

1 **BILL NO. X-18-07-06 (AS AMENDED)**

2
3 **ANNEXATION ORDINANCE NO. X- 1-18**

4 **AN ORDINANCE ANNEXING**
5 **CERTAIN TERRITORY COMMONLY KNOWN**
6 **AS THE LA CABREAH ANNEXATION TO**
7 **FORT WAYNE AND INCLUDING THE SAME**
8 **COUNCILMANIC DISTRICT NO. 3.**

9
10 **WHEREAS**, the Annexation Territory includes at least three persons per
11 acre and more than 60% of the subdivided lots are not more than one acre; and

12 **WHEREAS**, I.C. 36-4-3-8(c) requires that this Ordinance include terms
13 and conditions impounding in a special fund for three years all municipal property
14 taxes imposed on the Annexation Territory that are not used to meet the basic
15 services set forth in the fiscal plan and that such funds be expended within five
16 years of the effective date of the annexation to provide additional services not set
17 forth in the fiscal plan; and

18 **WHEREAS**, while it is anticipated that there will be municipal property
19 taxes that are not used to meet the basic services in the fiscal plan and this
20 Ordinance creates the special fund to impound such excess municipal property
21 taxes.

22 All Municipal property taxes imposed on any real estate in the Annexation
23 Territory during the first three years after the effective date of the annexation
24 which are not used to meet the basic services set forth in the fiscal plan adopted
25 by Resolution R-53-18 shall be impounded in a special fund that will be used to
26 provide additional services for the benefit of the Annexation Territory not
27 provided in the fiscal plan and shall be so used within five (5) years of the
28 effective date of the annexation.

29 The advisory board required by I.C. 36-4-3-8.1 shall be appointed within
30 90 days after the annexation under this Ordinance becomes effective.

1 **BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF**
2 **FORT WAYNE, INDIANA:**

3
4 **SECTION 1.** That the following described territory is and the same is
5 hereby annexed to, and made part of, the corporation of the City of Fort Wayne,
6 Indiana to-wit:

7 Beginning at the Southwest corner of the Northeast Quarter of Section 33, T32N,
8 R12E, this point also being the Southwest corner of the Secondary Plat of Eagle
9 Lake, Section V, as recorded in Plat Cabinet C, Page 8, in the Office of the
10 Recorder of Allen County, Indiana; also being the Northwest corner of the
11 Secondary Plat of Eagle Lake, Section III, as recorded in Plat Cabinet B, Page
12 110, in the Office of the Recorder of Allen County, Indiana; thence Northerly, on
13 and along the Westerly line of said Eagle Lake, Section V, on the following
14 courses and distances; North 00 degrees 10 minutes 00 seconds East, a
15 distance of 1129.45 feet (also being the current City of Fort Wayne Corporate
16 Limits as established by Annexation Ordinance X-01-93); thence North 26
17 degrees 47 minutes 15 seconds East, a distance of 223.20 feet; to Northwest
18 Corner of Eagle Lake, Section V, also being the Northeast Corner of the
19 Secondary Plat of La Cabreah, Section III, as recorded in Plat Cabinet C, Page
20 37, in the Office of the Recorder of Allen County, Indiana (also being the current
21 City of Fort Wayne Corporate Limits as established by Annexation Ordinance X-
22 01-93);thence continuing North 26 degrees 47 minutes 15 seconds East ,
23 projecting the previous line Northeasterly to the North right-of-way line of Badiac
24 Road (also being the current City of Fort Wayne Corporate Limits as established
25 by Annexation Ordinance X-01-93); thence Westerly on and along the North
26 right-of-way line of Badiac Road to the East boundary of the Secondary Plat of
27 La Cabreah, Section III; thence Northerly on and along said East boundary to the
28 Northeasterly corner of Lot 99 in the Secondary Plat of La Cabreah, Section III, ,
29 said point also being the Southeast corner of the Secondary Plat of La Cabreah,
30 Section IV, as recorded in Plat Cabinet C, Page 85, in the Office of the Recorder
of Allen County, Indiana; thence on and along the East boundary of La Cabreah,
Section IV, on the following courses and distances; North 00 degrees 10 minutes

1 03 seconds East, a distance of 1211.94 feet to the North One-quarter corner of
2 said Section 33, said point also being the South Quarter corner of Section 28 as
3 found marked by a rail post; thence North 00 degrees 05 minutes 56 seconds
4 East along the North-South centerline of Section 28, a distance of 241.20 feet to
5 the Northeast corner of La Cabreah, Section IV; thence North 00 degrees 05
6 minutes 56 seconds East, a distance of 33.80 feet along the Eastern most line of
7 Block "S" to the Northeast corner of the Secondary Plat of La Cabreah, Section
8 VII, as recorded in Plat Cabinet E, Page 74, in the Office of the Recorder of Allen
9 County, Indiana; thence on and along the boundary of La Cabreah, Section VII,
10 on the following courses and distances; North 89 degrees 30 minutes 28
11 seconds West, a distance of 511.39 feet; thence North 59 degrees 29 minutes
12 10 seconds West, a distance of 455.12 feet; thence North 89 degrees 25
13 minutes 56 seconds West, a distance of 415.00 feet; thence South 00 degrees
14 04 minutes 33 seconds East, a distance of 112.52 feet to the as platted
15 Northwest corner of Lot 209; thence North 89 degrees 32 minutes 31 seconds
16 West, a distance of 51.79 feet (Reference Allen County, Indiana Recorder's
17 Office Document Number 2012056509); thence continuing North 89 degrees 32
18 minutes 31 seconds West, projecting a line to the west boundary of the
19 abandoned Fort Wayne, Jackson & Saginaw Railroad (Reference Allen County,
20 Indiana Recorder's Office Document Number 206013366); thence Southerly on
21 and along the West boundary of the abandoned Fort Wayne, Jackson & Saginaw
22 Railroad Parcels(PIN #020233151002000057 and PIN #020228351002000057)
23 to the Northeast corner of the Final Plat of Woodmont, Section 5, as recorded in
24 Plat Book 41, Pages 54-57 within current City of Fort Wayne Corporate Limits as
25 established by Annexation Ordinance X-01-93; thence Easterly on and along the
26 current City of Fort Wayne Corporate Limits as established by Annexation
27 Ordinance X-01-93 to the Point of Beginning. Containing 105 acres, more or
28 less. (see attached map)
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SECTION 2. That the City of Fort Wayne will furnish the above described territory within a period of one (1) year from the effective date of annexation, planned services of a non-capital nature, including police and fire protection, and street and road maintenance, in a manner which is equivalent in standard and

1 scope to those non-capital services provided to the areas within the City of Fort
2 Wayne regardless of topography, patterns of land-use, and population density to
3 the said described territory. The City of Fort Wayne will also provide services of
4 capital improvement nature, including street construction, street lighting, and
5 stormwater drainage facilities to the annexed territory within three (3) years of
6 the effective date of annexation, in the same manner as such services are
7 provided to areas already in the City of Fort Wayne regardless of topography,
8 patterns of land-use, and population density and in a manner consistent with
9 federal, state and local laws, procedures and planning criteria.

