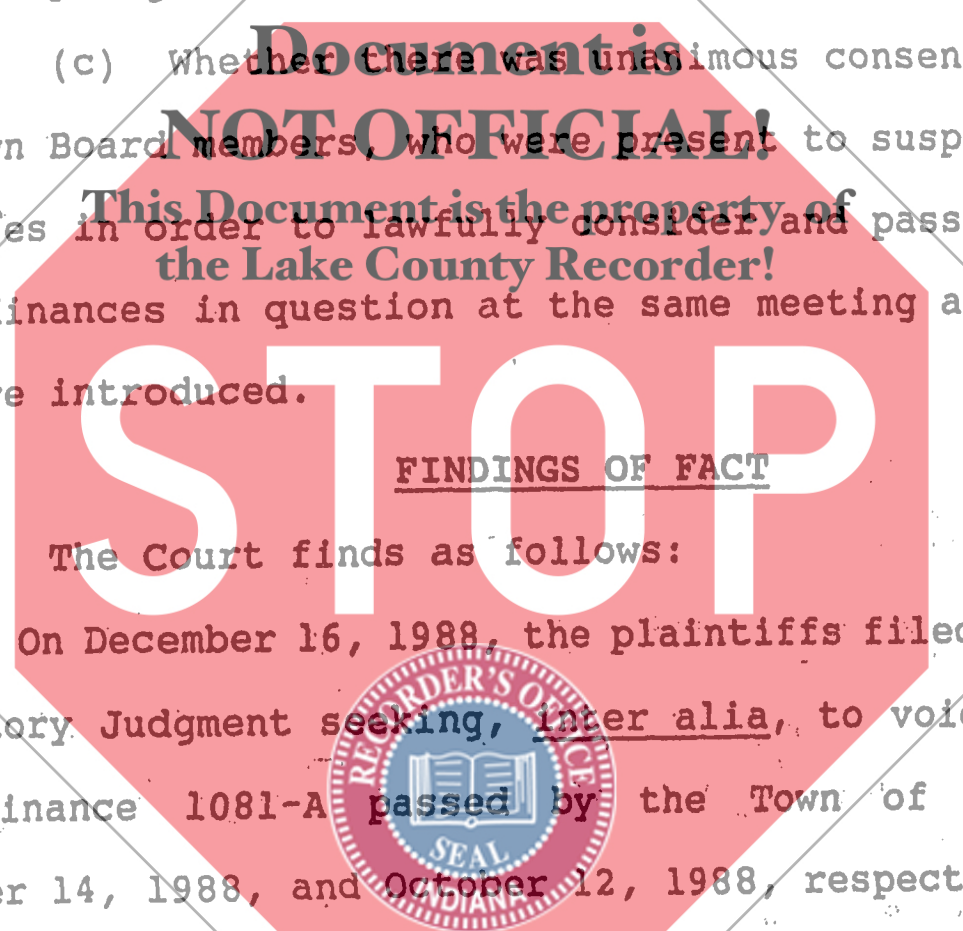


2. These issues require a determination of the following items:

(a) Whether the defendant enacted a written fiscal plan for the area to be annexed as required by law;

(b) Whether the defendant secured the approval of the City of Crown Point as required by law before attempting to annex the area in question; and

(c) Whether there was unanimous consent of all Town Board members, who were present to suspend their rules in order to lawfully consider and pass the annexation ordinances in question at the same meeting as they were introduced.



FINDINGS OF FACT

The Court finds as follows:

1. On December 16, 1988, the plaintiffs filed a complaint for Declaratory Judgment seeking, inter alia, to void Ordinance 1081 and Ordinance 1081-A passed by the Town of Schererville on September 14, 1988, and October 12, 1988, respectively.
2. Ordinance 1081 purportedly annexed the territory in question to the Town of Schererville and Ordinance 1081-A amended the legal description attached to Ordinance 1081.
3. Ordinance 1081-A was made retroactive by the Town Board on October 12, 1988, to September 14, 1988, ". . . as though the correct legal description were there inserted on Ordinance 1081."
4. Ordinance 1081, which passed on September 14, 1988, and

effective, by its own terms, commencing September 14, 1988, is the annexing ordinance.

