

STATE OF INDIANA

BEFORE THE TOWN COUNCIL OF THE TOWN OF GEORGETOWN

Ordinance No. 2009- 06

**AN ORDINANCE AMENDING ORDINANCE NO. 2008-15
AND THE LEGAL DESCRIPTION OF THE REAL ESTATE
ANNEXED INTO THE TOWN OF GEORGETOWN THEREBY**

WHEREAS, this Town Council of the Town of Georgetown, Indiana (the "Town Council"), is the legislative body of the Town of Georgetown, County of Floyd, State of Indiana (the "Town"); and,

WHEREAS, this Town Council previously determined that an approximately sixty-nine (69) acre tract of real estate located generally to the east/southeast of the existing corporate boundaries of the Town and within the unincorporated territory of Floyd County, Indiana (the "Second Amended Annexation Area"), was sufficiently contiguous to the existing boundaries of the Town pursuant to the provisions of both IC 36-4-3-1.5 and IC 36-4-3-13(c)(1) to be eligible for annexation into the Town; and,

WHEREAS, this Town Council has determined that the Second Amended Annexation Area statutorily qualified for annexation under the provisions of IC 36-4-3, *et seq.*; and,

WHEREAS, on June 17, 2008, this Town Council adopted a fiscal plan by Resolution No. 2008-03 as the definite policy of the Town for the provision of non-capital and capital services to the Second Amended Annexation Area (the "Fiscal Plan") in conformity with the provisions of IC 36-4-3-13 prior to consideration of Ordinance No. 2008-15 (the "Annexation Ordinance"); and,

WHEREAS, on June 17, 2008, this Town Council further introduced the Annexation Ordinance and approved it on its first reading following adoption of the Fiscal Plan by resolution; and,

WHEREAS, following notice and publication in accordance with the provisions of IC 36-4-3-2.1 and IC 36-4-3-2.2, this Town Council held a public hearing subsequent to notice in accordance with applicable law concerning the proposed annexation that is the subject of this Ordinance on August 22, 2008, which date was more than sixty (60) days after the date on which (i) the Fiscal Plan was adopted by the above-referenced resolution, and (ii) this Ordinance was first introduced; and,

WHEREAS, following the close of the public hearing, the Town Council was advised of the existence of an agreed judgment entered on June 20, 2008, in a proceeding styled a *In re a Petition Remonstrating Against Ordinance G-07-07, an Ordinance Annexing Certain Real Estate into the Town of Georgetown, Indiana, Michael Hamilton, et al., Petitioners v. The Town of Georgetown, Indiana, Respondent* pending as Cause No. 22C01-0709-PL-657 (the “Moratorium Judgment”), by which it was claimed that the annexation of a portion of the Second Amended Annexation Area was prohibited; and,

WHEREAS, upon investigation by the Town and its surveying consultant, it was determined that the Second Amended Annexation Area should be reduced to approximately sixty-six (66) acres (the “First Amended Second Amended Annexation Area”) in order to avoid any overlap with the legal description of the area described in the Moratorium Judgment; and,

WHEREAS, on September 23, 2008, a date that was more than thirty (30) days, but less than sixty (60) days following the date of the public hearing on the Annexation Ordinance, this Town Council finally adopted Ordinance No. 2008-15 by which the First Amended Second Amended Annexation Area was annexed into the Town; and,

WHEREAS, following publication of notice of the adoption of the Annexation Ordinance in the manner required by law, petitioners, Edwardsville Community, Inc., Nancy Foxworthy, Donald Gresham, Michael Stettenbenz, Barbara Cooper, and Michael Hamilton filed a *Verified Complaint for Declaratory Judgment and Appeal of Annexation Ordinance* as Cause No. 22C01-08-11-PL-799 in the Floyd Circuit Court (the “Annexation Ordinance Challenge”) in which it was alleged that the First Amended Second Amended Annexation Area was not sufficiently contiguous to the Town and continued to overlap with the area described in the Moratorium Judgment; and,