10 **SECTION 3.** That governmental and proprietary services will be provided
11 to the above described territory in a manner consistent with the written Fiscal
12 Plan for the territory developed by the Fort Wayne Department of Planning and
13 Policy. Said Plan was examined by the Common Council of the City of Fort
14 Wayne and has been approved and adopted by the Common Council. Two
15 copies of said plan are on file in the office of the Clerk of the City of Fort Wayne
16 and are available for inspection as required by law.

17 **SECTION 4.** That said described territory shall be temporarily assigned to
18 Councilmanic Political Ward No. 3 of the City of Fort Wayne, Indiana, as
19 described in Division I, Section 2-9 of Chapter 2 of the Municipal Code of the City
20 of Fort Wayne, Indiana of 1974, as amended. This assignment is subject to
21 redistricting pursuant to Indiana Code 36-4-6-3 (g).

22 **SECTION 5.** That the municipality has established and adopted a
23 resolution approving the written Fiscal Plan.

24 **SECTION 6.** That notification has been sent to all landowners in the
25 territory proposed to be annexed under and in accordance with Indiana Code 36-
26 4-3-2.2.

27
28 **SECTION 7.** That, after adoption and any and all necessary approval by
29
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1 the Mayor, this Ordinance shall be published as provided for in Indiana Code 36-
2 4-3-7. The above-mentioned territory shall become part of the City of Fort Wayne
3 on January 1, 2020.

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5 
6 _____
7 COUNCIL MEMBER

8 APPROVED AS TO FORM AND LEGALITY

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10 _____
11 CAROL HELTON, CITY ATTORNEY

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**FORT WAYNE COMMON COUNCIL
ROLL CALL (VOTE)
COMMITTEE SESSION**

Date: 10-23-18

Bill # X-18-07-06

THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, MET IN ROOM 030, COUNCIL DISCUSSION ROOM, GARDEN LEVEL - CITIZENS SQUARE, TUESDAY EVENING, IN COMMITTEE SESSION. PRESIDENT TOM FREISTROFFER IN THE CHAIR, COUNCIL ATTORNEY JOSEPH BONAHOOM AND LANA R. KEESLING, CITY CLERK, AT THE DESK, PRESENTS THE FOLLOWING MEMBERS

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| | | | | | |
|--------|---|----------|---|--------------|---|
| ARP | N | BARRANDA | N | CRAWFORD | Y |
| DIDIER | Y | ENSLEY | Y | FREISTROFFER | Y |
| HINES | Y | JEHL | Y | PADDOCK | Y |

.....

ABSENT: NONE

| Final Vote Tally | | |
|-------------------------|---------|---------|
| In Favor | Against | Abstain |
| 7 | 2 | |

1 **BILL NO. X-18-07-06 (AS AMENDED)**

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6 **CERTAIN TERRITORY COMMONLY KNOWN**
7 **AS THE LA CABREAH ANNEXATION TO**
8 **FORT WAYNE AND INCLUDING THE SAME**
9 **COUNCILMANIC DISTRICT NO. 3.**

10 **WHEREAS**, the Annexation Territory includes at least three persons per
11 acre **and more than 60% of the subdivided lots are not more than one acre;**
12 and

13 **WHEREAS**, I.C. 36-4-3-8(c) requires that this Ordinance include terms
14 and conditions impounding in a special fund for three years all municipal property
15 taxes imposed on the Annexation Territory that are not used to meet the basic
16 services set forth in the fiscal plan and that such funds be expended within five
17 years of the effective date of the annexation to provide additional services not set
18 forth in the fiscal plan; and

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22 taxes.

23 All Municipal property taxes imposed on any real estate in the Annexation
24 Territory during the first three years after the effective date of the annexation
25 which are not used to meet the basic services set forth in the fiscal plan adopted
26 by Resolution R-53-18 shall be impounded in a special fund that will be used to
27 provide additional services for the benefit of the Annexation Territory not
28 provided in the fiscal plan and shall be so used within five (5) years of the
29 effective date of the annexation.

30 The advisory board required by I.C. 36-4-3-8.1 shall be appointed within
90 days after the annexation under this Ordinance becomes effective.

1
2 **BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF**
3 **FORT WAYNE, INDIANA:**
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5 **SECTION 1.** That the following described territory is and the same is
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14 and along the Westerly line of said Eagle Lake, Section V, on the following
15 courses and distances; North 00 degrees 10 minutes 00 seconds East, a
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17 Limits as established by Annexation Ordinance X-01-93); thence North 26
18 degrees 47 minutes 15 seconds East, a distance of 223.20 feet; to Northwest
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5 East along the North-South centerline of Section 28, a distance of 241.20 feet to
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7 minutes 56 seconds East, a distance of 33.80 feet along the Eastern most line of
8 Block "S" to the Northeast corner of the Secondary Plat of La Cabreah, Section
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16 Northwest corner of Lot 209; thence North 89 degrees 32 minutes 31 seconds
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18 Office Document Number 2012056509); thence continuing North 89 degrees 32
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29 less. (see attached map)

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1 street and road maintenance, in a manner which is equivalent in standard and
2 scope to those non-capital services provided to the areas within the City of Fort
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4 the said described territory. The City of Fort Wayne will also provide services of
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14 Policy. Said Plan was examined by the Common Council of the City of Fort
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1 **BILL NO. X-18-07-06**

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5 **TERRITORY COMMONLY KNOWN AS THE LA**
6 **CABREAH VOLUNTARY ANNEXATION TO FORT**
7 **WAYNE AND INCLUDING THE SAME**
8 **COUNCILMANIC DISTRICT NO. 3.**

9 **BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,**
10 **INDIANA:**

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2 centerline of Section 28, a distance of 241.20 feet to the Northeast corner of La Cabreah,
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5 La Cabreah, Section VII, as recorded in Plat Cabinet E, Page 74, in the Office of the
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8 seconds West, a distance of 511.39 feet; thence North 59 degrees 29 minutes 10 seconds
9 West, a distance of 455.12 feet; thence North 89 degrees 25 minutes 56 seconds West, a
10 distance of 415.00 feet; thence South 00 degrees 04 minutes 33 seconds East, a distance
11 of 112.52 feet to the as platted Northwest corner of Lot 209; thence North 89 degrees 32
12 minutes 31 seconds West, a distance of 51.79 feet (Reference Allen County, Indiana
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16 Office Document Number 206013366); thence Southerly on and along the West boundary
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19 Final Plat of Woodmont, Section 5, as recorded in Plat Book 41, Pages 54-57 within
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21 93; thence Easterly on and along the current City of Fort Wayne Corporate Limits as
22 established by Annexation Ordinance X-01-93 to the Point of Beginning. Containing 105
23 acres, more or less. (see attached map)

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25 SECTION 2. That the City of Fort Wayne will furnish the above described
26 territory within a period of one (1) year from the effective date of annexation, planned
27 services of a non-capital nature, including police and fire protection, and street and road
28 maintenance, in a manner which is equivalent in standard and scope to those non-capital
29 services provided to the areas within the City of Fort Wayne regardless of topography,
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Fort Wayne will also provide services of capital improvement nature, including street
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patterns of land-use, and population density and in a manner consistent with federal,
state and local laws, procedures and planning criteria.

