

STATE OF INDIANA ) IN THE HUNTINGTON CIRCUIT COURT  
 ) SS:  
COUNTY OF HUNTINGTON ) CAUSE NO. 35C01-0809-MI- 578

HUNTINGON CITIZENS AGAINST ANNEXATION INC., )  
 )  
Plaintiff, )  
v. )  
CITY OF HUNTINGTON, ET AL, )  
 )  
Defendant. )

FILED WITH CLERK  
HUNTINGTON, INDIANA  
2008 SEP 19 PM 4:04  
*Charles E. Hogg*

**COMPLAINT**

COMES NOW the PLAINTIFF, Huntington Citizens Against Annexation Inc. (“HCAAN”), by and through its attorney William B. Hogg, and makes this claim for legal relief, and in support thereof states the following as true under the penalties of perjury:

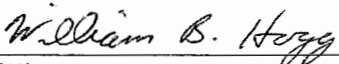
1. That on August 25, 2008, the Huntington City Common Council held a special Council meeting to provide public hearings as required under Indiana Code on the matter of whether to adopt Ordinances 12-C-08 and 13-C-08. Each ordinance contained a proposal to annex certain real estate to the City of Huntington. Ordinance 12-C-08 was described as the “west” annexation. Ordinance 13-C-08, PROPOSED ORDINANCE TO ANNEX CERTAIN CONTIGUOUS REAL ESTATE TO THE CITY OF HUNTINGTON, INDIANA (EAST ANNEXATION), was described as the “east” annexation. The special Council meeting began at or around 7:00 p.m. in the Common Council Chambers on the Third Floor of the City Building located a 300 Cherry Street, Huntington, Indiana.

2. That under Indiana Code § 36-4-3-2.1(b), “[a] municipality may adopt an ordinance under this chapter only after the legislative body has held a public hearing concerning the proposed annexation. The municipality shall hold the public hearing not earlier than sixty (60) days after the date the ordinance is introduced. All interested parties must have the opportunity to testify as to the proposed annexation.”

3. That the Mayor of the City of Huntington, Steve Updike, presided at the special Council meeting.

4. That during the public hearing concerning proposed Ordinance 13-C-08, east annexation, the Mayor did not allow all interested parties the opportunity to testify as to the proposed annexation.

Wherefore, Plaintiff, HCAAN, by Counsel, prays that the Court give the Plaintiff judgment by declaring that the August 25, 2008 City of Huntington Common Council Public Hearing on Proposed Ordinance 13-C-08 shall be invalid and a nullity, under Indiana Code § 36-4-3-2.1(b), as a necessary step in the process by which the City of Huntington Common Council may adopt proposed Ordinance 13-C-08. Plaintiff further prays that the Court declare invalid and a nullity, any vote, subsequent to the City of Huntington Common Council’s August 25, 2008 special Council meeting, taken by the Council to adopt proposed Ordinance 13-C-08, unless such vote has been preceded by a public hearing at which all interested parties have been given the opportunity to testify as to the proposed annexation, and for all other Just and Proper relief in the premises.

  
\_\_\_\_\_  
William B. Hogg  
Attorney I.D. # 27163-49  
450 North Jefferson Street P.O. Box 30  
Huntington, IN 46750 Telephone: (260) 356-4350  
Facsimile: (260) 356-9180

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**SUMMONS**

The State of Indiana to Defendant:

**The Honorable Mayor Steve Updike**  
**300 Cherry Street**  
**Huntington, IN 46750**

**City Attorney Michael Hartburg**  
**533 Warren Street**  
**Huntington, IN 46750**

You have been sued by the person named "Plaintiff", in the Court stated above.

The nature of the suit against you is stated in the petition, which is attached to this document. It also states the demand that the Petitioner has made and wants from you.

You must answer the petition in writing, by you or your attorney, within twenty (20) days, commencing the day after you receive this summons, or judgment will be entered against you for what the Plaintiff has demanded.

If you have a claim for relief against the Plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

Date September 19, 2008

  
(Seal)  
CLERK, HUNTINGTON SUPERIOR COURT

The following manner of service is hereby designated:

**SERVICE BY SHERIFF**

**WILLIAM B. HOGG**  
**Attorney I.D. # 27163-49**  
**450 North Jefferson Street**  
**P.O. Box 30**  
**Huntington, Indiana, 46750**  
**Telephone: (260) 356-4350**  
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*William B. Hogg*

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 HUNTINGTON, INDIANA

**NOTICE OF APPEARANCE**

1. Attorney appearing for the following:  
 HUNTINGTON CITIZENS AGAINST ANNEXATION INC.

2. Attorney Information (as applicable for service):

WILLIAM B. HOGG  
 450 N. Jefferson Street  
 P.O. Box 30  
 Huntington, IN 46750