WHEREAS, at trial on the Annexation Ordinance Challenge held in the Floyd Circuit Court on April 13, 2009, petitioner, Michael Hamilton, and Mark Gardner, a registered land surveyor retained by petitioners, each testified that an assumed error in the legal description of the area described in the Moratorium Judgment could be corrected by moving the southwest most point of the First Amended Second Amended Annexation Area by approximately 400 feet to the southeast, and thereby create an overlap with the area described in the Moratorium Judgment; and,

WHEREAS, subsequent to such hearing this Town Council has instructed its surveying consultant to investigate the correction urged by petitioners in the Annexation Ordinance Challenge, and this Town Council understands that the First Amended Second Amended Annexation Area can be further decreased in a manner to eliminate the overlap that is artificially created by the correction of the legal description in the Moratorium Judgment urged by petitioners, yet still comply with the contiguity requirements for annexation of such reduced area; and,

WHEREAS, the Indiana Supreme Court specifically authorized the amendment of an annexation ordinance after its adoption in order to comply with applicable legal requirements in *City of Carmel v. Annexation Territory Landowners*, 868 N.E.2d 793 (Ind. 2007); and,

WHEREAS, this Town Council now finds that the Annexation Ordinance should be amended in the best interests of the Town by further reducing the size of the First Amended Second Amended Annexation Area in the manner set forth herein and such that there can be no claim of overlap with the area described in the Moratorium Judgment while still complying with the applicable contiguity requirements.

NOW, THEREFORE, BE IT ORDAINED BY THIS TOWN COUNCIL OF THE TOWN OF GEORGETOWN, INDIANA, AS FOLLOWS:

Section 1. Description of Boundaries of Second Amended Annexation Area. The description of the First Amended Second Amended Annexation Area described in the Annexation Ordinance is hereby amended as follows (the "Second Amended Annexation Area"):

Being a part of Sections 2 and 3, Township 3 South, Range 5 East, Floyd County, Indiana and being further described as follows:

Beginning at the northeast corner of the southeast quarter of said Section 3; Thence N. 0° 04' 03" W., along the line dividing said Sections 2 and 3, and along the corporate boundary of the Town of Georgetown, 1200 feet, more or less, to the south Right-of-Way line of Interstate 64, the TRUE PLACE OF BEGINNING:

Thence continuing N. 0° 04' 03" W., along said Section line and said corporate boundary line, 500 feet, more or less, to the north Right-of-Way line of said Interstate 64; Thence northwesterly and southwesterly, along said northern Right-of-Way line and a corporate boundary line of said Town, 1100 feet Thence North, 169.5 feet, more or less, to a point 160 feet north of the northern Right-of-Way line of said Interstate 64 as measured at right angles to said Right-of-Way line; Thence northeasterly and southeasterly, parallel to and 160 feet from said northern Right-of-Way line, 1447 feet, more or less, to the line dividing the land owned by Zelpha Schoen described in Deed Record Book 128, Page 570 from the land owned by Brenda K. Beams described in Deed Drawer 21, Instrument 1893; Thence S. 24° W., along said dividing line, 148.5 feet, more or less, to the northern Right-of-Way line of said Interstate 64; Thence easterly, along said northern line, 2191 feet, more or less, to the southwest corner of a tract of land owned by the Town of Georgetown, described in Instrument #200604261 and 200604262; Thence N. 3° 33' W., along a line of said Georgetown property, 891.89 feet to a corner of said Georgetown property; Thence S. 89° 49' E., along a line of said Georgetown property, 294.27 feet to a corner of said property; Thence N. 1° 50' E., along a line of said property, 361.93 feet to the north Right-of-Way

