

Eagle Township Board
February 11, 2009 6:30 pm
Zionsville Town Hall
Zionsville, Indiana 46077

Minutes

1. **Call to Order.** The meeting was called to order at 6:40 by President Rob Schein.
2. **Minutes.** The January 14, 2009 minutes were presented. Board member Ralph Stacy requested a revision under the Fire Territory minutes. Regarding the Fire Chief report prepared by Eagle Perry and Worth Fire Chiefs, Mr. Stacy requested that we include the fact that the Fire Chief report was not signed by Worth Fire Chief Harold Vinson upon advice of their legal counsel. Also to correct the starting time of the February 10 meeting. Rob Schein made a motion to make the correction and it was seconded by Jeff Papa. Motion carried.

Fire Territory. Since the subject of the fire coverage was raised the board moved to take the agenda out of order and continue the discussion of the fire coverage in Western Eagle Township inside the corporate limits of Whitestown. Attorney Steve Buschmann was present and answered questions. The following is his memo regarding this subject:

To: Eagle Township Trustee and Board
From: Stephen R. Buschmann
Date: February 12, 2009
Re: Provision and Taxation for Fire Services

You had asked me for an opinion as to whether Eagle Township through the fire territory has the obligation to provide fire protection services in the part of Eagle Township that has been annexed by Whitestown and whether Eagle Township has the right to levy property taxes in that Area for those services. My answer is that the part of Eagle Township that has been annexed by Whitestown is NOT a part of the fire protection territory and Eagle Township does NOT have the right to levy property taxes for fire protection services in that Area.

FACTS: Eagle Township and Zionsville established a fire protection territory, pursuant to IC 36-8-19 several years ago. Whitestown annexed a part of Eagle Township, which annexation became effective on April 9, 2007. Whitestown provided in its fiscal plan, that it did not provide fire protection services within Whitestown, so it would not provide fire protection services in the Eagle Township Annexation Area.

OPINION:

1. Is Whitestown obligated to provide fire protection services *within* Whitestown?

Prior to the annexations within Eagle Township, Whitestown and Worth Township had engaged in an agreement pursuant to IC 36-8-13-3(b). Pursuant to that code section, Worth Township assumed the responsibility for providing fire protection inside the corporate limits of Whitestown. In addition, pursuant to IC 36-8-13-4.5, Worth Township had the right to levy property taxes both inside and outside the corporate boundaries of Whitestown. Therefore, prior to the annexations within Eagle Township, Whitestown did not provide fire protection within its corporate boundaries. Worth Township provided those services pursuant to IC 36-8-13-3(b).

IC 36-8-13-3(b) provides that the provisions of that statute can ONLY be used if (1) the municipality has *all municipal territory completely within a township* and (2) the municipality does not have a full-time paid fire department. Once Whitestown annexed territory in Eagle Township, it no longer had all municipal territory within Worth Township. Therefore, Whitestown and Worth Township were statutorily precluded from operating under IC 36-6-13-3(b). Therefore, after annexing territory in Eagle Township, Whitestown would be obligated under IC 36-8 to provide fire protection within its corporate boundaries. Whitestown could still obtain fire protection services from Worth Township, but it would be required to do so by contract, pursuant to a contract pursuant to IC 36-1-7.

The effective date of the Eagle Township Annexation Area was April 9, 2007. Since Whitestown and Worth Township had entered an agreement under IC 36-8-13-3(b) for calendar year 2007 prior to the effective date of the annexation, the agreement would continue to be effective for the remainder of calendar year 2007. Since Whitestown and Worth Township were statutorily prohibited from continuing the agreement in 2008. Therefore, Whitestown became legally obligated to provide fire protection services within its corporate boundaries beginning January 1, 2008.

2. Is Whitestown obligated to provide fire protection to the Eagle Township Annexation Area?

IC 36-4-3-13(d)(4) provides that a municipality must provide services of a non-capital nature, including fire protection, which are provided within the corporate boundaries to the annexed territory within 1 year after the effective date of the annexation in a manner equivalent to the scope of those services within the corporate boundaries. In simple terms, if Whitestown provides fire protection services within its corporate boundaries, then it must provide equivalent services to the Eagle Township Annexation Area within 1 year after the effective date of the annexation.

At the time Whitestown proposed its fiscal plan, Whitestown didn't provide fire protection service within its corporate boundaries. However, once the annexation took place, Whitestown did become obligated to provide fire protection services within its corporate boundaries. Therefore, Whitestown also became obligated to provide equivalent services to the Eagle Township Annexation Area.

Since the annexation became effective on April 9, 2007, Whitestown became liable to provide equivalent fire protection services to the Eagle Township Annexation Area on April 9, 2008. One could argue that since Whitestown did not become obligated to provide fire protection service within its corporate boundaries until January 1, 2008, Whitestown would not be obligated to provide equivalent services to the Eagle Township Annexation Area until 1 year later or January 1, 2009. I do not believe that this is a proper interpretation, but under any circumstance, Whitestown became legally obligated to provide fire protection services to the Eagle Township Annexation Area for all of calendar year 2009.

3. Can Eagle Township levy property taxes for fire protection within the Eagle Township Annexation Area?

IC 36-8-19-11 provides: “Any area that is part of a territory and that is annexed by a municipality that is not a part of the territory ceases to be a part of the territory when the municipality begins to provide fire protection services to the area.”

Whitestown became obligated to provide fire protection services to the Eagle Township Annexation Area on April 9, 2008, or, if you buy into the stretched argument, on January 1, 2009. Under either situation, the Eagle Township Annexation Area ceased to be a part of the Fire Protection Territory for all of calendar year 2009.