SECTION 3. That governmental and proprietary services will be provided
to the above described territory in a manner consistent with the written Fiscal Plan for
the territory developed by the Fort Wayne Department of Planning and Policy. Said Plan
was examined by the Common Council of the City of Fort Wayne and has been approved

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and adopted by the Common Council. Two copies of said plan are on file in the office of the Clerk of the City of Fort Wayne and are available for inspection as required by law.

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SECTION 5. That the municipality has established and adopted a resolution approving the written Fiscal Plan.

SECTION 6. That notification has been sent to all landowners in the territory proposed to be annexed under and in accordance with Indiana Code 36-4-3-2.2.

SECTION 7. That, after adoption and any and all necessary approval by the Mayor, this Ordinance shall be published as provided for in Indiana Code 36-4-3-7. The above-mentioned territory shall become part of the City of Fort Wayne on January 1, 2020.



COUNCIL MEMBER

APPROVED AS TO FORM AND LEGALITY



CAROL HELTON, CITY ATTORNEY

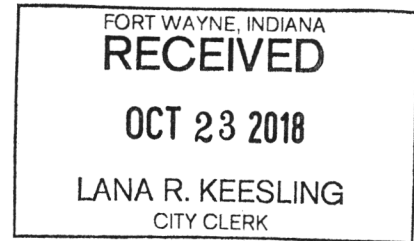


436 E. Wayne Street • Fort Wayne, IN 46802
Telephone: (260) 424-8132 • Fax: (260) 969-5361
www.vgtlaw.com

October 18, 2018

City Council Office
Citizens Square Suite 120
200 E Berry St.
Fort Wayne, Indiana, 46802

**RE: La Cabreah Voluntary Annexation
X-18-07-06 and R-18-07-07**



Dear Council Members:

I am writing in regard to the City of Fort Wayne’s (“City”) proposed annexation of territory consisting of the La Cabreah Community Association, Inc. On October 23, 2018, Fort Wayne Common Council (“Council”) is scheduled to hold a third reading of the annexation ordinance, Bill No. X-18-07-06 (“Ordinance”). The City’s consideration of the Voluntary Petition for Annexation (“Petition”) has been flawed from the beginning. Before further Council action is taken on the annexation, I urge members to consider the following points.

(1) The Annexation is Subject to Judicial Review.

Annexation is a legislative function and subject to judicial review as provided by statute. As was done here, the annexation process can begin when an individual or individuals submit a petition to a municipality requesting annexation. Once the annexation is adopted, affected landowners have the right to remonstrate and seek judicial review.

On review, “[t]he trial court’s role is to decide whether the municipality has operated within its authority and satisfied the statutory conditions for annexation.” *City of Carmel v. Steele*, 836 N.E.2d 967, 973 (Ind. Ct. App. 2005) (citing *Bradley v. City of New Castle*, 764 N.E.2d 212, 216 (Ind. 2002)). A municipality seeking to annex territory bears the burden of showing compliance with the requirements of the annexation statute, and it is up to the trial court to determine if municipality has satisfied this burden and, ultimately, whether the municipality has acted within its authority. *Id.*

In *Bradley v. City of New Castle*, the Indiana Supreme Court recognized that annexing municipalities may commit procedural wrongs so severe that courts must act to protect remonstrators’ substantial rights. The *Bradley* Court found that the procedural errors in question did not impair the remonstrators’ substantial rights. However, the issues raised in the La Cabreah annexation are distinguishable.

La Cabreah owners withdrawing their signatures are raising procedural, as well as substantive, arguments against the annexation. First, owners contend they signed the Petition based on misinformation provided by the City. Second, they argue that the Ordinance cannot proceed as voluntary since the annexation no longer has the support of 51% of the owners (see Section (2) below). In a similar case, *City of Carmel v. Steele*, landowners contended that Carmel did not satisfy the requirements of Ind. Code § 36-4-3-5.1 because it was unclear whether 100% of the landowners residing in the territory had signed the petition for voluntary annexation. The Court determined that the trial court had authority to determine whether Carmel had satisfied the statutory conditions for an annexation under Section 5.1. Based on the lack of signatures, the *Steele* Court invalidated the Ordinance.

Likewise, La Cabreah owners are contending that the City lacks the signatures necessary to proceed under Ind. Code § 36-4-3-5 (“Section 5”), an issue appropriate for judicial review. On review, the trial court would have the ability to assess the sufficiency of the La Cabreah voluntary annexation petition and invalidate the Ordinance.

(2) Landowners May Withdraw Their Signatures from a Voluntary Annexation Petition at any Time Prior to the Ordinance’s Enactment.

The voluntary annexation procedure at Section 5 requires the signatures of at least 51% of the owners in the annexation territory. La Cabreah landowners have submitted signatures notifying the City they are withdrawing their signatures from the voluntary Petition. Nine withdrawal signatures were sent to the City on July 9, 2018, reducing support for the Petition below 51%. An additional seven signatures were later submitted, including five new signatures with this letter. A copy of all sixteen signatures are attached for your reference (first to last chronologically).

Once signed, a petition is not set in stone; owners may withdraw their signatures from a petition before it is acted on: “It is a well settled rule that the withdrawal of names on a petition operates as a dismissal of it as to those names withdrawn and that persons signing a petition have the right to withdraw their names therefrom before the tribunal created by law to receive and consider such petition has acted thereon.” *Jones v. Nay*, 163 N.E.2d 119 (Ind. 1960).

Indiana courts have consistently held that the rule espoused in *Jones v. Nay*, 163 N.E.2d 119 (Ind. 1960) applies generally in civil cases, including annexations. For example, in *Petercheff v. City of Indianapolis*, 178 N.E.2d 746 (Ind. 1961), the Indiana Supreme Court considered a remonstrance proceeding against a City of Indianapolis annexation ordinance. The municipality filed a motion to withdraw the names of fifty (50) remonstrators along with an exhibit of signatories requesting the withdrawal. The trial court allowed the removal of remonstrator signatures prior to the court ruling on the sufficiency of the remonstrance. After removal of the signatures, the trial court found that the remonstrance lacked the required number of remonstrators and dismissed the proceeding.

On appeal, the Indiana Supreme Court affirmed the trial court and in support specifically cited *Jones v. Nay*:

The rule is well settled that the withdrawal of names on a petition operates as a dismissal of it as to those names withdrawn, and it follows from Burns' § 2-901, *supra*, that persons signing a petition have the right to withdraw their names therefrom before the tribunal created by law to receive and consider said petition has acted thereon. *Jones v. Nay* (1960), Ind., 163 N.E.2d 1919, 120; *Parker v. Seward School Township of Kosciusko* (1959), Ind., 159 N.E.2d 576, 579; *Hord, Prosecuting Attorney, ex rel. Stanley and Others, v. Elliott and Others* (1870), 33 Ind. 220, 222; *Black et al. v. Campbell et al.* (1887), 112 Ind. 122, 126, 13 N.E. 409, 411.

