

STATE OF INDIANA)
)
COUNTY OF PORTER)

IN THE PORTER SUPERIOR COURT

SITTING AT VALPARAISO, INDIANA

STURDY ROAD PRAIRIE RIDGE)
PROPERTY OWNERS’ ASSOCIATION,)
INC., on behalf of Members Prairie Ridge)
Annexation Territory Property Owners)
Opposed to City of Valparaiso Annexation)
Ordinance No. 14, 2021,)
Plaintiffs, Remonstrators,)

v.)

CAUSE NO. _____

CITY OF VALPARAISO, INDIANA,)
COMMON COUNCIL OF THE CITY)
OF VALPARAISO, INDIANA;)
MATTHEW R. MURPHY, MAYOR OF)
CITY OF VALPARAISO;)
ORDINANCE NO. 14, 2021 , CITY OF)
VALPARIASO, and VICKI URBANIK,)
AUDITOR OF PORTER COUNTY,)
INDIANA,)
Defendants.)

**COMPLAINT FOR REMONSTRANCE AGAINST ANNEXATION AND FOR
JUDICIAL REVIEW**

COMES NOW, Plaintiffs, Prairie Ridge Annexation Territory Property Owners Opposed to City of Valparaiso Ordinance No. 14, 2021, who are Members of and represented by Sturdy Road Prairie Ridge Property Owners’ Association, Inc., by Harris Welsh & Lukmann, by L. Charles Lukmann, III, and Connor H. Nolan, and for their Complaint for Remonstrance against Annexation and Judicial Review state as follows:

1. Plaintiff, Sturdy Road Prairie Ridge Property Owners’ Association, Inc. (“Association”), is an Indiana nonprofit corporation with a principal office address in Porter County, Indiana.

2. All owners of real property in the Prairie Ridge Subdivision are Members of the Association.
3. The Association is representing 59 of its Members in this cause of action.
4. The Plaintiffs are owners of real property in Porter County, Indiana in the Prairie Ridge Subdivision located on the east side of Sturdy Road. A list of Plaintiffs represented by the Association and the addresses of the real property they own in the Prairie Ridge Subdivision is attached hereto as **Exhibit 'A'**.
5. Defendant, City of Valparaiso ("City"), is an Indiana municipality located in Porter County, Indiana.
6. Defendant Common Council of the City of Valparaiso ("Common Council") is the legislative body of the City of Valparaiso.
7. Defendant Matthew R. Murphy is the Mayor and executive of the City of Valparaiso.
8. Defendant Vicki Urbanik is the Auditor of Porter County, Indiana.
9. Ordinance No. 14, 2021, was adopted by the City Council on October 25, 2021 to annex a territorial area consisting entirely of the Prairie Ridge Subdivision to the City of Valparaiso, which includes real property owned by the Plaintiffs. A copy of Ordinance No. 14, 2021 is attached hereto as **Exhibit 'B'**.

Description of the Annexation Area

10. The territory to be annexed ("Annexation Area") is described as follows:

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 35 NORTH, RANGE 5 WEST OF THE SECOND PRINCIPAL MERIDIAN IN CENTER TOWNSHIP, PORTER COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER; THEN SOUTH 00 DEGREES, 6 MINUTES, 45 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 866.00 FEET TO THE

POINT OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES, 6 MINUTES, 45 SECONDS EAST ALONG SAID WEST LINE, A DISTANCE OF 1,212.00 FEET; THENCE SOUTH 89 DEGREES, 48 MINUTES 17 SECONDS EAST, PARALLEL TO THE NORTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 1,079.72 FEET; THENCE NORTH 00 DEGREES 6 MINUTES 45 SECONDS WEST, PARALLEL TO THE SAID WEST LINE, A DISTANCE OF 1,212.00 FEET; THENCE NORTH 89 DEGREES 48 MINUTES 17 SECONDS WEST, PARALLEL TO SAID NORTH LINE, A DISTANCE OF 1,079.72 FEET, TO THE POINT OF BEGINNING. CONTAINING 30.04 ACRES, MORE OR LESS.

11. The Annexation Area is 100% subdivided.
12. The Annexation Area consists of 71 subdivided parcels of property (“Lots”).
13. Of the 71 Lots in the Annexation Area, 2 Lots are exempt from taxation.
14. There are 69 Lots in the Annexation Area that are subject to property taxes.
15. The Plaintiffs are all owners of Lots within the Annexation Area.
16. The Plaintiffs own 59 of the 69 Lots within the Annexation Area that are subject to property taxes.
17. The Plaintiffs own **85.5% percent** of the taxable Lots in the annexation area.
18. Alternatively, if Plaintiff Sturdy Road Prairie Ridge Property Owners Association, Inc. is an owner of a taxable Lot, the Plaintiffs, including the Association, own 85.7% percent of the taxable Lots in the annexation area.

