

STATE OF INDIANA)
)SS:
COUNTY OF CASS)

IN THE CASS SUPERIOR COURT 1

BRYON STEPHENS)
 Plaintiff,)

vs.)

CAUSE NO. 09D01-2005-PL-000

JAMES L. SAILORS,)
 RYAN BROWNING,)
 AND RALPH ANDERSON as the)
 Board Of Commissioners Of)
 Cass County, and)
 DAVID ARNOLD, GROVER BISHOP,)
 BRIAN REED, DUANE SAILORS,)
 JAMES L. SAILORS, and RYAN ZECK,)
 as the Cass County Redevelopment)
 Commission,)
 Defendants.)

COMPLAINT FOR DECLARATORY JUDGMENT

Comes now the Plaintiff Bryon Stephens, by counsel, and petitions the Court, pursuant to the Open Door Law, I.C. 5-14-1.5-7, to declare void the Economic Development Agreement (Exhibit A) which the County Commissioners and the County Economic Development Commission signed on March 2, 2020, for the following reasons:

1. Bryon Stephens is a citizen and taxpayer of Cass County, Indiana, and has an interest in the execution of the law and has the right to seek the enforcement of a public right or duty under the public standing doctrine.

2. The Cass County Commissioners James Sailors, Ryan Browning, and Ralph Anderson are elected officials and function as "The Board of Commissioners of the County of Cass." I.C. 36-2-2-2.

3. The Cass County Redevelopment Commission members Dave Arnold, Grover Bishop, Brian Reed, Duane Sailors, James L. Sailors, and Ryan Zeck are appointed officials and function as "The Cass County Redevelopment Commission" pursuant to I.C. 36-7-14-3.

4. The Economic Development Agreement (E.D.A.) is a decision or final action of both the Commissioners and the Redevelopment Commission (R.D.C.) which was taken after a series of secret meetings of which notice was not given in accordance with section 5 of the Open Door Law, I.C. 5-14-1.5-5 ("Public Notice of Meetings").

5. The County Commissioners and the R.D.C., at Section 4.01 of the E.D.A., pledged \$23 million in TIF bonds and provided that the net proceeds of those bonds are to be made available to WSP Holdings, LLC, (WSP) and DRA, Inc., (collectively "WSP"). WSP contends that the investment for the Development amounts to \$52 million. The County Council passed an inducement resolution for the TIF bonds for this Development in an amount not to exceed \$52 million (See Exhibit B).

6. This Complaint is timely, pursuant to I.C. 5-14-1.5-7(b)(1), because those bonds have not yet been delivered.

7. This Complaint is also timely, pursuant to I.C.

5-14-1.5-7(b)(2) because Stephens could not have known when the County conducted the secret meetings that result in a \$52 million commitment to WSP. The Open Door Law and its timing requirements (thirty days) are to be liberally construed: "5-14-1.5-1 Purpose. Sec. 1. In enacting this chapter, the general assembly finds and declares that this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state. It is the intent of this chapter that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. The purposes of this chapter are remedial, and its provisions are to be liberally construed with the view of carrying out its policy."

8. The WSP Development for \$52 million (Phase I) and \$28.5 million (Phase II) was first disclosed to the public at a regular meeting of the County Commissioners on March 2, 2020. That portion of County business on the Commissioners' agenda consumed a total of one minute and three seconds. A transcript is attached as Exhibit C; the court reporter's attestation as to total time elapsed is set out in her letter, Exhibit D.

Prior to March 2, the WSP Development had been referred to by code names: "Project Rail" and "Project Scorpion."

9. The E.D.A. was adopted by the Commissioners and apparently later signed by the RDC, all on March 2, 2020. There was no

discussion whatsoever by the Commissioners concerning the E.D.A. As set out below, the document includes at least 39 decisions which could only have been made prior to disclosure of the E.D.A. on March 2. There is no reasonable way for Stephens to have known when the Commissioners or the RDC conducted the secret meetings to make the decisions which are the details in the E.D.A. Therefore, the 30-day clock never started.

To date, Stephens has not discovered memoranda or minutes of those secret meetings of the Commissioners and/or the RDC regarding the WSP Development that were made available for public inspection.

