-3-11(a)(1). Although Carmel has shown a basis for decertifying the signatures for eleven parcels affected by Ordinance No. C-263, the remaining valid signatures for 2,390 parcels (70% of all affected

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

parcels) are still well above the minimum acceptable number of 2,236 parcels (65% of the overall total of 3,440 parcels). Accordingly, the Court still has jurisdiction of the subject-matter of this dispute.

Nothing in the relevant portions of the many covenants and restrictions introduced by Carmel justifies a holding to the contrary. *See* Respondent's Exhibits CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, and MM; Finding of Fact No. 19, *supra* at 6-8. Under Indiana law, all purported waivers of the right to remonstrate contained in those exhibits are void and unenforceable. Generally, a right cannot be waived unless the right has first vested, and the right to remonstrate does not vest until a municipality adopts an ordinance that purports to annex specific properties. *See Doan v. City of Ft. Wayne*, 253 Ind. 131, 136-37, 252 N.E.2d 415, 417-18 (1969) (grounding such general reasoning on statutory language providing that “[w]henver territory is annexed . . . an appeal may be taken . . . [.]”—language that was still present in I.C. 36-4-3-11(a) at all times relevant to this litigation) (emphasis in the original). As in *Doan*, in this case too “the record is completely barren of any evidence which would lead this court to believe that the right to remonstrate had vested at the time the alleged waivers were executed.” *Id.* at 137, 252 N.E.2d at 418. More specifically, in Indiana a landowner may waive future rights to remonstrate against annexations only if the owner executes the waiver in accordance with state statute. At all times relevant to this litigation, Indiana statute permitted such waivers only if they served as consideration for a municipality's provision of sewer works. *See* I.C. 36-9-22-2; *see also Doan*, 253 Ind. at 139, 252 N.E.2d at 419 (rejecting an attempt to substitute a contract for water services for the requirement of sewer-works contracts provided by the strict letter of the predecessor of I.C. 36-9-22-2); and *In the Matter of the Annexation Proposed by Ordinance No. X-01-93*, 654 N.E.2d 284, 287 (Ind. Ct. App. 1995) (applying I.C. 36-9-22-2), *trans. denied*.

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

None of the purported waivers in the covenants and restrictions introduced by Carmel contains any language suggesting that the waivers were consideration for Carmel's provision of sewer works for the properties governed by Respondent's Exhibits CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, and MM. Thus, even assuming that these exhibits concern realty affected by Ordinance No. C-263, their relevant portions do not divest this Court of its subject-matter jurisdiction.

3. The Court concludes further that holding the final hearing more than sixty days after entering the *Order of Certification* on December 6, 2005 also did not divest the Court of its jurisdiction. Largely for constitutional reasons, the sixty-day period imposed by I.C. 36-4-3-11(c) is advisory, not mandatory. *See Keene v. City of Michigan City*, 241 Ind. 592, 597, 174 N.E.2d 48, 50 (squarely deciding the same issue under a predecessor statute). Continuing the final hearing for twenty-seven days therefore did not disturb this Court's jurisdiction.

4. For reasons discussed in Conclusion of Law No. 2, *supra* at 9, the Court also rejects Carmel's jurisdictional challenge based on Fred Yde's testimony that the only way to secure enough signatures for the remonstrance was for NOAX to promise to negotiate with Carmel for better terms of annexation. *See Oral Argument of Mr. Kile, Record of Final Hearing* (approximately 10:08-10:09 a.m. on March 1, 2006).

5. On the merits, the first issue is whether the pending remonstrance is based on Ordinance No. C-263 or Ordinance No. C-263, As Amended. The Court concludes that only Ordinance No. C-263, supported by the fiscal plan adopted by the Common Council in Resolution No. 06-21-04-03, is a proper basis for this proceeding. This Court is well aware that the Indiana Supreme Court, deciding cases under earlier statutory schemes, has permitted cities great latitude in their ability to modify an annexation fiscal plan after a remonstrance has been filed. *See, e.g., Bradley v. City of New Castle*, 764 N.E.2d 212, 221 (Ind. 2002) (under pertinent

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

annexation statutes that had been last amended in 1992, affirming the trial court's acceptance of amendments to a fiscal plan during the final hearing). At the same time, unlike *Bradley* and other earlier cases, this case is proceeding under a statutory scheme on annexations that the General Assembly fundamentally altered in 1999. One specific alteration distinguishes this case from *Bradley*: the legislature's clear and unambiguous intent to require municipalities that annex pursuant to I.C. 36-4-3-4, as Carmel did here, to commit themselves to "terms and conditions fairly calculated to make the annexation equitable to the property owners and residents of the municipality and the annexed territory," I.C. 36-4-3-8(b), and to make that commitment *before* the municipalities notify the affected landowners of the annexation. In 1999 the General Assembly enacted I.C. 36-4-3-3.1, which provides that "the municipality *shall* establish and adopt the written fiscal plan *before mailing the notification to landowners in the territory proposed to be annexed . . .*" I.C. 36-4-3-3.1(c) (emphasis added).