History of the Annexation Area

19. In 2004, all of the Annexation Area was owned by an Indiana limited liability company named Valpo Sturdy Road, LLC.
20. The property was re-zoned and subdivided with the approval of the Porter County Plan Commission.

21. As part of the subdivision process, Valpo Sturdy Road, LLC requested the extension of sewer service and water service from the Valparaiso City Utilities.
22. On December 8, 2004, Valpo Sturdy Road LLC, by Member Richard Hornat, executed a request for extension of service and a waiver of the right to remonstrate against annexation. A copy of this waiver (“Hornat Waiver”) is attached hereto as **Exhibit ‘C’**.
23. The Hornat Waiver included the entire Annexation Area.
24. The City, by then-Mayor Jon Costas, accepted the Hornat Waiver on December 8, 2004.
25. In following years, the City had other individual persons execute waivers of the right to remonstrate against Lots within the Annexation Area (“Individual Waivers”).
26. With respect to the Lots owned by the Plaintiffs, Individual Waivers for 49 of the Lots were not executed by or on behalf the then-current owner of the Lot.
27. As a percentage of the taxable Lots in the Annexation Area, 49 Lots represent 71.0% of the taxable Lots.
28. No Individual Waiver was ever executed for the Lot owned by the Association.
29. The other 10 Lots owned by Plaintiffs had Individual Waivers executed by the then-current owners.
30. On December 9, 2019, the Hornat Waiver expired by operation of law. See I.C. § 36-4-3-11.7(c)(2).

City of Valparaiso’s Annexation Efforts

31. In 2020, the Defendant City through its Planning Department initiated a super-voluntary annexation against the Annexation Area under Ind. Code § 36-4-3-5.1.
32. The City’s super-voluntary annexation was improper because the City did not own 100% of the property in the Annexation Area.

33. The City abandoned its attempt at voluntary annexation.
34. In 2021, the City, again through its Planning Department, initiated an involuntary annexation against the Annexation Area under I.C. § 36-3-4-3.
35. The City must prove that it complied with the statutory pre-requisites for any annexation over the Annexation Area. *Rogers v. Municipal City of Elkhart*, 688 N.E.2d 1238, 1240 (Ind. 1997).
36. On October 25, 2021, the Defendant Common Council adopted Ordinance No. 14, 2021 declaring its intention to annex the Annexation Area. *See* Exhibit 'B'.
37. On October 25, 2021, the Defendant Mayor Murphy approved Ordinance No. 14, 2021. *See* Exhibit 'B'.

Plaintiffs Remonstrate Against Ordinance No. 14, 2021

38. After the Common Council adopted Ordinance No. 14, 2021, the Plaintiffs executed a remonstrance petition and submitted it to Defendant, Vicki Urbanik, Auditor of Porter County.
39. A copy four (4) counterparts of the Remonstrance Petition, are attached hereto as **Exhibit 'D'**.
40. The Remonstrance Petition was signed by more than sixty-five percent (65%) of the owners of land in the annexation territory. *See* I.C. § 36-4-3-11.3(b)(1).
41. On February 28, 2022, Auditor Urbanik issued a Certification to the City Council. A copy of this Certification is attached hereto as **Exhibit 'E'**.
42. The issuance of the Certification started a statute of limitations to commence a lawsuit within fifteen (15) business days. I.C. § 36-4-3-11(d).

43. On March 1, 2022, the Association's President Steven Sumichrast requested the Auditor's Office for a status update on the status of the Certification.
44. On March 1, 2022, the Chief Deputy Auditor, Toni Downing, sent a written reply to Mr. Sumichrast stating: "As an update to the process... The City provided their final documentation of waivers on 2/15/2022. We have until 3/8/2022 to issue our final determination of the number of owners whose property is not subject to a valid waiver of the right of remonstrance although I hope to complete the form this week."
45. Chief Deputy Auditor Downing sent this reply despite Auditor Urbanik having already completed the Certification.
46. On March 9, 2022, Mr. Sumichrast sent a written request for a status update to Chief Deputy Auditor Downing.
47. On March 9, 2022, at 9:14 A.M., Chief Deputy Auditor Downing sent a reply e-mail to Mr. Sumichrast with a copy of the Certification and the following message: "Attached is the copy of our auditor's verification statement that was provided to the Valparaiso City Council last week."
48. The Chief Deputy Auditor's false statements on March 1, 2022 caused Plaintiffs to lose six (6) of the fifteen (15) business days, or 40% of the time, in the statute of limitations on their remonstrance claim.