Attorney No.: 27163-49  
 Telephone: (260) 356-4350  
 Fax: (260) 356-9180

- 3. There are no other party members.
- 4. In accordance with Administrative Rule 8(B)(3), this case type is Miscellaneous.
- 5. I will not accept service by FAX.
- 6. There are no related cases.
- 7. Additional information required by local rule: None

*William B. Hogg*  
 \_\_\_\_\_  
 William B. Hogg, Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of September, 2008, a true copy of the foregoing was served upon Michael Hartburg, Counsel for Respondent, at 533 Warren Street, Huntington, Indiana 46750 and Mayor Steve Updike, 300 Cherry Street, Huntington, Indiana 46750 by first-class, United States Mail, postage prepaid.

*William B. Hogg*  
 \_\_\_\_\_  
 William B. Hogg

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**AFFIDAVIT IN SUPPORT OF COMPLAINT**

COMES NOW the PLAINTIFF, Huntington Citizens Against Annexation Inc. (“HCAAN”), by and through its attorney William B. Hogg, and states the following as true under the penalties of perjury:

1. That on August 25, 2008, the Huntington City Common Council held a special Council meeting to provide public hearings as required under Indiana Code on the matter of whether to adopt Ordinances 12-C-08 and 13-C-08. Both ordinances involved proposals to annex certain real estate to the City of Huntington. Ordinance 12-C-08 was described as the “west” annexation. Ordinance 13-C-08 was described as the “east” annexation. The special Council meeting began at or around 7:00 p.m. in the Common Council Chambers on the Third Floor of the City Building located a 300 Cherry Street, Huntington, Indiana.

2. That under Indiana Code § 36-4-3-2.1(b), “[a] municipality may adopt an ordinance under this chapter only after the legislative body has held a public hearing concerning the proposed annexation. The municipality shall hold the public hearing not earlier than sixty (60)

days after the date the ordinance is introduced. All interested parties must have the opportunity to testify as to the proposed annexation.”<sup>1</sup>

3. That the subject hearing room, containing seventy-eight (78) seats, was filled with interested citizens, including many who were forced to stand around the perimeter of the room.

4. That additionally, many interested citizens were unable to enter the crowded hearing room and were forced to stand in the hallway outside the room.

5. That neither the Mayor nor the Common Council acted to accommodate the interested citizens who were unable to enter the Council Room. These citizens were not brought into the room or given an opportunity to speak. Neither was the location of the public hearing moved to a room with sufficient capacity to hold every interested citizen who attempted to attend the public hearing.

6. That after prayer and the Pledge of Allegiance, the Mayor explained that the purpose of the special Council meeting was to conduct public hearings on the proposed ordinances,<sup>2</sup> and that “we’re going to hear testimony from all interested parties as to the proposed annexations.”<sup>3</sup>

7. That the Mayor further explained that, “[I]n an effort to be fair to all the people here, and so that the Council can hear as much as possible, we’re going to follow the procedure that are [sic] printed out and available near the door. If a . . . if there are people that are going to talk, and you didn’t get a piece of paper, have somebody hand you one.”<sup>4</sup>

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<sup>1</sup> Indiana Code §36-4-3-2.1(b).

<sup>2</sup> See Petitioner’s Exhibit B: Audio recording of Huntington City Common Council Meeting minute marker 0:55.

<sup>3</sup> See *id* at minute marker 1:23.

<sup>4</sup> See *id* at minute marker 1:30.

8. That the subject paper was entitled “PROCEDURES FOR PUBLIC COMMENTS” and contained seven rules of procedure that the Mayor read out loud to the interested citizens inside the Council meeting room.<sup>5</sup>

9. That procedural rule 2 stated: “Each statement by a participant will be limited to three (3) minutes.”

10. That procedural rule 3 stated: “No participant may speak more than once.”

11. That procedural rule 4 stated: “All statements shall be directed to the Council as a whole; no person may address or question Council members individually.”

12. That procedural rule 5 stated: “The Mayor may terminate a person’s statement if that statement is personally directed, abusive, obscene, irrelevant or redundant. In fairness to other speakers, all persons addressing the Council are asked to avoid simply repeating the remarks of others.”

13. That, following his reading of the procedural rules, the Mayor opened the public hearing for Ordinance 12-C-08, west annexation.<sup>6</sup>

14. That, when the first interested citizen attempted to speak, the Mayor stopped the citizen from speaking by declaring: “Stop . . . are . . . this is the west annexation we’re talking about.”<sup>7</sup> The Mayor told the citizen that he would be allowed to speak during the public hearing for the east annexation.