Reading Section 3.1 to harmonize it with other annexation statutes, however, the Court concludes further that the required adoption of a written fiscal plan before notification of affected landowners does not absolutely freeze the fiscal plan as of the date of mailing the original notice announcing the required public hearing on a proposed forced annexation. *Contrast* Petitioners' Post-hearing Brief at 8 (arguing against any post-June 2004 fiscal plans in this case purely because they were not adopted "before the fiscal plan was provided to the residents and land owners [*sic*] of SW Clay pursuant to I.C. 36-4-3-3.1"). Courts must read statutes "to avoid an absurd result or a result that the legislature, as a reasonable body, could not have intended." *Raider v. Pea*, 613 N.E.2d 870, 872 (Ind. Ct. App. 1993). Reading Section 3.1 to absolutely freeze an annexing municipality's fiscal plan as of the mailing of the original notice to affected landowners would impose just such an absurd result. The public hearing for forced annexations

required by I.C. 36-4-3-2.1 would be pointless if a municipality could not amend its annexation ordinance and underlying fiscal plan after that hearing to include terms of annexation that benefit both the affected landowners and the annexing municipality. Accordingly, the Court concludes further that the General Assembly intended to permit amendment of the fiscal plan until the adoption of the annexation ordinance. The repeal provisions in our annexation statutes permit a municipality to change course dramatically, and with relatively minimal penalties, even after adopting an annexation ordinance and even after a remonstrance petition has been filed. *See* I.C. 36-4-3-15(c) (imposing a twelve-month moratorium on annexation if a municipality repeals an adopted annexation ordinance less than sixty-one days after its publication but before the hearing on remonstrance); and I.C. 36-4-3-15(d) (imposing a moratorium of twenty-four months if a municipality repeals an adopted annexation ordinance between sixty-one and 120 days after publishing notice of the ordinance but before the remonstrance hearing). Under Sections 15(c) and 15(d), an annexing municipality's ability to change course without penalty expires, however, as of the publication of an annexation ordinance's adoption. The Court therefore concludes that, despite the strict letter of I.C. 36-4-3-3.1(c), the General Assembly intended to permit negotiations of an annexation fiscal plan up to—but not after—the publication of an annexation ordinance's adoption.

Section 3.1(c) therefore evinces a clear legislative break with the past. Under Section 3.1(c), annexing municipalities no longer have the option of broadcasting a rough intent to annex at the beginning of an annexation proceeding, trusting that they can make up even substantial deficiencies in a fiscal plan if, as in this case, resistance to an annexation is sufficiently strong to force after-the-fact negotiations. Section 3.1(c) now requires annexing municipalities to commit themselves to fair and equitable fiscal plans before an adopted annexation ordinance is

published.² The 1992 statutory scheme governing the fiscal plan at issue in *Bradley* left room for the *Bradley* Court to ask—and to decide—“whether a fiscal plan is frozen as of the date of its adoption for purposes of evaluating its legal sufficiency.” 764 N.E.2d at 219. The legislature now has made that decision for the courts, mandating that a fiscal plan is frozen as of the publication of an adopted annexation ordinance. In Section 3.1(c), the General Assembly has narrowed the interpretive gap so far as to strongly encourage municipalities to begin the entire annexation process with negotiations as exemplary as those that eventually occurred in this case.

This procedural conclusion finds factual support in the substantial injuries incurred by Petitioners as a direct result of Carmel’s failure to comply with Section 3.1(c). *Contrast* City of Carmel’s Post-hearing Brief at 10 (asserting that Petitioners “can cite to no possible prejudice that they have suffered as a result of the updates”). Carmel’s failure to comply with Section 3.1(c) has caused Petitioners—and, in all frankness, Carmel itself—substantial burdens that could have been avoided if Carmel had followed Indiana law when it undertook the annexation of SW Clay in 2004. Part of that law was Section 3.1’s mandate for Carmel to commit itself to a fair and equitable written fiscal plan, not well after the filing of the remonstrance petition against Ordinance No. C-263, but before the adoption and publication of Ordinance No. C-263. Carmel chose not to follow that mandate, and that choice imposed burdens of great time and expense upon Petitioners as negotiations toward a fair and equitable fiscal plan continued well after Carmel published notice that Ordinance No. C-263 had been adopted. In other words, not only the legal basis but also the factual basis of this case removes it from the great latitude shown to

² In this case, Carmel’s awareness of I.C. 36-4-3-3.1(c) and its requirements was more than just a legal fiction. *See* Respondent’s Exhibit B at 1 (first recital clause of Resolution No. 06-21-04-03 specifically invoking I.C. 36-4-3-3.1).