Auditor's Breach of Statutory Duty to Verify the Validity of Waivers

49. In the Certification, Auditor Urbanik found that none of the signatures on the Remonstrance Petition was valid.

50. In particular, Auditor Urbanik found that 3 signatures on the Remonstrance Petition were for a Lot that had already been signed for, not property owners, or owners of tax-exempt property, and 59 signatures were for Lots subject to a valid waiver of remonstrance.
51. Auditor Urbanik had a statutory duty to verify that any purported waivers of remonstrance were valid. I.C. § 36-4-3-11.2(i).
52. Auditor Urbanik breached this statutory duty by failing to verify that each Individual Waiver was signed by, or on behalf of, the owner of the Lot.
53. On information and belief, Auditor Urbanik relied exclusively on the existence of a recorded waiver of the right to remonstrate against annexation and did not verify that any Individual Waiver was properly executed.
54. On information and belief, Auditor Urbanik did not do any due diligence to confirm that each Individual Waiver recorded against the Lots was signed by or on behalf of the owner of the Lot at the time the Individual Waiver was executed.

The City Cannot Prove the Individual Waivers are Valid

55. The City bears the burden of proving that a waiver of a property owner's right to remonstrate against annexation is valid.
56. The City cannot meet this burden of proof.
57. The Hornat Waiver expired, by operation of law, on December 9, 2019. I.C. § 36-4-3-11.7(c).
58. Individual Waivers are invalid because they were not executed by, or on behalf of, a property owner.

59. Alternatively, the Individual Waivers are invalid because they covered the same transaction as the Hornat Waiver without any additional consideration, and therefore, each of them fail due to lack of consideration.

60. Additionally, the City violated I.C. § 36-4-3-11.7 by not sending written notice to property owners that a waiver of the right to remonstrate exists for any deeds in the Annexation Area recorded after June 30, 2015.

The Annexation is Void

61. Plaintiffs represent more than 65% of the property owners in the Annexation Area.

62. If a Remonstrance Petition is signed by at least 65% of the owners of property in an annexation territory, the annexation is void as a matter of law. I.C. § 36-4-3-11.3(b)(1).

63. Valid waivers of the right to remonstrate against annexation do not exist.

64. All of Plaintiffs' 59 signatures on the Remonstrance Petition are effective, which represents at least 85.5% of the taxable Lots in the Annexation Area.

65. At least 65% of the owners of property in the Annexation Area signed the Remonstrance Petition.

66. The annexation is void. I.C. § 36-4-3-11.3(b)(1).

Alternatively, the Annexation is subject to Judicial Review

67. In the alternative, at least 36 signatures on the Remonstrance Petition are effective, which is 51.4% of the taxable Lots in the Annexation Area.

68. If a Remonstrance Petition is signed by at least 51% but less than 65% of the owners of property in an annexation territory, the annexation is subject to judicial review. I.C.

§§ 36-4-3-11(d) & 36-4-3-11.3(c)(1).

69. At least 51% of the owners of property in the Annexation Area signed the Remonstrance Petition.
70. The annexation is subject to judicial review. I.C. §§ 36-4-3-11(d); 36-4-3-11.3(c)(1).
71. Under judicial review, the City must prove compliance with all statutory pre-requisites, and that the annexation is in the best interests of the property owners in the Annexation Area. I.C. §§ 36-4-3-13(f) & 36-4-3-13(i).
72. The City cannot prove compliance with all statutory pre-requisites.
73. The City's fiscal plan is inadequate.
74. The City cannot prove that the annexation is in the best interests of the property owners in the Annexation Area because the Plaintiffs and other property owners are already receiving all services that the City proposes to provide, and every tax-paying property in the Annexation Area will experience a significant and substantial increase in annual property tax rates without receiving any corresponding benefits. I.C. § 36-4-3-13(f).
75. The Plaintiffs are adequately furnished with police protection, fire protection, and street and road maintenance. I.C. § 36-4-3-13(e)(2)(A).
76. The annexation will have a significant negative financial impact on the owners of land in the Annexation Area. I.C. § 36-4-3-13(e)(2)(B).
77. Annexation is not in the best interests of the owners of the land in the Annexation Area. I.C. § 36-4-3-13(e)(2)(C).
78. As a result, the Court is required to find in favor of the Plaintiffs, and order that the proposed annexation is void and shall not take place.

WHEREFORE, Plaintiffs respectfully request the following relief:

- A. A judgment that the Individual Waivers are invalid.
- B. A judgment invalidating the Auditor's Verification Statement dated February 28, 2022
- C. A judgment that no less than 46 owners of real property in the Annexation Area signed the Remonstrance Petition that are not subject to a valid waiver of the right to remonstrate, which is at least 65% of the owners of property in the Annexation Area.
- D. A judgment that Ordinance No. 14, 2021, City of Valparaiso is void.
- E. A holding that the City of Valparaiso may not pass an involuntary annexation ordinance affecting any part of the Annexation Area for a period of four (4) years after final judgment.
- F. Reimbursement of all reasonable costs of the remonstrance, including attorney's fees, as provided by statute.
- G. All other relief, at law or in equity, which Plaintiffs are entitled to receive.

Respectfully submitted,

HARRIS WELSH & LUKMANN

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JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

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