Council has not “acted” on the Petition since the Ordinance has yet to be adopted. Therefore, the enclosed withdrawal signatures, including those submitted for the first time with this letter, should be accounted for and invalidate any ordinance adopted on a “voluntary” basis.

(3) The Annexation Ordinance May Not be Converted from Voluntary to Involuntary.

As Council is aware, the statutory requirements for a voluntary annexation ordinance differ from those of an involuntary annexation. These differences prevent the City from converting the annexation to an involuntary proceeding at this stage; rather, if the City chooses to proceed, an involuntary annexation ordinance must be introduced, and the process started anew.

For instance, an involuntary annexation requires six outreach meetings as opposed to only three under the voluntary process. On June 15, 2018, the City sent a letter to owners within the annexation territory informing them of three “open house” meetings in mid-July. The letter specified that the meetings would be in regard to the voluntary Petition. On September 13, 2018, the City sent another letter informing residents of an additional three “information” meetings concerning the voluntary annexation, to be held on October 19, 20, and 22, just days before the Council considers the third reading of the ordinance.

The City asserts that the additional meetings have been scheduled to provide another opportunity for owners who were unable to attend the first three meetings. However, it is noteworthy that the City has now scheduled six meetings, the same number required for an involuntary annexation. Purely coincidence or not, it is appropriate to address the reasons why the annexation cannot be considered involuntary at this stage:

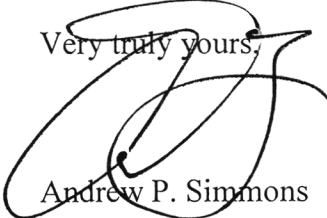
- Notice of the date/time/location of all outreach meetings must be sent to owners not later than thirty days before the date of the first meeting. The statute does not envision two sets of notices and meetings. Therefore, the three “information” meetings do not qualify as outreach meetings under the statute.
- The September 13, 2018 letters to residents were not sent by certified mail as required by Ind. Code § 36-4-3-1.7.

- The Ordinance was introduced as a voluntary annexation and considered as such at the public hearing and on second reading. It should not, on third reading, be considered as involuntary.
- The fiscal plan was drafted with a voluntary annexation envisioned.
- If involuntary, the statute provides additional requirements that may need to be included in the Ordinance. For example, Ind. Code § 36-4-8 provides that a special fund for property taxes must be established if the annexed area has 3 persons per acre and 60% of the lots are not more than one acre in size.

Compliance with the annexation statute is not a choice. Under the circumstances, proceeding with a voluntary annexation does a disservice not only to those owners who have withdrawn their signatures from the petition to annex, but also to those who signed the petition and remain in favor of annexation. The petition is “voluntary” in name only and its passage by Council will be subject to litigation and a determination of invalidity.

This is no longer a question of whether the annexation is good or bad for La Cabreah owners or the City, but whether the Ordinance complies with Indiana law. The answer to that question is “No”. I urge Council members to vote against the annexation.

Thank you for your time and consideration.

Very truly yours,

Andrew P. Simmons

Enclosures

**NOTICE OF PUBLIC HEARING
BEFORE COMMON COUNCIL OF
FORT WAYNE,
REGARDING PROPOSED
LA CABREAH VOLUNTARY
ANNEXATION ORDINANCE**

Notice is hereby given that the Common Council of the City of Fort Wayne will hold a public hearing in accordance with IC 36-4-3-2.1, on the proposed La Cabreah Voluntary Annexation Ordinance, which hearing shall be held at Citizens Square, Room 030, 200 E Berry St., Fort Wayne, Indiana, at 5:30 P.M. on Tuesday, September 11, 2018.

All interested parties are invited to appear and be heard. "Reasonable accommodations" for persons with a known disabling condition will be considered in accordance with the State and Federal Law. Any person needing a "Reasonable accommodation" should notify Public Information Office (260)427-1120, TTY (269)427-1200 at least seventy two (72) hours prior to the meeting.

La Cabreah Voluntary Annexation Legal Description - A Parcel of land located in parts of T32N, R12E, here known as Perry Township, within Allen County Indiana, more particularly described as follows: Beginning at the Southwest corner of the Northeast Quarter of Section 33, T32N, R12E, this point also being the Southwest corner of the Secondary Plat of Eagle Lake, Section V, as recorded in Plat Cabinet C, Page 8, in the Office of the Recorder of Allen County, Indiana; also being the Northwest corner of the Secondary Plat of Eagle Lake, Section III, as recorded in Plat Cabinet B, Page 110, in the Office of the Recorder of Allen County, Indiana; thence Northerly, on and along the Westerly line of said Eagle Lake, Section V, on the following courses and distances; North 00 degrees 10 minutes 00 seconds East, a distance of 1129.45 feet (also being the current City of Fort Wayne Corporate Limits as established by Annexation Ordinance X-01-93); thence North 26 degrees 47 minutes 15 seconds East, a distance of 223.20 feet; to Northwest Corner of Eagle Lake, Section V, also being the Northeast Corner of the Secondary Plat of La Cabreah, Section III, as recorded in Plat Cabinet C, Page 37, in the Office of the Recorder of Allen County, Indiana (also being the current City of Fort Wayne Corporate Limits as established by Annexation Ordinance X-01-93); thence continuing North 26 degrees 47 minutes 15 seconds East, projecting the previous line Northeasterly to the North right-of-way line of Badiac Road (also being the current City of Fort Wayne Corporate Limits as established by Annexation Ordinance X-01-93); thence Westerly on and along the North right-of-way line of Badiac Road to the East boundary of the Secondary Plat of La Cabreah, Section III; thence Northerly on and along said East boundary to the Northeasterly corner of Lot 99 in the Secondary Plat of La Cabreah, Section III, said point also being the Southeast corner of the Secondary Plat of La Cabreah, Section IV, as recorded in Plat Cabinet C, Page 85, in the Office of the Recorder of Allen County, Indiana; thence on and along the East boundary of La Cabreah, Section IV, on the following courses and distances; North 00 degrees 10 minutes 03 seconds East, a distance of 1211.94 feet to the North One-quarter corner of said Section 33, said point also being the South Quarter corner of Section 28 as found marked by a rail post; thence North 00 degrees 05 minutes 56 seconds East along the North-South centerline of Section 28, a distance of 241.20 feet to the Northeast corner of La Cabreah, Section IV; thence North 00 degrees 05 minutes 56 seconds East, a distance of 33.80 feet along the Eastern most line of Block "S" to the Northeast corner of the Secondary Plat of La Cabreah, Section VII, as recorded in Plat Cabinet E, Page 74, in the Office of the Recorder of Allen County, Indiana; thence Northerly on and along the boundary of

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The Journal Gazette

Account # 1061692 - 1332261
FW Community Development

Allen County, Indiana

PUBLISHER'S CLAIM

LINE COUNT

Display Master (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) -- number of equivalent lines _____

Head -- number of lines _____

Body -- number of lines _____

Tail -- number of lines _____

Total number of lines in notice 145

COMPUTATION OF CHARGES

145 lines, 1 column(s) wide equals _____

145 equivalent lines at \$ 0.460 cents per line \$ 66.70

Additional charges for notices containing rule or tabular work (50 per cent of above amount) -

Charge for extra proofs of publication (\$2.00 for each proof in excess of two) -

TOTAL AMOUNT OF CLAIM \$ 66.70

DATA FOR COMPUTING COST

Width of single column in picas 9.8 Size of type 7point.
Number of Insertions 1

Pursuant to the provisions and penalties of IC 5-11-10-1, I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

I also certify that the printed matter attached hereto is a true copy, of the same column width and type size, which was duly published in said paper 1 times.