5. Ordinance 1081-A did no more than amend the legal description included in Ordinance 1081 and Ordinance 1081-A contained no annexation enabling language of its own.

6. It is undisputed that there was no written fiscal plan for the proposed annexation area attached to Ordinance 1081, nor was one passed contemporaneously with such ordinance, nor was one subsequently enacted after such ordinance was passed.

7. However, the defendant contends that on August 10, 1988, Resolution 88-9 was passed and that it was a general written fiscal plan to be used when any territory is annexed.

8. Resolution 88-9 reads that it applied to two annexation ordinances other than the ones in issue here, and to no other ordinances.

9. The Town Board minutes for August 10, 1988, also indicate that the town attorney referred to Resolution 88-9 as the fiscal plan specifically for the two other annexation ordinances only.

10. The area sought to be annexed is within three (3) miles of the City of Crown Point.

11. It is undisputed that the defendant failed to obtain permission for annexation of the area from the City of Crown Point before passing Ordinance 1081.

12. The minutes do not reflect that there was unanimous consent for a suspension of the rules of the Town Board for consideration of Ordinance 1081 and 1081-A, so as to allow passage

of the same at the same meeting at which they were introduced.

13. The plaintiffs are residents of the proposed annexation area.

CONCLUSIONS OF LAW

In light of the foregoing findings of fact and the record in this cause the Court concludes as follows:

STANDING

1. The plaintiffs have standing to challenge the validity of the ordinances in question here, since they are residents of the proposed annexation area. Langbehn v. Town of Merrillville (1980), Ind. App., 413 N.E.2d 680.

2. The Indiana Code, I.C. 36-4-3-13(d), requires a municipality to develop a written fiscal plan and establish a definite policy "by resolution of the legislative body, as of the date of passage of the annexation ordinance . . ." [Emphasis added.]

3. Such fiscal plan must show cost estimates of planned services; method of financing; plans for the extension of services; planned services of a non-capital nature to be provided within one year of annexation; services of a capital-improvement nature to be provided within three years of annexation; and a plan for hiring employees of other governmental entities.

4. The plain language of Resolution 88-9, and the minutes of the Town Board meeting of August 10, 1988, the date of passage of such resolution, clearly establish it was a fiscal plan which was

intended to apply to other ordinances not in issue here, and to no other ordinances.

5. Resolution 88-9 further fails to provide cost estimates of planned services; fails to provide a method of financing; fails to provide a plan for extension of services; fails to provide for planned services of a non-capital nature; fails to provide for services of a capital-improvement nature; and fails to provide a plan for hiring employees of other governmental entities.

6. Even if Resolution 88-9 applied here, it would still be insufficient as a written fiscal plan and definite policy for Ordinance 1081 in light of its failure to address the factors above noted.

7. The lack of a written fiscal plan and definite policy passed as of the date of passage of the annexing ordinance renders fatal any attempt by a municipality to annex territory, since a municipality must act in strict accord with the annexation statutes. Sedlak v. Town of St. John (1980), Ind. App., 403 N.E.2d 1126.

8. There is no genuine issue of material fact regarding the absence of a written fiscal plan and definite policy at the time that the annexing ordinance here in question was passed.

9. The lack of such plan at the time of passage of Ordinance 1081, the annexing ordinance, operates to render it void as a matter of law.

CONSENT

10. The Indiana Code, I.C. 36-4-3-9(b), requires that a town

"must obtain the consent of the legislative body of a second- or third-class city before annexing territory" within three (3) miles thereof. [Emphasis added.]

11. The City of Crown Point is a city within the purview of the foregoing statute, requiring its consent to be obtained for annexation of the subject area.

