Annexation in Indiana

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City Growth

• If annexation is occurring, it is an indicator of a vibrant and growing economy
• Annexation enables municipal planning and zoning so land can be developed for its best use
• Government 101:
  – A more densely populated area requires a different level of service
Why Annexation Occurs

- Outside property owners want services
- There is a need to change management styles with a denser population
- To plan for future growth in a “smart” way
  - i.e. planning and zoning near a new highway interchange
- Defensive tactic

Why is Annexation Unpopular with County Officials?

- One would think that county officials would also want growth and prosperity within the county... right?
- Yes, but when a city/town annexes territory from the unincorporated area, county officials lose resources
  - Why? Income tax distribution formula
Indiana Association of Cities and Towns

Who else doesn’t like annexation?

- Non-municipal taxpayers who use municipal services for free.
  - Why would you want to pay when you can get something for free?
  - Examples:
    - Use of parks and libraries
    - Back-up police and fire protection
    - Use of municipal streets and infrastructure
    - A place to be employed
- Property owners who become subject to municipal ordinances (i.e. open burning prohibitions)

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Additional Tax Rate

- Coming into a city or town requires an additional tax rate to be paid, so generally, a person’s taxes go up when his or her property is annexed.
- Example:
  - County tax rate + township tax rate + {New} City tax rate = Property tax rate applied
- Exception: When you are at your tax cap – this is when you get greater level of services without having to pay more.
What are the Benefits of Being in a City or Town?

- Better police and fire protection = lower insurance rates
- Trash pick up, snow removal, leaf pick-up, sidewalks, street cleaning, mosquito fogging, streetlights
- Safe drinking water, sewer service
- Affordable housing
- Opportunities for more economical and reliable electric services (available in 72 municipalities)

New Trends at the General Assembly Make Annexation a Necessity to Providing Services Outside

Legislation passed in the last three years regarding extension of utilities to outlying areas is making annexation an absolute necessity OR ELSE municipalities are faced with risks of increased costs due to IURC regulation, arbitration, and subsidies to outside users.

- HEA 1126-2012 > Allows outside users of municipal water and sewer service to petition the IURC to have rates reviewed when rates are 15% or more than that of inside users. Applies even if the municipality has opted out of the IURC.
- HEA 1307-2013 > Provided a window of time for outside beneficiaries of water and sewer service to petition the IURC to have rates reviewed when rates were 50% or more than that of any municipal user. Applies even if municipality has opted out of the IURC.
New Trends at the General Assembly Make Annexation a Necessity to Providing Services Outside

- SEA 53-2014 > Addresses Payments in Lieu of Annexation Contracts
  - (Permitted for 15 years – 1st and 2nd class cities; 4 years for 3rd class cities and towns)
  - SEA 53 pertained to PILOA contracts for municipal utility services
  - When the contract expires, a municipality cannot terminate service. Service must continue at the same rate for two years or until one of the following occurs:
    - A renewed contract agreement is reached
    - Annexation
    - Arbitration

Elkhart Example

- Payments in Lieu of Annexation Contracts
- IC 36-4-3-21
Triangle of Issues

- These three issues go together, but so often we discuss them in a vacuum

Questions?
The Annexation Process in Indiana

- Two types of annexations:
  - Property Owner Initiated *Voluntary*
    - The property owners ask to become part of the city/town
  - City or Town Initiated *Involuntary*
    - The city/town decides that plans for future growth lends itself to bring outlying areas into the municipal boundaries
    - NOTE: Involuntary does not necessarily mean that outside property owners are being brought in against their will. It just means that the municipality is the one who initiates the process.

Process

- IC 36-4-3-3 - Gives cities and towns the power to define and declare their corporate limits or boundaries.
- Generally the territory annexed must be contiguous (there are certain exceptions for airports, landfills, golf courses, hospitals - IC 36-4-3-4).
Initiation by Property Owners (Voluntary)

- IC 36-4-3-5 A landowner petition must be signed by either at least 51% of the owners of real property in the territory proposed to be annexed or owners of at least 75% of the assessed value in the territory.
- IC 36-4-3-5.1 A landowner petition must be signed by 100% of the landowners who reside in the territory.

Process

- Annexation Ordinance
  - A description of the boundaries
  - Approximate number of acres in the territory to be annexed
  - A description of any special terms and conditions for an involuntary annexation
  - A description of any real property tax abatements adopted under IC 36-4-3-8.5 for an involuntary annexation
Special terms

- If territory sought to be annexed:
  - Has a resident population of at least three persons per acre
  - Is subdivided or parceled through separate ownerships such that at least 60% of the total number of lots and parcels are less than one acre
- Then, the annexation ordinance must contain:
  - A provision impounding in a special fund all of the municipal property taxes imposed on the annexed territory after the annexation takes effect
  - That are not used to provide the capital and non-capital services identified in the municipality's fiscal plan for a period of at least three years

Fiscal Plan

- Adoption time frame:
  - Voluntary – fiscal plan adopted prior to the adoption of the annexation ordinance
  - Involuntary – fiscal plan must be adopted prior to the date the certified mail notice is sent
- Included in the plan:
  - Cost estimates of planned services to be furnished to the territory and impact on each municipal dept.
  - Methods for financing and funding
  - Plans for extension and organization of services
  - That non-capital services will be provided within one year
  - That capital services will be provided within three years
Notice Requirements

- Written notice must be sent via certified mail prior to the public hearing to all property owners within the proposed annexed territory
  - 60 days in advance of the public hearing for involuntary
  - 20 days in advance for voluntary
  - Not required for super-voluntary

Public Hearing/Adoption

- The public hearing may occur not earlier than 60 days after the date the annexation ordinance is introduced.
- The annexation ordinance may be adopted no earlier than 30 days and not later than 60 days after the public hearing.
Electric Service Extension

- In the 72 communities with municipal electric service, if municipal electric service will be provided to the annexed area, the municipality must petition the IURC within 60 days of the annexation ordinance becoming effective in order to acquire the territory and serve the customers or future customers.

- The municipality must compensate the incumbent electric utility supplier for any facilities acquired and future growth opportunities in accordance with the formula set out in state statute (IC 8-1-2.3-6(1)).

Publication

- After an annexation ordinance has been adopted, it must be published one time, within 30 days after the passage of the ordinance.

- In absence of a remonstrance, the ordinance takes effect 90 days after publication and after it has been filed with the county auditor, circuit court clerk, secretary of state, office of census date, board of voter registration and recorded with the county recorder.
Remonstrance

- Property owners may appeal an annexation by filing a remonstrance with the circuit or superior court of any county in which the annexed territory is located.
- It must be signed by at least 65% of the owners of land in the annexed territory or the owners of more than 75% of assessed valuation of the land in the annexed territory.
- 90 days to collect signatures
- If signatures gathered, the court is required to conduct a hearing within 60 days

Remonstrance

- In order for a court to order an annexation to take place, a municipality must show:
  - At least 1/8 of the aggregate external boundaries of the territory sought to be annexed is contiguous
  - AND Either:
    - The resident population of the area has three persons per acre/ 60% is subdivided; or
    - The territory is zoned for commercial, business or industrial uses; or
    - At least 1/4 of the aggregate external boundaries of the territory sought to be annexed is contiguous AND the territory is needed and can be used by the municipality in the reasonably near future.