The dates of publication being as follows:

7/11/2018

Additionally, Newspaper has a Web site and this public notice was posted on the same day as it was published in The Journal Gazette.

Donna M. Brotherton

Donna M. Brotherton
Legal Clerk

Date: July 11, 2018

ATTACH COPY OF ADVERTISEMENT HERE

28 as found marked by a rail post; thence North 00 degrees 05 minutes 56 seconds East along the North-South centerline of Section 28, a distance of 241.20 feet to the Northeast corner of La Cabreah, Section IV; thence North 00 degrees 05 minutes 56 seconds East, a distance of 33.80 feet along the Eastern most line of Block "S" to the Northeast corner of the Secondary Plat of La Cabreah, Section VII, as recorded in Plat Cabinet E, Page 74, in the Office of the Recorder of Allen County, Indiana; thence on and along the boundary of La Cabreah, Section VII, on the following courses and distances; North 89 degrees 30 minutes 28 seconds West, a distance of 511.39 feet; thence North 89 degrees 29 minutes 10 seconds West, a distance of 455.12 feet; thence North 89 degrees 25 minutes 56 seconds West, a distance of 415.00 feet; thence South 00 degrees 04 minutes 33 seconds East, a distance of 112.52 feet to the as platted Northwest corner of Lot 209; thence North 89 degrees 32 minutes 31 seconds West, a distance of 51.79 feet (Reference Allen County, Indiana Recorder's Office Document Number 2012056509); thence continuing North 89 degrees 32 minutes 31 seconds West, projecting a line to the west boundary of the abandoned Fort Wayne, Jackson & Saginaw Railroad (Reference Allen County, Indiana Recorder's Office Document Number 206013366); thence Southerly on and along the West boundary of the abandoned Fort Wayne, Jackson & Saginaw Railroad Parcels (PIN #020233151002000057 and PIN #020228351002000057) to the Northeast corner of the Final Plat of Woodmont, Section 5, as recorded in Plat Book 41, Pages 54-57 within current City of Fort Wayne Corporate Limits as established by Annexation Ordinance X-01-93; thence Easterly on and along the current City of Fort Wayne Corporate Limits as established by Annexation Ordinance X-01-93 to the Point of Beginning.

7--11 1332261 hspaxlp

PUBLIC HEARING

Speaker Sign Up - Name and Address Required

Speakers will be allowed a maximum of 2 minutes

Names will be called once. If the speaker does not respond, the next person will be called

Public Hearing will be held in Room 030 - Council Discussion Room

| | Name REQUIRED | Address REQUIRED |
|----|-------------------------|-------------------------------|
| 1 | CURT SYLVESTER | 11502 PENNET RUN F.W |
| 2 | Deb Parish | 11924 Tillbury Cove F.W 46845 |
| 3 | Rw: Karen EMER | 11124 LAVISTA PLACE FW 46845 |
| 4 | Ed Sobera/ski | 11222 Cabriolet Run FW 46845 |
| 5 | John Richter | 11325 CABRIOLET RUN FW 46845 |
| 6 | Jeff Clark | 11315 Brougham Run FW 46845 |
| 7 | Angela Level | 11441 Brougham Run FW 46845 |
| 8 | Mary Jane Novase/ | 11623 Tillbury Cv 46845 |
| 9 | Meredith Morrow | 11731 Tillbury Cv 46845 |
| 10 | Nick Hodgman | 11309 Brougham Run FW 46845 |
| 11 | | |
| 12 | Sarah Miller | 11115 Rockway Dr |
| 13 | Jill Campadonoco | TILBURY core |
| 14 | Eldin Andersson | 11225 Chariot Ct. |
| 15 | Dennis Massey | Cabriolet Run |
| 16 | Jerry Hoffmann | 11201 |
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PUBLIC HEARING

Speaker Sign Up - Name and Address Required

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Public Hearing will be held in Room 030 - Council Discussion Room

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Public Hearing will be held in Room 030 - Council Discussion Room

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PUBLIC HEARING

Speaker Sign Up - Name and Address Required

Speakers will be allowed a maximum of 2 minutes

Names will be called once. If the speaker does not respond, the next person will be called

Public Hearing will be held in Room 030 - Council Discussion Room

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PUBLIC HEARING

Speaker Sign Up - Name and Address Required

Speakers will be allowed a maximum of 2 minutes

Names will be called once. If the speaker does not respond, the next person will be called

Public Hearing will be held in Room 030 - Council Discussion Room

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David C. Van Gilder
Ann M. Trzynka
Dustin M. Roach



Van Gilder & Trzynka, P.C.
attorneys at law

Andrew P. Simmons
Lindsay D. Solon

436 E. Wayne Street • Fort Wayne, IN 46802
Telephone: (260) 424-8132 • Fax: (260) 969-5361
www.vgtlaw.com

July 26, 2018

City Clerk's Office
Citizens Square
200 East Berry Street, Suite 110
Fort Wayne, IN 46802

RE: X-18-07-06 and R-18-07-07

To Whom It May Concern:

Enclosed please find copies of letters sent to Carol Helton and Joseph Bonahoom regarding the La Cabreah annexation. Please include these letters and the attached signatures in the Council's records for the annexation ordinance.

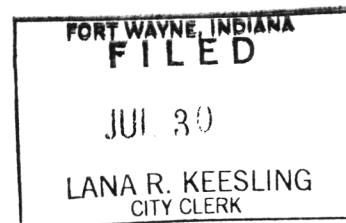
Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to be 'A. Simmons', written over the typed name 'Andrew P. Simmons'.

Andrew P. Simmons

APS/jg
Enclosures





436 E. Wayne Street • Fort Wayne, IN 46802
Telephone: (260) 424-8132 • Fax: (260) 969-5361
www.vgtlaw.com

July 9, 2018

COPY

Joseph G. Bonahoom
Fort Wayne Common Council Attorney
927 South Harrison, Ste. 200
Fort Wayne, IN 46802

**RE: La Cabreah Voluntary Annexation
X-18-07-06 and R-18-07-07**

Dear Mr. Bonahoom:

I am writing in regard to the City of Fort Wayne's proposed annexation of territory consisting of the La Cabreah Community Association, Inc. According to the July 10, 2018 Fort Wayne Common Council agenda, both the annexation ordinance, Bill No. X-18-07-06, and the fiscal plan resolution, R-18-07-07, are scheduled for introduction before the Common Council tomorrow evening. A number of owners within La Cabreah have expressed concern about the annexation and have asked me to represent them in this matter.