12. There is no genuine issue of material fact regarding the failure of the defendant to obtain the required consent of the City of Crown Point for ~~annexation of such area before enacting the annexing ordinance in question.~~

13. ~~The failure of the defendant to obtain such consent before passage of the annexing ordinance operates to render it void as a matter of law. Town of Porter v. Bethlehem Steel Corporation (1983), Ind. App., 451 N.E.2d 69.~~

14. ~~The Indiana Code, I.C. 36-5-2-9.8, requires unanimous consent of all present members of a town's legislative body for consideration of an ordinance at the same meeting at which it is introduced.~~

15. The ordinances in question here were introduced and passed at the same meeting of their introduction.

16. There is no genuine issue of material fact that the Town Board of the defendant failed to obtain the unanimous consent of all present board members for consideration of such ordinances for passage at the same meeting as their introduction.

17. Such failure operates to void Ordinance 1081 and

Ordinance 1081-A as a matter of law.

SUMMARY

18. In summary, there is no genuine issue of material fact with respect to the issues raised by the plaintiffs, and plaintiffs are entitled to summary judgment as a matter of law. Rule 56(C), Indiana Rules of Trial Procedure.

19. Accordingly, the plaintiffs' Motion for Summary Judgment should be granted.

20. The plaintiffs are entitled to payment of the costs of this action by the defendant. I.C. 34-4-10-10.

21. The plaintiffs are not entitled to include attorney fees as a part of their costs, nor are they entitled to an award of fees under I.C. 34-1-32-1(b), since the defendant's assertion of its defense, and the continued litigation thereof, was not groundless or in bad faith, as required for fees under the latter statute.

JUDGMENT

IT IS ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. The plaintiffs' Motion for Summary Judgment is granted and Ordinance 1081 and Ordinance 1081-A are hereby declared null and void.

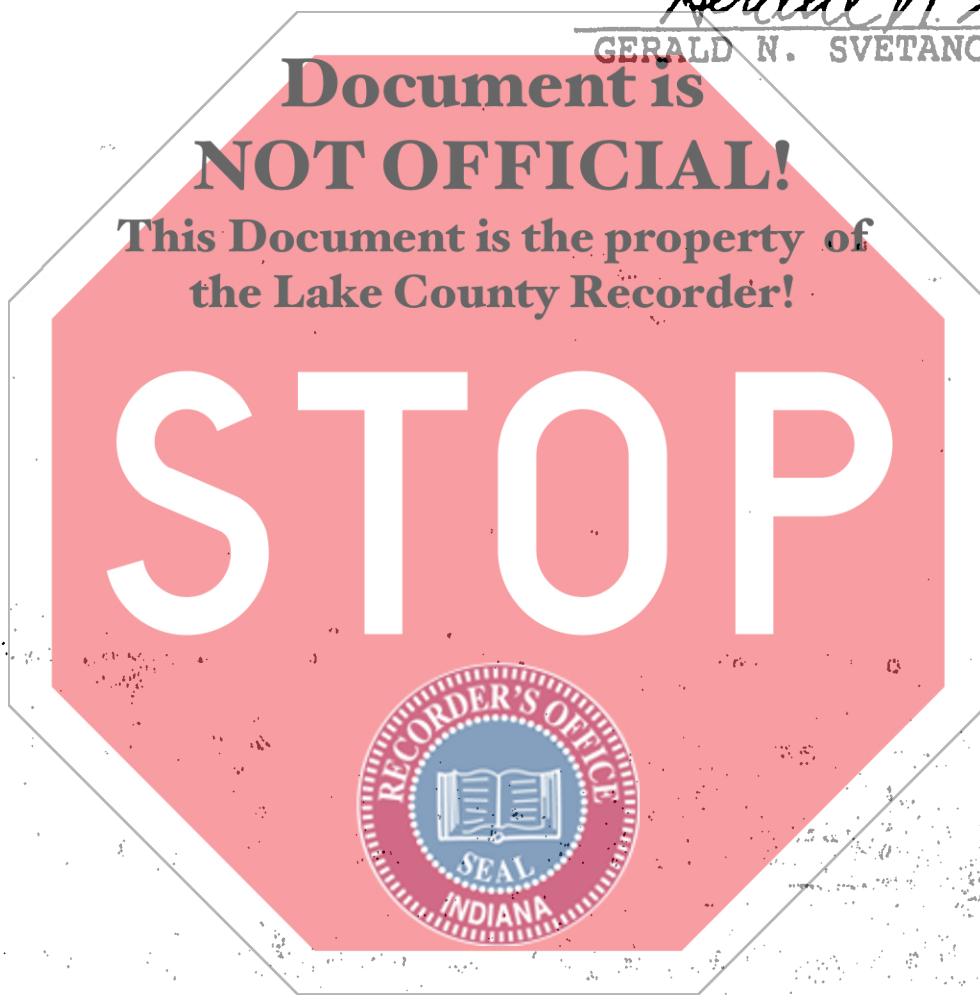
2. The Defendant, TOWN OF SCHERERVILLE, is hereby enjoined for a period of two (2) years from the date of this order from any attempt to annex any part of the territory described in Ordinance 1081 or 1081-A, copies of which are attached hereto and made a part hereof. This action is taken pursuant to I.C. 36-4-3-15(b).