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

the City of New Castle in *Bradley*. See *Bradley*, 764 N.E.2d at 218-19 (using the allegations in *King v. City of Bloomington*, 239 Ind. 548, 556, 159 N.E.2d 563, 567 (1959), that the “remonstrators claimed to have incurred great expense to challenge an annexation ordinance,” as well as the obvious lengthening of the annexation process, as sufficient injury for equity to provide relief for procedural violations even without a statute such as I.C. 36-4-3-3.1(c) prohibiting the municipality’s conduct). In this case, by continuing to modify its fiscal plan after it published notice of Ordinance No. C-263’s adoption, Carmel did “commit procedural wrongs so severe that [this] court[] must act to protect remonstrators’ substantial rights,” *Bradley*, 764 N.E.2d at 217, by enforcing Section 3.1(c) and confining this Order’s remonstrance analysis to Ordinance No. C-263. Contrast *Bradley*, 764 N.E.2d at 216-17 (on the failure of the remonstrators there to allege, let alone show, any harm resulting from the municipality’s failure to comply with established procedures). Contrary to Carmel’s characterization of this issue, Petitioners here have not naively claimed a non-existent “property interest in adherence to established procedure.” *Bradley*, 764 N.E.2d at 218 (quoting *Shook Heavy & Environmental Construction Group v. City of Kokomo*, 632 N.E.2d 355, 361 (Ind. 1994)). Instead, they have claimed and shown the very kinds of injuries and burdens that the General Assembly intended for Section 3.1(c) to prevent. Ordinance No. C-263, as originally adopted, is therefore the basis for this remonstrance proceeding.³

³ Carmel selectively states the abstract principle that “the scope of judicial review [in an annexation proceeding] is limited to Section 13.” Carmel’s Post-hearing Brief at 13. *Bradley* squarely held that the scope of judicial review is limited, not just to Section 13, but to Sections 11 through 13. See 764 N.E. at 217. The *Bradley* Court also recognized a significant exception to that holding: courts can review procedural challenges outside Sections 11 through 13 *if* the alleged procedural wrongs are sufficiently severe, and *if* the remonstrators at least allege “impairment of substantive rights.” 764 N.E.2d at 218. Both conditions are present in this case,

This Court does not necessarily agree with the policy preferences reflected in I.C. 36-4-3-3.1, especially when those preferences foreclose the laudable (though belated) discussions between the municipality and many affected landowners that occurred in this case, and especially when, as in this case, the remonstrators do an exceptional job of negotiating terms of annexation that benefit both the remonstrators and the municipality. This Court's role in our constitutional order, however, is not to substitute its own policy preferences for those of the legislature, but merely to apply the policy preferences that the legislature has established through its duly enacted laws. The difficulty of fulfilling that role increases when, in a case as close as this one, our appellate courts have not yet had an opportunity to provide squarely applicable guidance on how to interpret and apply new statutory law. Reviewing this issue with the necessary deference to the General Assembly, then, the Court concludes that a fiscal plan is now frozen as of the adoption of the annexation ordinance, and that Ordinance No. C-263, supported by the fiscal plan adopted by Resolution No. 06-21-04-03, is the ordinance at issue in this case.⁴

and the exception for reviewing Carmel's compliance with statutory procedural mandates therefore applies in this case.

Carmel recently argued under *Bradley* in seeking to foreclose judicial review of the City's compliance with the procedural requirements of I.C. 36-4-3-5.1 in a requested-annexation case. See *City of Carmel v. Steele*, 836 N.E.2d 967, 975-76 (Ind. Ct. App. 2005), *trans. granted* (April 19, 2006, under Supreme Court Cause No. 29S02-0604-CV-139). Of course, the Indiana Supreme Court's rationale for granting transfer in *Steele* is not known at this time, and this issue thus may or may not figure in the final appellate decision in *Steele*. Although the Court of Appeals' opinion in *Steele* now has no precedential value, in *Steele* the Court of Appeals rejected Carmel's attempt to foreclose judicial review of its compliance with Section 5.1 because, according to the Court of Appeals, the "substantive rights" exception also applied in that case. See 836 N.E.2d at 976.