My clients have provided me with a copy of the "Petition for Annexation into the City of Fort Wayne" date-stamped as received by the City Clerk on April 18, 2018. The Petition appears to include the signatures of just over one-half the owners of land in the territory sought to be annexed. Therefore, I presume the City is proceeding under the voluntary annexation procedure at Ind. Code 36-4-3-5, which requires the signatures of at least fifty-one percent (51%) of the owners in the annexation territory. There are a few matters that I want to bring to your attention that may affect the annexation process.

First, residents who previously signed the Petition now wish to withdraw their signatures and support for the annexation. Enclosed with this letter are the signatures of nine (9) such owners. Case law and the annexation statute support the right of an owner to withdraw their signature from a petition: "It is a well settled rule that the withdrawal of names on a petition operates as a dismissal of it as to those names withdrawn and that persons signing a petition have the right to withdraw their names therefrom before the tribunal created by law to receive and consider such petition has acted thereon." *Jones v. Nay*, 163 N.E.2d 119 (Ind. 1960). Moreover, under the related voluntary annexation statute, owners may withdraw their signatures within thirteen (13) days after the City adopts the fiscal plan. *See* Ind. Code 36-4-3-5.1(g).

The enclosed withdrawal signatures should be accounted for in the City's decision on how to proceed with the annexation. Please let me know if the Council still believes it may proceed with a voluntary annexation despite the withdrawn signatures and, if so, please provide an accounting of owners in support of the annexation in relation to all owners.

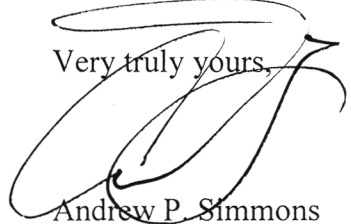
Second, owners would like clarification on the statutory procedure the City has followed to this point. As you know, the City must hold at least three (3) public information meetings for a voluntary annexation not earlier than six (6) months before introducing the annexation ordinance. The City is required to provide notice of the dates, times, and locations of the outreach program meetings both by publication and by certified mail to each owner of land within the annexation territory at least thirty (30) days before the first meeting. This procedure applies to all annexations, except for unanimously annexed territory under section 5.1. *See* Ind. Code 36-4-3-1.7.

However, the withdrawn signatures arguably affect the number of outreach meetings and new notice may need to be provided. If the City must proceed under the involuntary annexation statute due to a lack of signatures, a total of six (6) public information meetings is necessary. If owners are not notified of all meetings as required in the statute, the requirements of Ind. Code 36-4-3-1.7 have not been met, which could affect the timing of later requirements under the statute.

Finally, I appreciate that this letter may reach you just prior to the Council meeting, but I believe it is imperative that La Cabreah owners are granted all rights available under the annexation statute. Moreover, the City must consider the proper statutory procedure in light of the withdrawn signatures.

Thank you for your time and consideration. I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Andrew P. Simmons". The signature is fluid and cursive, with a large loop at the end.

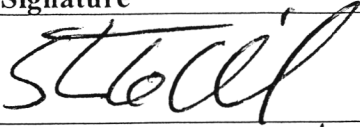
Andrew P. Simmons

APS/jg
Enclosures

WITHDRAWAL OF ANNEXATION PETITION SIGNATURES

The landowners signing below hereby withdraw their signatures from the "Petition for Annexation into the City of Fort Wayne" (the "Petition"), date-stamped as received by the City on or about April 13, 2018. The Petition proposes the annexation of territory commonly known as the La Cabreah Community Association, Inc., as depicted in the attached Exhibit "A" (the "territory").

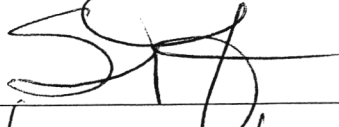
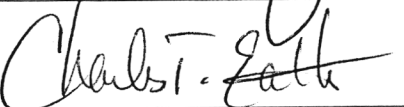
Pursuant to this withdrawal from the Petition, the undersigned hereby reassert their right to oppose or remonstrate against any pending or future annexation of the territory. Landowners may wish to send individual written notices to the City and the list of undersigned landowners shall not be construed by the City to be an inclusive list of all those withdrawing from the Petition.

| No. | Print Name | Signature | Street Address |
|-----|---|---|------------------------|
| 1 | STEVEN + KAREN Gill |  | 325 Calash Run |
| 2 | Marva Eberly Marva Eberly | Marva Eberly | 11370 Dougherty Run |
| 3 | James Denny | James J. Denny | 11529 Pennet Run |
| 4 | Donald Gotsch | Donald Gotsch | 11317 Cabriolet Run |
| 5 | KAREN CARISSIMI | Karissim | 11210 Cabriolet Run |
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WITHDRAWAL OF ANNEXATION PETITION SIGNATURES

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| No. | Print Name | Signature | Street Address |
|-----|---------------------------|--|---------------------|
| 1 | Martin & Stephanie Fisher |  | 11322 Dougherty Run |
| 2 | Charles T. Earthy |  | 11607 Pennet Run |
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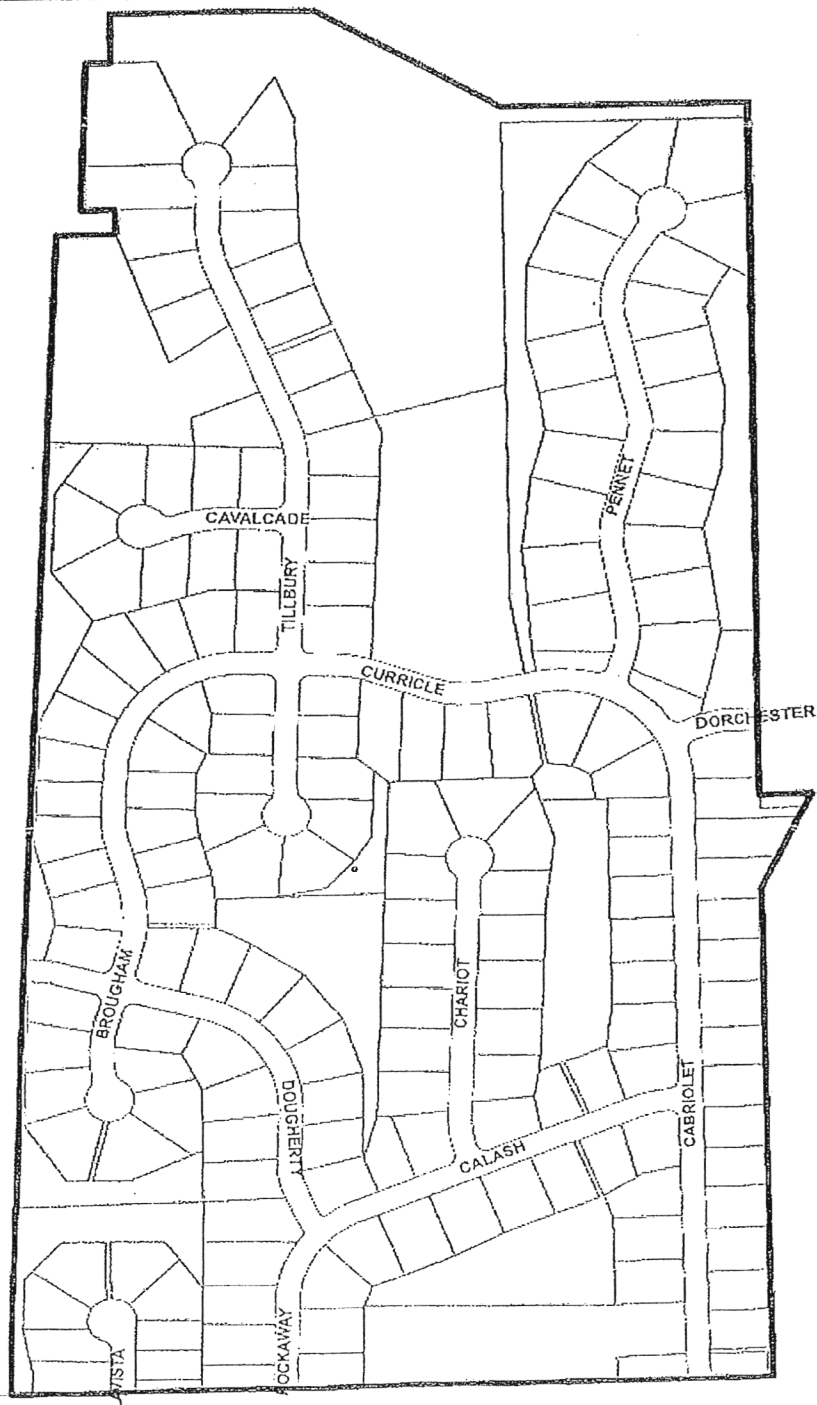
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| No. | Print Name | Signature | Street Address |
|-----|-----------------|-----------------|--------------------|
| 1 | Meredith Morrow | Meredith Morrow | 11731 Tillbury Cv. |
| 2 | ROBERT POTTER | Robert Potter | 421 CAVALCADE CT. |
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EXHIBIT
A