3. The plaintiffs shall submit on or before January 31, 1991,

their written claim for costs, excluding attorney's fees, incurred in the prosecution of this cause of action, so that an award of costs may be entered in favor of the plaintiffs and against the defendant pursuant to I.C. 34-4-10-10.

ALL OF WHICH IS ORDERED, ADJUDGED AND DECREED this 14th day of January, 1991.

Gerald N. Svetanoff
GERALD N. SVETANOFF, JUDGE

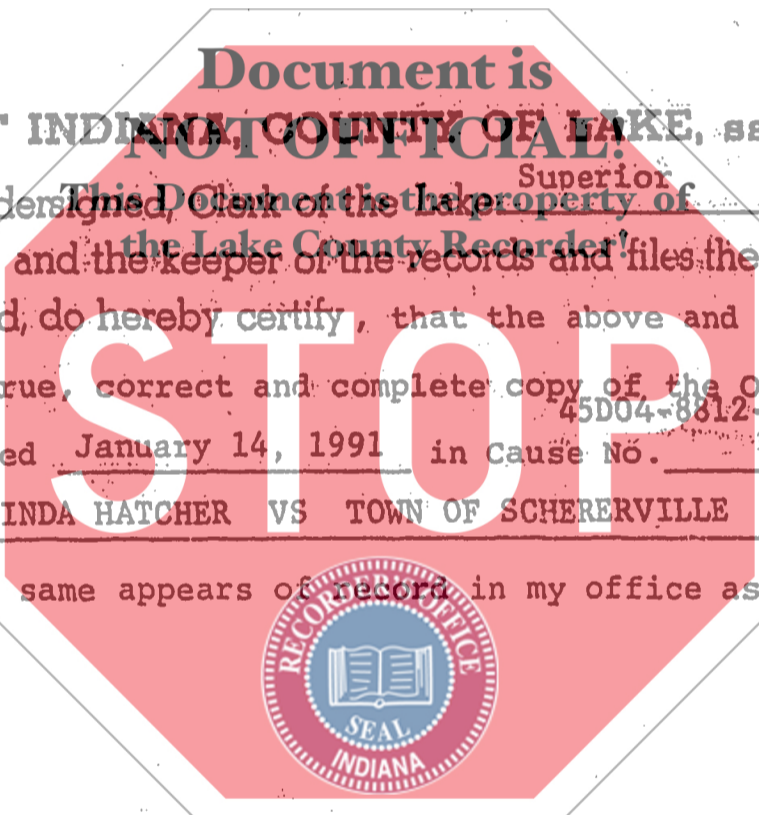


The United States of America



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STATE OF INDIANA, COUNTY OF LAKE, ss:

I, the undersigned, Clerk of the Superior Court of Lake County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify, that the above and foregoing is a full, true, correct and complete copy of the Order of Court dated January 14, 1991 in Cause No. 45D04-8812-CP-00642-0 entitled LINDA HATCHER VS TOWN OF SCHERERVILLE, as fully as the same appears of record in my office as such Clerk.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court,

this 21st day of February, 1991 A. D. 19 91

Robert C. Vetch
Clerk Lake Superior Court.
Robert C. Vetch
Deputy