line of Old Georgetown Road; Thence easterly, along said Right-of-Way line, 585 feet, more or less; Thence S. 28° 10' E., partially along a line of said Georgetown property, 140 feet, more or less, to a corner of said property; Thence S. 10° 36' 24" W., along a line of said property, 50.46 feet to a corner of said property; Thence S. 5° 32' 24" W., along a line of said property, 59.63 feet to a corner of said property; Thence S. 75° 44' 24" W., along a line of said property, 73.42 feet to a corner of said property; Thence S. 22° 07' 54" W., along a line of said property, 107.95 feet to a corner of said property; Thence S. 14° 57' 06" E., along a line of said property, 181.03 feet to a corner of said property; Thence N. 77° 29' 30" E., along a line of said property, 102.05 feet to a corner of said property; Thence S. 20° 07' 48" E., along a line of said property, 84.4 feet to a corner of said property; Thence S. 77° 15' 12" W., along a line of said property, 100.89 feet to a corner of said property; Thence S. 20° 54' 48" E., along a line of said property, 345.54 feet to a corner of said property; Thence S. 5° 23' 18" E., along a line of said property, 283.81 feet to the northern Right-of-Way line of said Interstate 64; Thence S. 70° W., 1050 feet, more or less, to the south Right-of-Way line of said Interstate 64; Thence westerly, along said southern Right-of-Way, 2494 feet, more or less, to THE PLACE OF BEGINNING.

Containing 55.4 acres, more or less.

The above described Second Amended Annexation Area is hereby annexed into the Town, including any public highways or rights-of-way therein or adjacent thereto.

This Second Amended Annexation Area consists of approximately fifty-five and four-tenths (55.4) acres. The aggregate external boundaries of the Second Amended Annexation Area are approximately 12,758 lineal feet, and such aggregate external boundaries of the Second Amended Annexation Area coincide with 1,650 lineal feet of the existing boundaries of the Town. The aggregate external boundaries of the Second Amended Annexation Area are therefore twelve and nine-tenths percent (12.9%) contiguous to the Town, which percentage exceeds the minimum one-eighth (1/8) requirement established by IC 36-4-3-1.5.

The map prepared by David R. Blankenkoper, L.S., entitled *Drawing of Proposed Georgetown Annexation* attached hereto further depicts the location of the Annexation Territory, and is incorporated herein by reference.

Section 2. Description of Special Terms and Conditions. Pursuant to the provisions of IC 36-4-3-8, the following special terms and conditions that are intended to make the annexation effected hereby equitable to the property owners and residents of the Town as well as those in the Second Amended Annexation Area are hereby adopted:

a. The effective date of the annexation enacted by this Ordinance shall be postponed until 12:01 o'clock a.m. on January 2, 2010, in accordance with the provisions of IC 36-4-3-7(b).

b. The rendering of needed capital and non-capital services to the Second Amended Annexation Area shall be pursuant to the provisions of the Fiscal Plan previously adopted by resolution of this Town Council, except that the date by which non-capital services shall be provided shall be delayed to not later than January 1, 2011, and the date by which capital services shall be provided shall be delayed to not later than January 1, 2013.

c. This Town Council has determined upon reasonable inquiry that (i) the resident population density of the aggregate of the Second Amended Annexation Area is less than three (3) persons per acre, and/or (ii) the aggregate of the Second Amended Annexation Area is not subdivided or parceled through separate ownerships into lots or parcels such that at least sixty percent (60%) of the total number of lots and parcels are less than one (1) acre, and the provisions of IC 36-4-3-8(c) are accordingly inapplicable to this Ordinance and the Second Amended Annexation Area.

Section 3. Description of Property Tax Abatements within Second Amended Annexation Area. No property tax abatements pursuant to the provisions of IC 36-4-3-8.5 within the Second Amended Annexation Area are adopted within this Ordinance as to any property within the Second Amended Annexation Area.

Section 4. Assignment of Second Amended Annexation Area to Municipal Legislative District. Pursuant to the provisions of IC 36-4-3-4(g), the Annexed Area shall be divided and assigned according to existing Township Precincts into the following Council Districts of the Town:

<u>Existing Township and Precinct #</u>	<u>Town Council District After Annexation</u>
Georgetown 3	Third District

The ordinance defining Council Districts within the Town shall automatically be deemed as amended as of the effective date of the annexation effected by this Ordinance the changes set forth above.