⁴ In closing argument, Carmel's lead counsel correctly surmised that the Indiana Supreme Court knew of the 1999 statutory amendments when it decided *Bradley*. In the sister case to *Bradley* handed down the same day, *City of Ft. Wayne v. Certain Southwest Annexation Area Landowners*, 764 N.E.2d 221 (Ind. 2002), the Court noted that the 1999 amendments on postponements of annexations would have "significantly reduce[d] many of the difficulties this

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

6. When courts review proposed annexations, a guiding first principle is that “[a]nnexation is essentially a legislative process, and courts should not micromanage it.” *Bradley*, 764 N.E.2d at 214. Because of the constitutional separation of powers, *see* IND. CONST. art. 3, sect. 1, judicial review of a municipality’s compliance with the statutory requirements for annexation is necessarily limited:

The trial court’s role [in reviewing a proposed annexation’s compliance with statutory requirements] is to decide whether the municipality has operated within its authority and satisfied the statutory conditions for annexation. . . .

Id. at 216 (citation omitted). Although annexation is still an essentially legislative process, that process has changed dramatically in the past thirty-five (35) years. Most pertinent to this Order’s review of Ordinance No. C-263 and its supporting fiscal plan is the unmistakable evolution of a legislative intent to require more precision from fiscal plans when municipalities must justify proposed annexations in court:

- In 1971, I.C. 18-5-10-25(c) required only a showing that “[t]he annexing city has developed a fiscal plan” The Indiana Court of Appeals, finding the statute ambiguous, construed that general requirement to hold that “factor (c) is not satisfied by evidence which fails to show . . . how [the annexing city] intends to finance its provision of such services.” *Harris v. City of Muncie*, 163 Ind.App. 522, 531, 325 N.E.2d 208, 214 (1975).
- In 1992, I.C. 36-4-3-13(d)(2) required a written fiscal plan that showed “[t]he method or methods of financing the planned services.” *Bradley*, 764 N.E.2d at 218 (quoting I.C. 36-4-3-13(d)(2) (West Supp. 1992)).

case presents.” *Id.* at 223 n.1. The Court did not apply the 1999 amendments in *City of Ft. Wayne*, though, because that case arose under statutes enacted in 1996. Similarly, in *Bradley* the 1999 amendments would have significantly reduced the difficulties surrounding “whether a fiscal plan is frozen as of the date of its adoption . . . ,” 764 N.E.2d at 219, but I.C. 36-4-3-3.1, enacted in 1999, was not and could not have been at issue in *Bradley*, a case in which the annexation ordinance was passed in October 1992. Under our separation of powers, *see* IND. CONST. art. III, sect. 1, that point is not merely technical.

- Today I.C. 36-4-3-13(d)(2) requires a written fiscal plan showing “[t]he method or methods of financing the planned services. *The plan must explain how specific and detailed expenses will be funded and must indicate the taxes, grants, and other funding to be used.*” (emphasis added)

Thus, although annexation is still an essentially legislative process, the General Assembly has just as clearly evinced an evolving intent to require cities to provide more “specific and detailed” explanations of how they plan to pay for proposed annexations. This indisputably more demanding legislative burden on municipalities is easily reconciled with the broad principles for annexation proceedings enunciated in cases decided under prior statutory schemes: The General Assembly intends these more precise explanations of funding for planned annexations as an integral component of a more demanding definition of the “credible commitment” required by the Indiana Supreme Court’s interpretation of prior annexation statutes. *See, e.g., Bradley*, 764 N.E.2d at 216.

7. Even after the significant amendments to our annexation statutes in 1999, the Court concludes that the statutory requirement of a written fiscal plan still has three broad purposes: (1) to “permit[] landowners to make an intelligent decision about whether to accept annexation or remonstrate”; (2) to “make[] the opportunity for remonstrance and judicial review more realistic. As a practical matter, *more than vague promises are needed* for a court to test a city’s ability to provide like services to the annexed territory”; and (3) “to protect the right of landowners to institute proceedings to force an annexing city to provide the services promised under the plan.” *City of Hobart v. Chidester*, 596 N.E.2d 1374, 1377-78 (Ind. 1992) (emphasis added). This Order resolves issues involving the second of these three purposes.