436 E. Wayne Street • Fort Wayne, IN 46802
Telephone: (260) 424-8132 • Fax: (260) 969-5361
www.vgtlaw.com

July 20, 2018

COPY

Carol Helton, Esq.
Fort Wayne City Attorney
200 E. Berry Street, Suite 430
Fort Wayne, IN 46802

**RE: La Cabreah Voluntary Annexation
X-18-07-06 and R-18-07-07**

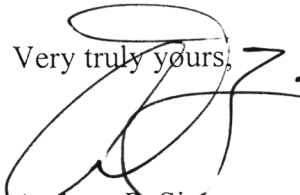
Dear Ms. Helton:

I am writing in regard to the City of Fort Wayne's proposed annexation of territory commonly known as the La Cabreah Community Association, Inc. I spoke with Mr. Bonahoom on July 11, 2018 about the introduction of the voluntary annexation ordinance and fiscal plan resolution. Mr. Bonahoom informed me that he passed my letter on to your office, a copy of which I have enclosed for your reference. Also enclosed are two additional signatures of owners who wish to withdraw their support from the voluntary annexation petition.

I would appreciate the opportunity to discuss the City's plans for the annexation, particularly whether the City intends to continue with the statutory procedure for voluntary annexations. Considering the withdrawn signatures, it is my clients' contention that the City must abandon the voluntary annexation and proceed, if at all, under the statute for involuntary annexations.

As you know, the statutory requirements for voluntary vs. involuntary annexation differ in many respects, so it would be beneficial to the City and affected owners to address the matter before taking additional steps. It may also be beneficial to address related matters such as the meaning of "owners of land" (as that term is used at Ind. Code § 36-4-3-5) and the City's position as to whether *new* owner signatures may be obtained on the current petition to replace those withdrawn.

Thank you for your time and consideration. I look forward to hearing from you.

Very truly yours,

Andrew P. Simmons

APS/jg
Enclosures

WITHDRAWAL OF ANNEXATION PETITION SIGNATURES

The landowners signing below hereby withdraw their signatures from the "Petition for Annexation into the City of Fort Wayne" (the "Petition"), date-stamped as received by the City on or about April 13, 2018. The Petition proposes the annexation of territory commonly known as the La Cabreah Community Association, Inc., as depicted in the attached Exhibit "A" (the "territory").

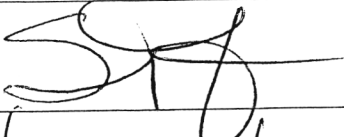
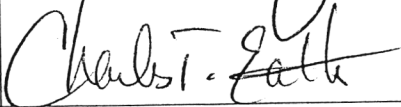
Pursuant to this withdrawal from the Petition, the undersigned hereby reassert their right to oppose or remonstrate against any pending or future annexation of the territory. Landowners may wish to send individual written notices to the City and the list of undersigned landowners shall not be construed by the City to be an inclusive list of all those withdrawing from the Petition.

| No. | Print Name | Signature | Street Address |
|-----|--|-----------------------|------------------------|
| 1 | STEVEN + KAREN Gill | <i>Stoll</i> | 325 Calash Run |
| 2 | Marva Eberly Maura Eberly | <i>Maura Eberly</i> | 11370 Dougherty Run |
| 3 | James Denny | <i>James J. Denny</i> | 11529 Pernet Run |
| 4 | Donald Gotsch | <i>Donald Gotsch</i> | 11317 Cabriolet Run |
| 5 | KAREN CARISSIMI | <i>Karissim</i> | 11210 Cabriolet Run |
| 6 | | | |
| 7 | | | |
| 8 | | | |
| 9 | | | |
| 10 | | | |
| 11 | | | |

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| No. | Print Name | Signature | Street Address |
|-----|---------------------------|--|---------------------|
| 1 | Martin & Stephanie Fisher |  | 11322 Dougherty Run |
| 2 | Charles T. Earthly |  | 11607 Pennet Run |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |
| 7 | | | |
| 8 | | | |
| 9 | | | |
| 10 | | | |
| 11 | | | |