10. Although the March 2, 2020, meeting of the Commissioners was properly noticed up, that fact does not cure the violation of the Open Door Law by the conduct of the secret meetings prior to March 2, 2020. Consider I.C. 5-14-1.5-7(c): "If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter."

A Secret Meeting Is No Meeting

It is the intent of the Open Door Law (ODL) that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. I.C. 5-14-1.5-1. Except as provided in section

6.1 of the Open Door Law, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. 5-14-1.5-3(a).

A meeting is "a gathering of a majority of a governing body of a public agency for the purpose of taking official action upon public business." I.C. 5-14-1.5-2(c). Official action means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. 5-14-1.5-2(d). Public business means any function upon which the public agency is empowered or authorized to take official action. I.C. 5-14-1.5-2(e).

The ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if no such office exists, at the place where the meeting is held. I.C. 5-14-1.5-5(b)(1). The governing body is required to provide notice to news media who have requested notices. I.C. 5-14-1.5-5(b)(2).

The County's Determinations Outside Of Public Observation

The County Commissioners and the R.D.C. (collectively "County Bodies") have offered incentives and assistance to WSP. What are

those decisions and when were they made? Such offers or incentives and assistance did not happen at the March 2, 2020 Commissioners' meeting; the E.D.A. consists of the following elements, each of which is a determination by the County Bodies:

The R.D.C.

A. Per Section 3.01. of the E.D.A., the R.D.C. stated that it "has agreed to transfer the County Parcel to WSP and DRA at no cost to the Company." This amounts to 54.535 acres.

B. Per 3.01., there is a conditional grant by WSP of a right of re-entry to the RDC regarding the County Parcel.

The County Bodies

C. Per 3.02., the Development which WSP plans to construct is described in Exhibit B. The Company's construction is conditioned, at 3.01., upon "the performance by the County Bodies of their respective obligations under this Agreement..." The Company plans to construct and operate a Waelz kiln facility to process electric arc furnace dust.

D. By reference to Exhibit B, the County Bodies have determined that the construction consists of several buildings, totaling around 220,000 square feet.

E. By reference to Exhibit B, the County Bodies have determined that construction and operation of a second kiln will happen in the future.

F. By reference to Exhibit B, the County Bodies have determined that the cost of construction referenced in Paragraphs D and E exceeds \$80 million.

G. By reference to Exhibit B, the County Bodies have determined that the Company expects to hire 60 employees.

H. By reference to Exhibit B, the County Bodies have determined that the Company projects that the average annual wage for those employees amounts to \$49,000.

I. By reference to Exhibit B, the County Bodies have determined that the Company expects to hire 30 additional employees related to completion of construction of the second kiln.

J. By reference to Exhibit B, the County Bodies have determined that the Company expects to pay those additional employees "at the same wage."

K. Per 3.02., the County Bodies have determined that the Development which WSP plans to construct will be assessed for real property and personal property taxation at values set forth in Exhibit C.

L. By reference to Exhibit C, the County Bodies have determined the assessed real property value and personal property value for WSP from 2023 to 2045.

M. By reference to Exhibit C, the County Bodies have determined the estimated TIF revenues from the taxation referenced in Paragraph

S, and that covers the period from 2023 to 2045.

N. Per 3.03., the County Bodies determined that there are "Permitted Delays."

O. Per 4.01., the County Bodies have determined that they shall issue TIF bonds, related to the Development, pursuant to I.C. 36-7-12.

P. Per 4.01, the County Bodies have determined to issue bonds up to \$16,500,000 for Phase I.

Q. Per 4.01., the County Bodies have determined to issue bonds up to \$6,500,000 for Phase II.

R. Per 4.01., the County Bodies have determined that the net proceeds of the bonds referenced in Paragraphs P and Q, may be made available to WSP and DRA through a financial institution serving as the trustee.

S. Per 4.01., the County Bodies determined that the Phase I bonds shall be issued not later than July 31, 2020, and may be issued subject to draws over a period of ten years.

T. Per 4.01., the County Bodies determined that the Phase II bonds will be issued within six months after the Company give notice of its intent to complete Phase II of the Development.

U. Per 4.01., the County Bodies determined that the term of each of the two series of bonds shall not exceed 23 years.

V. Per 4.01., the County Bodies determined that the bonds shall

bear interest at a rate not exceeding 10% per annum.