Section 5. Zoning Classifications of Properties within the Second Amended Annexation Area. Upon the effective date of the annexation effected by this Ordinance, all properties within the Second Amended Annexation Area shall be classified for zoning purposes in accordance with the provisions of Section I(D) and Appendix IV(B) of the Fiscal Plan. The Town Zoning Map shall be amended as of the effective date of this Ordinance to reflect such zoning classifications of the properties within the Second Amended Annexation Area. Any use existing within the Annexation Territory on the effective date of this Ordinance that was fully in compliance with the applicable Floyd County zoning requirements in effect prior to the effective date of this Ordinance, but which is not in compliance with the requirements of the applicable new zoning classification under the provisions of the Georgetown Zoning Ordinance, including without limitation any agricultural use, shall be permitted to continue as a non-conforming use to the extent and scope that such use existed as of the effective date of this Ordinance and in

conformity with the provisions of the Floyd County Zoning Ordinance and Indiana law generally (as the same may be amended from time-to-time) pertaining to such non-conforming uses.

Section 6. Fire Protection District. The Town does not presently provide municipal fire protection service. Such service is provided to the entirety of both the Town and the Second Amended Annexation Area by the Georgetown Township Fire Protection District. As such, no financial adjustment is deemed as required pursuant to the provisions of IC 36-4-3-7(e). However, in the event that the Town would subsequently assume responsibility for fire protection service to the Second Amended Annexation Area and/or such financial adjustment is otherwise deemed to be required as the result of this annexation, the Town shall be liable for and shall pay the indebtedness of the Georgetown Township Fire Protection District in the same ratio that the assessed valuation of the property in the Second Amended Annexation Area that is within such fire protection district bears to the assessed valuation of all property in each such fire protection district as shown by the most recent assessment before the annexation. The Town shall make such payments of principal and interest on such indebtedness to the board of fire trustees of the district as such obligations come due following the effective date that the Town assumes responsibility for fire protection service.

Section 7. No Township Debt. This Town Council has determined upon diligent inquiry to the Georgetown Township Trustee that as of the date of the adoption of this Ordinance, no debt has been issued or exists within such township. Pursuant to the provisions of IC 36-4-3-10, and if as of the effective date of this Ordinance, any of the townships from which the Town has annexed territory is indebted or has outstanding unpaid bonds or other obligations, the Town shall be liable for and shall pay that indebtedness in the same ratio as the assessed valuation of the property in the annexed territory bears to the assessed valuation of all property in the respective township, as shown by the most recent assessment for taxation before the annexation, unless the assessed property within the Town is already liable for the indebtedness. The Town shall pay its indebtedness under this section, if any, to the applicable township executive. If the indebtedness consists of outstanding unpaid bonds or notes of the township, the payments to the executive shall be made as the principal or interest on the bonds or notes becomes due.

Section 8. Displacement of Other Governmental Unit Employees. It is not anticipated that this annexation will result in the elimination of jobs for any employees of other governmental units. However, in the event that any such jobs are eliminated, the Town Council shall assist any such displaced employees in obtaining new employment, but nothing herein shall require the Town to provide employment for any such displaced employees.

Section 9. Effective Date of Annexation; Publication. The annexation enacted by this Ordinance shall take effect, except to the extent that applicable Indiana law may mandate a different date, at 12:01 o'clock a.m., prevailing local time, on January 2, 2010, and the Second Amended Annexation Area shall be and become a part of the Town as of such date and time, except as such date and time may be delayed by operation of applicable law. Promptly after adoption of this Ordinance, the Clerk-Treasurer shall publish this Ordinance and notice of its adoption in the manner prescribed by IC 5-3-1, which publication shall occur not less than ninety (90) days prior to the effective date of the annexation effected by this Ordinance.

Section 10. Certification of Ordinance; Effect. Promptly after adoption of this Ordinance, the Clerk-Treasurer shall certify a copy of this Ordinance as being true and correct in all respects. Pursuant to the provisions of IC 36-4-3-6, such certified copy of this Ordinance shall serve as conclusive evidence of the corporate boundaries of the Town in any subsequent proceeding, including without limitation, with respect to any issue that the territory described in this Ordinance was properly annexed and is a part of the Town.