IC 36-8-19-7 provides that property taxes levied to fund a fire protection territory are levied on “all taxable territory *within the territory*.” Therefore, once the Eagle Township Annexation Area “ceased to be a part of the fire protection territory”, Eagle Township could not impose a levy within that Annexation Area for fire protection services. Only Whitestown can impose property taxes for fire protection services in that Annexation Area.

4. Can the Eagle Township - Zionsville Fire Protection Territory provide fire protection services to the Eagle Township Fire Annexation Area?

Whitestown has the legal obligation to provide fire protection services to the Eagle Township Annexation Area. Correspondingly, the Eagle Township- Zionsville Fire Protection Territory is not legally obligated to provide those services within the Annexation Area. Nevertheless, the Eagle Township - Zionsville Fire Protection Territory *may* provide those services by contract, by mutual aid agreement, or by any other understanding it chooses to enter with Whitestown. It is up to the entities to determine the terms of any such agreement.

APPLICABLE STATUTORY PROVISIONS.

IC 36-4-3-13

(d) The requirements of this subsection are met if the evidence establishes that the municipality has developed and adopted a written fiscal plan and has established a definite policy, by resolution of the legislative body as set forth in section 3.1 of this chapter. The fiscal plan must show the following:

(4) That planned services of a noncapital nature, including police protection, fire protection, street and road maintenance, and other noncapital services normally provided within the corporate boundaries, will be provided to the annexed territory within one (1) year after the effective date of annexation and that they will be provided in a manner equivalent in standard and scope to those noncapital services provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, and population density.

IC 36-8-13-3

(b) This subsection applies only to townships that provide fire protection or emergency services or both under subsection (a)(1) and to municipalities that have all municipal territory completely within a township and do not have a full-time paid fire department. A township may provide fire protection or emergency services or both without contracts inside the corporate boundaries of the municipalities if before July 1 of a year the following occur:

(1) The legislative body of the municipality adopts an ordinance to have the township provide the services without a contract.

(2) The township legislative body passes a resolution approving the township's provision of the services without contracts to the municipality.

In a township providing services to a municipality under this section, the legislative body of either the township or a municipality in the township may opt out of participation under this subsection by adopting an ordinance or a resolution, respectively, before July 1 of a year.

IC 36-8-13-4.5

Sec. 4.5. (a) This section applies to a township that provides fire protection or emergency services or both to a municipality in the township under section 3(b) or 3(c) of this chapter.

(b) With the consent of the township legislative body, the township executive shall pay the expenses for fire protection and emergency services in the township, both inside and outside the corporate boundaries of participating municipalities, from any combination of the following township funds, regardless of when the funds were established:

(1) The township firefighting fund under section 4 of this chapter.

(2) The cumulative building and equipment fund under IC 36-8-14.

(3) The debt fund under sections 6 and 6.5 of this chapter.

(c) Subject to the levy limitations contained in IC 6-1.1-18.5, the tax rate and levy for the township firefighting fund, the cumulative building and equipment fund, or the debt fund is to be in an amount sufficient to pay all costs attributable to fire protection or emergency services that are provided to the township and the participating municipalities that are not paid from other available revenues. The tax rate and levy for each fund shall be established in accordance with the procedures set forth in IC 6-1.1-17 and apply both inside and outside the corporate boundaries of participating municipalities.

IC 36-8-19-11

Sec. 11. Any area that is part of a territory and that is annexed by a municipality that is not a part of the territory ceases to be a part of the territory when the municipality begins to provide fire protection services to the area.

IC 36-8-19-7

Sec. 7. A tax levied under this chapter must be levied at:

(1) a uniform rate upon all taxable property within the territory; or

(2) different rates for the units included within the territory, so long as a tax rate applies uniformly to all of a unit's taxable property within the territory.

Fire Territory con't. The Trustee reported that at the Zionsville Fire Territory Board Executive Board meeting that it had been decided to move ahead with locating a fire station in Western Eagle Township. It was noted that the school corporation has property adjacent to Zionsville West Middle School. Matt Price will contact school board member Mark Englert about the possibility of five acres to be given to the

community for a fire station. Chief VanGorder will be contacting an architect for preliminary drawings. President Schein expressed some concern about taking land away from the school corporation in the event that it might be needed by the school in the future. The Trustee said it was the feeling of the Fire Chief that a fire station was needed out west to provide adequate coverage for Royal Run, Stonegate and I-65.

3. **Financial Report.** The Total Funds on Deposit for January s \$507,478.49. The expenditures totaled \$15,373.35. The receipts totaled \$4,445.49. It was reported that the Fall Tax Settlement that was deposited December 31, 2008 was calculated incorrectly by the Auditors office and that \$7,472.47 had to be reimbursed.

4. **Government Reorganization** The Transition Team had their organizational meeting at the Town Hall on January 20. Following the example of the Study Committee, six committees were formed with each Transition Team member serving on two committees. The committees are; Budget/Finance, Governance, Infrastructure, Land Use/Zoning, Parks, and Public Safety. At this point all of the committees have met and the next committee of the whole will be February 17 at 7:00 p.m. at the Town Hall. It was discussed that any Memorandums of Understanding [MOU] that would be approved by the Transition Team would have to be acted upon by the current Town Council with an effective date of January 2, 2010. This would ensure that planning, zoning and park boards make up would already be determined, as well as the MOU with the Sheriff and Highway Department, in time for the effective date of the New Town of Zionsville.

There being no further business, the board adjourned at 7:50 p.m. The next meeting will be March 11 at 6:30 p.m. at the Town Hall.

Rob Schein, President ___x___

Jeff Papa, Secretary ___x___

Ralph Stacy, Bd. Member ___x___

Judith Essex, Trustee ___x___

Guests: Attorney Steve Buschmann, Candace Ulmer, Union Township Trustee