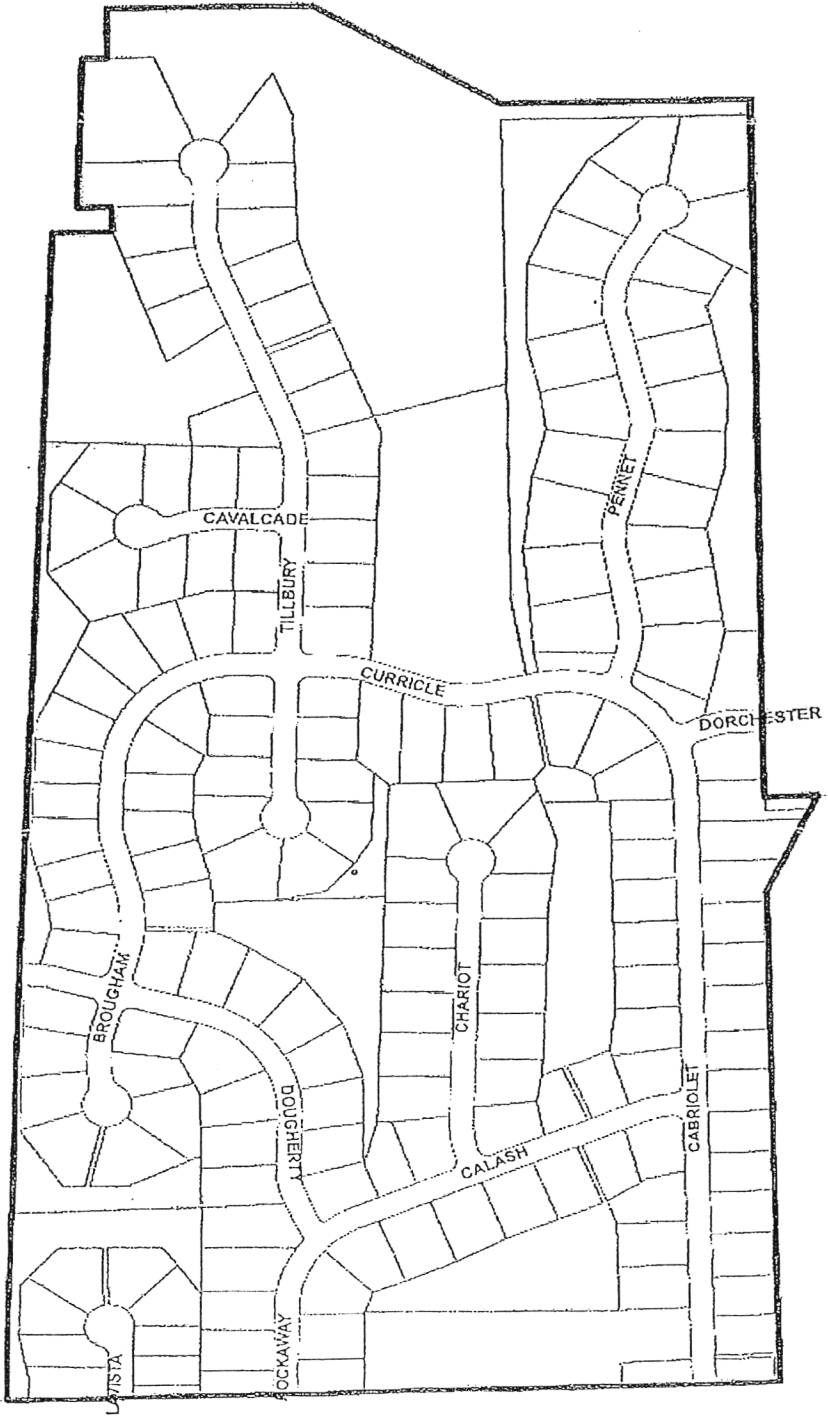
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| No. | Print Name | Signature | Street Address |
|-----|-----------------|-----------------|-------------------|
| 1 | Meredith Morrow | Meredith Morrow | 11731 Tilbury Cv. |
| 2 | ROBERT POTTER | Robert Potter | 421 CAVALCADE CT. |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |
| 7 | | | |
| 8 | | | |
| 9 | | | |
| 10 | | | |
| 11 | | | |



EXHIBIT
A



WITHDRAWAL OF ANNEXATION PETITION SIGNATURES

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| No. | Print Name | Signature | Street Address |
|-----|----------------|---|----------------------|
| 1 | Joe Chin |  | 11428 TULLERY CIV |
| 2 | Greg Schneider |  | 11137 ILLERY |
| 3 | | | |
| 4 | | | |
| 5 | | | |
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BILL NO. X-18-07-06 AA

REPORT OF COMMITTEE ON REGULATIONS

October 23, 2018

Paul Ensley Chair

Thomas Didier Co-Chair

All Council Members

An Ordinance annexing certain territory commonly known as the La Cabreah Voluntary Annexation to Fort Wayne and including the same Councilmanic District No. 3

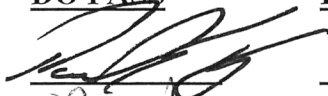


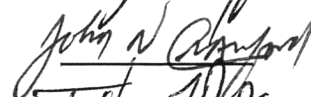
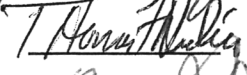
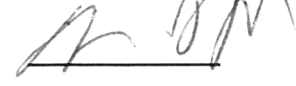


COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

DO PASS

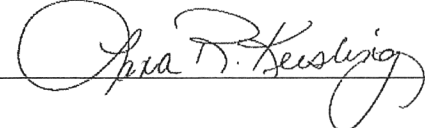
DO NOT PASS

ABSTAIN

NO REC

| | | | |
|---|---|-------|-------|
|  | _____ | _____ | _____ |
|  | _____ | _____ | _____ |
|  | _____ | _____ | _____ |
|  | _____ | _____ | _____ |
|  | _____ | _____ | _____ |
|  | _____ | _____ | _____ |
|  | _____ | _____ | _____ |
| _____ |  | _____ | _____ |
| _____ |  | _____ | _____ |

LANA R. KEESLING
CITY CLERK



Public Hearing Date: 9/11/18

Read the first time in full and on motion by Councilman Ensley.

Read the second time by title and referred to the Regulations Committee.

Read the third time in full and on motion by Councilman Ensley, placed on passage by the following vote:

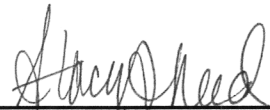
| <u>TOTAL VOTES</u> | <u>AYES</u> | <u>NAYS</u> | <u>ABSTAINED</u> | <u>ABSENT</u> |
|--------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| ARP | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| BARRANDA | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| CRAWFORD | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| DIDIER | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ENSLEY | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| FREISTROFFER | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| HINES | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| JEHL | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PADDOCK | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

DATED: October 23, 2018

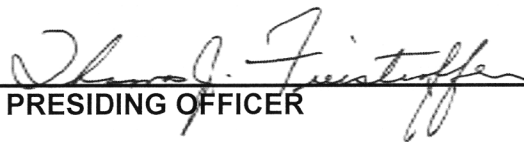


 STACY A. REED, DEPUTY CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as Annexation Ordinance No. X-18-07-06AA on the 23rd day of October, 2018



 STACY A. REED
 DEPUTY CITY CLERK



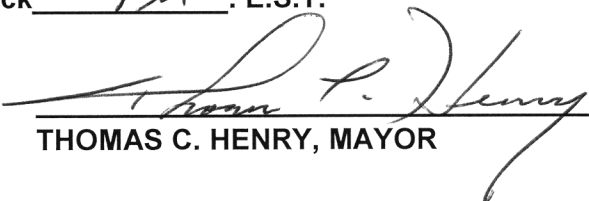
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25th of October 2018, at the hour of 3:30 o'clock P.M. E.S.T.



 STACY A. REED, DEPUTY CITY CLERK

Approved and signed by me this 25TH day of OCTOBER 2018, at the hour of 3:30 O'clock PM. E.S.T.



 THOMAS C. HENRY, MAYOR