8. Traditionally, and still today under the current version of I.C. 36-4-3-13, a remonstrance proceeding puts the annexing city to its proof. “Even though the burden of

pleading is on the remonstrator, the burden of proof is [initially] on the municipality to demonstrate compliance with the statute.” *Rogers v. City of Elkhart*, 688 N.E.2d 1238, 1240 (Ind. 1997). The constitutional separation of powers, however, limits the degree to which Indiana courts will scrutinize fiscal plans in annexation proceedings:

Although the municipality bears the burden of proof when properly challenged, [courts] afford legislative judgment considerable deference. It is well-established that [courts] avoid scrutinizing legislative processes, even those that are constitutionally mandated. . . .

. . . .

Therefore, a trial court hearing a remonstrance is not an examiner conducting an audit of a challenged fiscal plan. Rather, it should focus on whether that plan represents a credible commitment by the municipality to provide the annexed area with comparable capital and non-capital services.

Bradley, 764 N.E.2d at 216 (applying Indiana’s 1992 annexation statutes regarding fiscal plans).

9. Under I.C. 36-4-3-13(a), the annexation contemplated by Ordinance No. C-263 must first satisfy the requirements of either I.C. 36-4-3-13(b) or 36-4-3-13(c). The evidence establishes that Carmel’s proposed annexation of SW Clay satisfies either I.C. 36-4-3-13(b) (contiguity and subdivision) or I.C. 36-4-3-13(c) (contiguity and the municipality’s need for and ability to use the territory).

10. Under I.C. 36-4-3-13(a), the annexation contemplated by Ordinance No. C-263 also must satisfy the requirements of I.C. 36-4-3-13(d):

(d) The requirements of this subsection are met if the evidence establishes that the municipality has developed and adopted a written fiscal plan and has established a definite policy, by resolution of the legislative body as set forth in section 3.1 of this chapter. The fiscal plan must show the following:

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

(1) The cost estimates of planned services to be furnished to the territory to be annexed. The plan must present itemized estimated costs for each municipal department or agency.

(2) The method or methods of financing the planned services. The plan must explain how specific and detailed expenses will be funded and must indicate the taxes, grants, and other funding to be used.

(3) The plan for the organization and extension of services. The plan must detail the specific services that will be provided and the dates the services will begin.

(4) That planned services of a noncapital nature, including police protection, fire protection, street and road maintenance, and other noncapital services normally provided within the corporate boundaries, will be provided to the annexed territory within one (1) year after the effective date of annexation and that they will be provided in a manner equivalent in standard and scope to those noncapital services provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, and population density.

(5) That services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities, and stormwater drainage facilities, will be provided to the annexed territory within three (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.

The Court concludes that Ordinance No. C-263's fiscal plan fails to satisfy the requirements of I.C. 36-4-3-13(d)—specifically, and without limitation by the findings or conclusions stated in this Order, the requirements of I.C. 36-4-3-13(d)(2).

11. Carmel's fiscal plan for the SW Clay annexation fails to "represent[] a credible commitment by the municipality to provide the annexed area with comparable capital and non-capital services," *Bradley*, 764 N.E.2d at 216, partly because the plan does not satisfy the new requirement of I.C. 36-4-3-13(d)(2) to "explain how specific and detailed expenses will be funded and [to] indicate the taxes, grants, and other funding to be used." The fiscal plan adopted in Resolution No. 06-21-04-03, *see* Respondent's Exhibit B, therefore does not meet the

judicially defined general requirement to “make[] the opportunity for remonstrance and judicial review more realistic.” *Chidester*, 596 N.E.2d at 1378. As the *Chidester* Court observed, “*more than vague promises are needed* for a court to test a city’s ability to provide like services to the annexed territory.” *Id.* (emphasis added). Here, the fiscal plan supporting Ordinance No. C-263 does contain a 21-page general overview, in prose, of the proposed annexation. The 21-page overview is then supported by a 16-page document—the first four pages of which consist of tables of unexplained numbers printed in a typeface smaller than 10-point size—that claims to state the net-impact projections for the annexation. Those thirty-seven pages are all well and good—as far as they go. Using numbers as heavily as it does, the fiscal plan seems specific at first glance. It becomes little more than a collection of vague promises, however, when its contents are subjected to even an appropriately minimal judicial scrutiny.

