

December 22, 2009

Via First Class Mail

Clerk
Lagrange County Circuit Court
105 North Detroit Street
LaGrange, Indiana 46761

Re: Cause No. 44C01-0912-MI-40

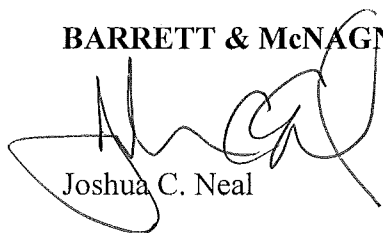
Dear Sir or Madam:

Please find enclosed herewith an original and three (3) copies of a Motion For Change of Judge for the above referenced Cause Number. Please have the Motion filed with the Court and return the remaining file stamped copies to my attention using the enclosed self addressed, stamped envelope.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

BARRETT & McNAGNY LLP



Joshua C. Neal

JCN:ahc:659867

enclosures

cc: Steven W. Krohne, Esq. (with enclosure, via email and first class mail)

STATE OF INDIANA)
)SS
COUNTY OF LAGRANGE)

IN THE LAGRANGE CIRCUIT COURT
CAUSE NO. 44C01-0912-MI-40

IN THE MATTER OF THE OBJECTION TO)
ORDINANCE NO. 2009-12-01-02 ADOPTED)
BY TOWN COUNCIL OF TOWN OF)
WOLCOTTVILLE, INDIANA,)
)

MOTION FOR CHANGE OF JUDGE

COME NOW Objectors, Property owners within Witmer Lake Association, Dallas Lake Association, and Westler Lake Association, by counsel, Barrett & McNagny LLP, and pursuant to Trial Rule 76(B) move for a Change of Judge, and in support thereof, state as follows:

1. Trial Rule 76(B) provides that a party shall be entitled to one change of judge “upon the filing of an unverified application or motion without specifically stating the ground therefore by a party or his attorney.”

2. Trial Rule 76(C) provides that an application for Change of Judge is timely made if submitted within ten (10) days after the pleadings have closed or, if no responsive pleading is required, within thirty (30) days from the date the case is placed and entered on the chronological case summary of the court as having been filed.

3. On December 9, 2009, the Town of Wolcottville, filed its Submission of Objection and Ordinance pursuant to Indiana Code § 36-9-23-26.1(b). There is no responsive pleading required by statute and thus the Motion for Change of Judge is timely made pursuant to Trial Rule 76(C).


4. Upon the filing of a Motion for Change of Judge, the Court is divested of jurisdiction except to grant the Motion or act on emergency matters. *In re Adoption of I.K.E.W.*, 724 N.E.2d 245, 251 (Ind. Ct. App. 2000).

5. Trial Rule 79(D) governs the selection of a special judge. Upon granting of the Motion, the parties have seven days to agree to an eligible special judge. Ind.T.R. 79(D). If the parties fail to agree, the Court, with consent of the parties, may appoint an eligible special judge. Ind.T.R. 79(E). If a special judge is not appointed pursuant to Trial Rule 79(D) or (E), the Court shall name and present to the parties a panel of eligible special judges. Ind.T.R. 79(F).

WHEREFORE, the Objectors respectfully request that the Court grant their Motion for Change of Judge and that an eligible special judge be named pursuant to the provisions of Trial Rule 79.

Respectfully submitted,

BARRETT & McNAGNY/LLP



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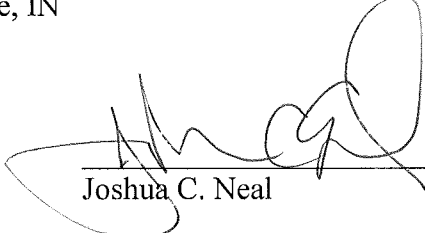
ATTORNEYS FOR THE OBJECTORS

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of December, 2009, deposited a copy of the foregoing in U.S. Mail, postage prepaid, properly addressed to:

Kurt R. Bachman
BEERS MALLERS BACKS & SALIN LLP
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Attorneys for the Town of Wolcottville, IN

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Joshua C. Neal