Section 11. Clerk-Treasurer to File Copies of Ordinance. Pursuant to the provisions of IC 36-4-3-7 and IC 36-4-3-22, the Clerk-Treasurer shall do all of the following:

a. Within ten (10) days after the adoption of this Ordinance, send written notice to the Georgetown Township Fire Protection District by its board of fire trustees that the Town shall not assume responsibility for fire protection service within the Annexed Area, and that the Georgetown Township Fire Protection District shall continue to provide fire protection service to the Second Amended Annexation Area notwithstanding this annexation and regardless of any remonstrance under the provisions of IC 36-4-3-11 or appeal under the provisions of IC 36-4-3-15.5.

b. In the event that a remonstrance or appeal of this Ordinance is not filed during the period permitted under applicable Indiana law, file a certified copy of the Ordinance with (i) the Floyd County Auditor, (ii) the Clerk of the Floyd Circuit Court, (iii) the Floyd County Board of Voter Registration, (iv) the office of the Indiana Secretary of State, and (v) the office of census data established by IC 2-5-1.1-12.2. The Clerk-Treasurer shall further provide a sufficient number of copies of the Ordinance to the Floyd County Auditor to enable the Floyd County Auditor to forward copies and provide notification of the effective date of the annexation effected by this Ordinance pursuant to the provisions of IC 36-4-3-22(d) to each of the following: (1) the Floyd County Highway Department, (2) the Floyd County Surveyor, (3) the Floyd County Plan Commission, (4) the Floyd County Sheriff, (5) the Georgetown Township Trustee, (6) the office of the Indiana Secretary of State, and (7) the office of census data established by IC 2-5-1.1-12.2.

c. In the event that a remonstrance or appeal of this Ordinance is timely filed, but this Ordinance is sustained following judicial review, a certified copy of the judgment ordering annexation in accordance with this Ordinance with (i) the Floyd County Auditor, (ii) the Clerk of the Floyd Circuit Court, (iii) the Floyd County Board of Voter Registration, (iv) the office of the Indiana Secretary of State, and (v) the office of census data established by IC 2-5-1.1-12.2. The Clerk-Treasurer shall further provide a sufficient number of copies of the judgment to the Floyd County Auditor to enable the Floyd County Auditor to forward copies and provide notification of the effective date of the annexation effected by this Ordinance pursuant to the provisions of IC 36-4-3-22(d) to each of the following: (1) the Floyd County Highway Department, (2) the Floyd County Surveyor, (3) the Floyd County Plan Commission, (4) the Floyd County Sheriff, (5) the office of the Indiana Secretary of State, and (6) the office of census data established by IC 2-5-1.1-12.2.

d. Record a certified copy of this Ordinance in the office of the Floyd County Recorder.

e. The filings and recordings required by this Section 11 shall be accomplished no later than ninety (90) days after (i) the expiration of the period permitted for a remonstrance or appeal, or (ii) the delivery of a certified order under the provisions of IC 36-4-3-15. However, the failure to record this Ordinance as provided by IC 36-4-3-22(a)(2) shall not invalidate this Ordinance.

Section 12. Partial Invalidity; Severability. In the event that a portion, but less than all, of the provisions of this Ordinance and/or annexations effected by this Ordinance are deemed to be invalid or unenforceable by the final, non-appealable order of a court of competent jurisdiction, such provisions shall be stricken from the text of this Ordinance, but the remaining provisions following such determination and striking shall remain in full force and effect notwithstanding such partial invalidity and striking.


Section 13. Adoption of Ordinance; Effective Date. This Ordinance shall be in full force and effect from the later of (a) the date of its passage and adoption by this Town Council, or (b) any later date specified by applicable Indiana law.

SO ORDAINED by this Town Council this _____ day of ~~May~~, 2009.
JUNE 3

TOWN COUNCIL OF THE TOWN OF GEORGETOWN, INDIANA


Voting Aye:

Voting Nay:




Billy W. Stewart, President

Billy W. Stewart, President



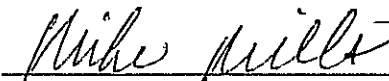
Aaron Striegel

Aaron Striegel



Karla Perkins

Karla Perkins



Mike Mills

Mike Mills

Everett Pullen

Everett Pullen

Everett Pullen

Attested by:

Doug Cook

Doug Cook, Clerk-Treasurer