The testimony of CPA Gregory T. Guerrataz, *see especially* Record of Final Hearing (approximately 9:13 a.m. *et seq.* on February 28, 2006), amply demonstrates the statutory deficiencies of the fiscal plan supporting Ordinance No. C-263 under I.C. 36-4-3-13(d)(2). As Mr. Guerrataz noted, the June 2004 fiscal plan fails to provide specific and detailed estimates of either the expenses or the methods of funding for both non-capital and capital services for SW Clay for each department of the City of Carmel. *See, e.g.*, Respondent’s Exhibit B (“Engineering Department,” the supporting Fiscal Plan itself at 11; and the second and third paragraphs of the supporting Fiscal Plan at 19, as compared to the net-impact projections for “street capital projects” at “11 of 16”). Mr. Guerrataz also noted that Carmel failed to make “an absolute promise” to SW Clay in the June 2004 fiscal plan on the subject of road improvements. *See also* Respondent’s Exhibit B (supporting Fiscal Plan itself at 19). Further, Carmel’s plethora of unexplained numbers in the June 2004 fiscal plan confused even Mr. Guerrataz—a trained,

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

working CPA who is experienced in annexations and who therefore knows what he is looking for when he reads an annexation fiscal plan. A specific instance of his confusion occurred when he read the projections for “negative revenue” for the City of Carmel in 2007 and 2008 for “township joinder agreements.” See Respondent’s Exhibit B (supporting net-impact projections at “1 of 16”). Even Mr. Guerrataz could make only a best guess at an explanation for such important figures in the fiscal plan for Ordinance No. C-263.⁵ Mr. Guerrataz described an effective practice used by the City of Bloomington—a practice he did not help to create—in which each projected expense item in an annexation fiscal plan is immediately explained, in the same table, with a corresponding, immediately viewable line-item showing the projected source of funding for each listed projected expense. Although the Court concludes that the Bloomington practice exceeds the level of specificity required by I.C. 36-4-3-13(d)(2), that practice is far more prudent than the approach that Carmel oversaw in preparing the fiscal plan for Ordinance No. C-263.⁶ The face of the net-impact projections themselves expressly warned Carmel that the

⁵ One of the City’s own financial experts, Steve Dyson, also could not point to stated explanations of projected property-tax revenues from the annexation under Ordinance No. C-263. See Testimony of Steve Dyson, Record of Final Hearing (approximately 4:09 p.m. on February 27, 2006). Also worth noting is that Mr. Dyson and one of the City’s other financial experts, Eric Reedy, could offer only speculative explanations similar to Mr. Guerrataz’s for other projected revenues listed in other fiscal plans. See Testimony of Steve Dyson, Record of Final Hearing (approximately 4:38 p.m. on February 27, 2006) (observing that, on the projected increase in COIT revenues in the September 2005 fiscal plan, “I understand why they’re increasing, but I cannot find anything here,” in the September 2005 fiscal plan itself, that explains why those revenues would increase); and Testimony of Eric Reedy, Record of Final Hearing (approximately 9:09 a.m. on March 1, 2006) (on his need to email the person who prepared the September 2005 fiscal plan to clarify the source of the negative property-tax revenue of \$399,042 projected for 2009 in the September 2005 fiscal plan).

⁶ As in *Bradley*, in this case too it is fair to say that, at a minimum, Carmel’s June 2004 fiscal plan for the SW Clay annexation “could be termed ‘sloppy.’” 764 N.E.2d at 221. See, e.g., Respondent’s Exhibit B (supporting net-impact projections at “13 of 16”) (estimated cost of extending police service, not to the affected SW Clay Township, but to Washington Township).

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

number-laden, occasionally counter-intuitive projections (as in “negative revenues”) were “intended for the use of officials of the City of Carmel . . . and should not be used by others for any purpose,” Respondent’s Exhibit B (net-impact projections at “1 of 16”). This warning necessarily included the many landowners in SW Clay who were not trained accountants versed in the finer points of municipal finance. Without explaining those numbers to make them truly intelligible, however, Carmel published them to its public in SW Clay as part of Carmel’s required fiscal plan. If Carmel’s June 2004 fiscal plan confuses even a trained CPA who is experienced in the drafting and reading of annexation fiscal plans, then the fiscal plan necessarily lacked the clarity required by state statute for distribution to Carmel’s recipient public in SW Clay.⁷ Carmel’s argument that the June 2004 fiscal plan sufficed because it enabled the resisting landowners to decide whether to remonstrate therefore fails. If Carmel’s June 2004 fiscal plan satisfied the first of its three purposes, it did so only by failing to satisfy its second purpose: the landowners in SW Clay have resisted annexation under Ordinance No. C-263 so vigorously for so long largely because the June 2004 fiscal plan presents no more than vague promises that permit Carmel much more fiscal discretion in this annexation than current state law allows.