15. That the Mayor closed the public hearing for the west annexation by speaking the words: “Being none, I will go ahead and I will close the public hearing for Ordinance 12-C-08 . . .”<sup>8</sup>

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<sup>5</sup> See Petitioner’s Exhibit A: HUNTINGTON CITY COUNCIL PROCEDURES FOR PUBLIC COMMENTS

<sup>6</sup> See Petitioner’s Exhibit B: Audio recording of Huntington City Common Council Meeting minute marker 3:35.

<sup>7</sup> See *id* at minute marker 4:36.

<sup>8</sup> See *id* at minute marker 5:04.

16. That the Mayor then opened the public hearing for Ordinance 13-C-08, the east side annexation.

17. That during the comment section of the public hearing, William Hogg, attorney, spoke representing only the members of HCAAN, who were a distinct minority of those interested citizens in attendance.

18. That during the comment section of the public hearing, only six (6) individual interested citizens, aside from attorney Hogg were allowed to testify.

19. That after hearing testimony from only seven (7) speakers, the Mayor stated, "Anybody else? You've had your chance."<sup>9</sup> The mayor made this ambiguous and intimidating statement without ever offering to any citizen standing in the hallway outside the hearing room, the opportunity to speak.

20. That, after this statement from the mayor, an interested citizen attempted to speak by saying, "I have a question." The Mayor responded, "No, no, no questions. This is not a question and answer, [sic] this is a public hearing where you can speak. You can [sic] we allowed you to speak. This is not a question and answer period."<sup>10</sup>

21. That procedural rule 4 anticipated questions from citizens and prohibited only those questions directed at Council members individually.

22. That the interested citizen's statement was neither a question, nor was it directed at a Council member individually.

23. That neither Indiana Code § 36-4-3-2.1(b), nor the procedural rules read by the Mayor prohibited the interested citizen from either stating that he had a question or from asking a question.

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<sup>9</sup> See *id* at minute marker 26:08.

<sup>10</sup> See *id* at minute marker 26:14.



24. That the Mayor then spoke for over nine (9) minutes, announcing, near the beginning of his monologue: “If you can’t have anything nice to say, get out! Did you hear me? If you don’t have anything nice to say, get out.”<sup>11</sup>

25. That the Mayor’s monologue was in answer to the testimony of interested citizens.

26. That after his answer, the mayor officially closed the comment period of the public hearing by stating, “If you don’t like this city, you can move out. You can move right on over to Wells County, and you can take up wherever you want to go. This, at this time, . . . I close the public hearing.”<sup>12</sup> That between the time that the Mayor said, “at this time,” and “I close the public hearing,” an interested citizen was attempting to speak.

27. That the Mayor’s specific and direct actions affirmatively denied to interested citizens within the room, as well as within the hallway area, their statutorily protected right to testify at the public hearing.

28. That the Mayor chilled the testimony of interested citizens when he stopped the first interested citizen from speaking without ascertaining whether that speaker was attempting to address the west or east annexation.

29. That the Mayor’s intimidation chilled the testimony of interested citizens when he announced, long before he closed the public hearing on the west annexation: “You’ve had your chance.”

30. That the Mayor directly denied an interested citizen’s statutorily protected right to testify by saying, “No, no, no questions.”

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<sup>11</sup> *See id* at minute marker 26:57.

<sup>12</sup> *See id* at minute marker 35:30 through 35:42.

31. That the Mayor denied to each person left standing outside the Council room, their statutorily protected right to testify, by providing no means for any of these interested citizens to speak.

32. That the Mayor chilled and intimidated testimony by interested citizens by shouting: "If you can't have anything nice to say, get out! Did you hear me? If you don't have anything nice to say, get out."

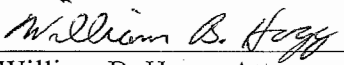
33. That the Mayor chilled and intimidated testimony by interested citizens by equating opposition to the proposed east annexation with not liking the city, and declaring: "If you don't like this city, you can move out."

34. That the Mayor directly denied to the interested citizen who attempted to speak while the Mayor paused as the Mayor was beginning to close the public hearing for the east annexation, that citizen's statutorily protected right to testify.

35. That the Mayor directly denied to every remaining interested citizen who had received no opportunity to testify, his or her statutorily protected right to testify.

36. That further, the Mayor's specific and direct actions affirmatively violated the Common Council's procedural rules by twice denying interested citizens an opportunity to testify in the form of a question not directed at any Council member individually.

Further affiant sayeth naught.

  
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William B. Hogg, Attorney for Plaintiff  
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