That particular confusion in the fiscal plan was arguably a typographical error resulting from the high pace of Carmel’s annexation activities at the time. *See* Testimony of CPA Michael Shaver, Record of Final Hearing (approximately 9:33 a.m. on March 1, 2006). The Court finds and concludes, however, (1) that the confusion caused by Carmel’s June 2004 fiscal plan was more systemic and substantial than the mostly arithmetic errors in the fiscal plan at issue in *Bradley*, and (2) that I.C. 36-4-3-3.1’s bar to post-adoption modification of fiscal plans underlying annexation ordinances required Carmel to publish reasonably accurate information about projected non-capital services, certainly for services as important as police services.

⁷ In rebuttal for the City, CPA Michael Shaver, who is also a landowner and resident in SW Clay, testified that his neighbors understood the amended ordinance. *See* Record of Final Hearing (approximately 9:30 a.m. on March 1, 2006). That testimony, however, went only to the intelligibility of the amended ordinance and its supporting *negotiated* settlement agreement and fiscal plan, neither of which implicates Ordinance No. C-263 and its fiscal plan.

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

For at least the foregoing reasons, then, the fiscal plan Carmel published in support of Ordinance No. C-263 failed to satisfy the General Assembly's 1999 addition to I.C. 36-4-3-13(d)(2) because Carmel did not "explain how specific and detailed expenses will be funded and [did not] indicate the taxes, grants, and other funding to be used." Although in this proceeding Carmel did demonstrate the general financial wherewithal to pay for the SW Clay annexation, I.C. 36-4-3-13(d)(2) requires a more specific commitment from municipalities, apparently to limit municipal discretion in allocating an imprecise bloc of generalized funds to pay for annexations: according to the General Assembly, fiscal plans like Carmel's improperly relieve municipalities from committing specific projected funds to pay for specific projected expenses in proposed annexations. Carmel did not need to use Bloomington's line-item practice to satisfy the statute, but it did need to offer intelligible explanations of its fiscal plan—before the adoption of Ordinance No. C-263's—to make the baseline "credible commitment" to the landowners in SW Clay. *Bradley*, 764 N.E.2d at 216. This Carmel did not do. Like the Indiana Court of Appeals in *In re Remonstrance Appealing Ordinance Nos. 98-004 et al.*, 769 N.E.2d 622 (Ind. Ct. App. 2002), this Court is "mindful of our supreme court's recent directive that 'annexation is essentially a legislative process, and courts should not micromanage it.'" *Id.* at 633-34 (citing *Bradley* and invalidating an attempted annexation for failure to comply with annexation statutes). Also like the Court of Appeals, however, this Court "do[es] not believe that holding the [City] to the statutory mandates is micromanagement." *Id.* at 634. Accordingly, partly because its fiscal plan lacks the statutorily mandated explanations of funding for specific and detailed expenses, Carmel has failed to prove that its fiscal plan for Ordinance No. C-263 complies with I.C. 36-4-3-13(d). The proposed annexation under Ordinance No. C-263 therefore should not occur.

12. Moreover, even if Carmel had met its burden under I.C. 36-4-3-13(d), the proposed annexation under Ordinance No. C-263 should not occur because Petitioners have met their burden on the showings required by I.C. 36-4-3-13(e) and because Carmel has also failed to meet its burden under I.C. 36-4-3-13(e)(2)(C). Like Section 3.1, Section 13(e) also was enacted in 1999. Section 13(e) gave Indiana landowners a way, for the first time, to defeat an annexation even if an annexing municipality proves its compliance with I.C. 36-4-3-13(a) (which requires compliance with *both* Section 13(b) or Section 13(c) *and* Section 13(d)). The current text of Section 13(e), along with necessary qualifications imposed on Section 13(e)(2)(C) by Section 13(f), reads as follows:

(e) At the hearing under section 12 of this chapter, the court shall do the following:

- (1) Consider evidence on the conditions listed in subdivision (2).
- (2) Order a proposed annexation not to take place if the court finds that all of the conditions set forth in clauses (A) through (D) . . . exist in the territory proposed to be annexed:
 - (A) The following services are adequately furnished by a provider other than the municipality seeking the annexation.
 - (i) Police and fire protection.
 - (ii) Street and road maintenance.
 - (B) The annexation will have a significant financial impact on the residents or owners of land.
 - (C) The annexation is not in the best interests of the owners of land in the territory proposed to be annexed as set forth in subsection (f).
 - (D) One (1) of the following opposes the annexation:
 - (i) At least sixty-five percent (65%) of the owners of land in the territory proposed to be annexed.

- (ii) The owners of more than seventy-five percent (75%) in assessed valuation of the land in the territory proposed to be annexed.

Evidence of opposition may be expressed by any owner of land in the territory proposed to be annexed.

....

(f) The municipality under subsection (e)(2)(C) bears the burden of proving that the annexation is in the best interests of the owners of land in the territory proposed to be annexed. In determining this issue, the court may consider whether the municipality has extended sewer or water services to the entire territory to be annexed:

- (1) within the three (3) years preceding the date of the introduction of the annexation ordinance; or
- (2) under a contract in lieu of annexation entered into under I.C. 36-4-3-21.

The court may not consider the provision of water services as a result of an order by the Indiana utility regulatory commission to constitute the provision of water services to the territory to be annexed.

In this case, Petitioners prevail on all applicable issues under Section 13(e). First, the evidence shows that SW Clay already receives adequate police and fire protection, as well as adequate street and road maintenance, from other sources besides Carmel. The only legal issue in those questions is whether SW Clay “provides” its own fire service. Especially since Clay Township owns the realty that houses its fire station, *see* Petitioner’s Exhibit No. 25 (warranty deed), and since the township could choose to end its fire-services agreement with Carmel at any time and seek assistance elsewhere, *see* Testimony of Carmel’s Mayor, James Brainard, Record of Final Hearing (approximately 1:36 p.m. on February 27, 2006) (conceding that the township controls the contractual relationship for fire services), the Court agrees with Petitioners that Clay Township “provides” its own fire services within the meaning of Indiana law.

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

Second, the Court finds and concludes that the annexation under Ordinance No. C-263 will have a significant financial impact on the landowners in SW Clay. The Court would consider a 21.4% increase in property taxes to be significant, legally and in any other sense of the term, without reference to other evidence besides Petitioner's Exhibit No. 57 (table showing 21.4% property-tax increase across the board for landowners in SW Clay). Other evidence from laypersons, though, confirms the Court's finding and conclusion that a 21.4% property-tax increase is indeed a significant financial impact. *See* Testimony of Gregory Guerrataz, Record of Final Hearing (approximately 9:47 a.m. on February 28, 2006) (testifying, without objection, that landowners in New Haven, Indiana recently vigorously resisted a 17% property-tax increase resulting from an annexation because they saw a 17% increase as significant).

Third, the annexation under Ordinance No. C-263 is not in the best interests of the landowners in SW Clay, partly because Carmel has not extended sewer or water services to the entire territory to be annexed either within the three years before Ordinance No. C-263 was introduced or under a contract in lieu of annexation entered into under I.C. 36-4-3-21.

Finally, fourth, at least 65% of the landowners in SW Clay oppose the annexation under Ordinance No. C-263. Even after modifying the original count of landowners opposing annexation under Ordinance No. C-263, certified signatures for 2,390 of the total 3,440 affected parcels—that is, 70% of the total—are still before the Court as opposing annexation under Ordinance No. C-263. Two members of NOAX who testified at the final hearing, Fred Yde and Dave Small, both stated unequivocally that they remain opposed to annexation under Ordinance No. C-263 despite their agreement to annexation under the negotiated "Ordinance No. C-263, As Amended." *See* Testimony of Fred Yde, Record of Final Hearing (approximately 6:11 p.m. on February 27, 2006) ("earnestly opposed to annexation" under Ordinance No. C-263); and

Testimony of Dave Small, Record of Final Hearing (approximately 8:26 a.m. on February 28, 2006). With valid signatures of owners of 2,390 parcels in SW Clay, the Court concludes that Petitioners also meet their burden under I.C. 36-4-3-13(e)(2)(D).

Thus, in every applicable respect, Petitioners prevail under I.C. 36-4-3-13(e). The annexation under Ordinance No. C-263 therefore should not occur even if Carmel had proven its compliance with I.C. 36-4-3-13(d).


JUDGMENT

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. The *Petition Remonstrating Against the Proposed Annexation of Southwest Clay Township into the City of Carmel*, which was filed February 24, 2005 by Petitioners, Certain Southwest Clay Township Annexation Territory Landowners, against Respondent, the City of Carmel, is **GRANTED**.

2. Judgment is therefore entered in favor of Petitioners, Certain Southwest Clay Township Annexation Territory Landowners, and against Respondent, the City of Carmel; and, accordingly, Respondent's proposed annexation of territory in Southwest Clay Township, Hamilton County, Indiana, as provided under Carmel City Ordinance No. C-263, shall not occur.

SO ORDERED THIS ^{23RD} 24TH DAY OF MAY, 2006.



William J. Hughes, Judge
Hamilton Superior Court No. 3

Certain SW Clay Landowners v. Carmel
Cause No. 29D03-0502-MI-188
Findings, Conclusions, & Judgment

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