W. Per 4.01., the County Bodies determined that, at the option of the Company, either series of the two bonds may be placed with a purchaser identified by the Company or the Company itself, or "any related company" (undefined) may purchase either series.

X. Per 4.02., the County Bodies have determined that the estimated TIF revenues generated, according to Exhibit C, amount to 77% of actual TIF revenues generated.

Y. Per 4.02., the RDC, for itself, pledged the TIF revenues, referenced in Exhibit C, to the payment of the TIF bonds.

Z. Per 4.02., the County Bodies determined that they will attempt to create a separate tax increment allocation area solely for the WSP Development.

AA. Per 4.03., under subsection (a) ("Failure to meet Phase I Job Creation Target"), the County Bodies have determined that, if the Company fails to meet both the jobs and salary requirements of Phase I by December 31, 2022, the RDC is entitled to adjust the TIF revenues pledged to WSP, with the proviso that there be no reduction in revenue if only 45 people be employed.

BB. Per 4.03., under subsection (b), ("Failure to Meet Phase II Job Creation Target"), the County Bodies have determined that, if the Company fails to meet both the jobs and salary requirements of Phase II by December 31 of the second year, following the year

in which Phase II is placed in service, the RDC is entitled to adjust the TIF revenues pledged to WSP, with the proviso that only 75 people be employed.

ADDITIONAL INCENTIVES

CC. Per 4.04(a), the RDC stated that it intended to provide fire protection improvements to the Company at no cost.

DD. Per 4.04(a), the RDC stated that it intended to provide road improvements to the Company at no cost.

EE. Per 4.04(a), the RDC stated that it intended to provide fiber upgrades to the Company at no cost.

FF. Per 4.04(a), the RDC stated that the improvements referred to in Paragraphs CC, DD, and EE were to happen by December 31, 2022.

GG. Per 404(b), the County Bodies have determined that they will reimburse the Company (WSP) for the cost of water well and septic systems.

HH. Per 4.04(c), the County Bodies have determined that it will make office space available to the Company rent free during Phase I. Those office activities include administrative work, planning, training, and interviewing.

II. Per 4.04(a) and (c), the County Bodies have determined that some of these offers to WSP set out above are pursuant to "the County Letter." Stephens has obtained a copy of that letter addressed by RDC President Arnold to Matt Conrad, Tim Conrad, and "Stimulus",

regarding "Project Rail." It is marked as Exhibit E. This letter was not available to the public until after the County Bodies' adoption of the Economic Development Agreement.

JJ. Per 4.04(d), the County Bodies determined that they will attempt to provide CEDIT funds, related to WSP's purpose.

KK. Per 4.05., the County Bodies state that they will assist the Company's effort to secure approvals for planning in the County.

LL. Per 4.05., the County Bodies determined that they will assist the Company's efforts to secure permitting related to the Development.

MM. Per 4.05., the County Bodies determined that they will assist the Company's efforts "in any challenge to the assessed value of the Development."

Factors

In accordance with I.C. 5-14-1.5-7(d) the Court should determine that the County Bodies' decision or final action, that is, the adoption and execution for the E.D.A., should be declared void because:

A. The E.D.A. is a very detailed contract, including at least 39 decisions in that contract. It is a writing that reasonably took many hours and extensive discussions to negotiate.

B. The financial consequence for the County's citizens is the expenditure for an unusually large amount of money: up to \$52

million, together with giving away land worth around one million dollars, and additional incentives of large, as yet undetermined, value.

C. The timing of the County government's disclosure of this Development project to the citizens is shocking. The County Commissioners made the disclosure at a regular meeting on March 2, 2002, where they merely introduced the matter, one commissioner said, "We have an agreement with WSP," moved, seconded, and voted unanimously to accept it.

D. Regarding "the extent to which the violation affected the substance" of the decision, if the County had had public input, their decision might have been different.

E. Regarding "the extent to which the violation denied or impaired access to any meetings that the public had a right to observe and record," the County's secrecy in the creation of the E.D.A. was a universal denial of the public's right to observe and record all of the County Bodies' consideration, deliberation, and decisions of all the elements included in the E.D.A. as a final contract between the County Bodies and WSP.

F. Regarding "the extent to which the violation presented or impaired public knowledge or understanding of the public's business," until March 2, the County's secrecy in the creation of the E.D.A. altogether prevented public knowledge of the WSP

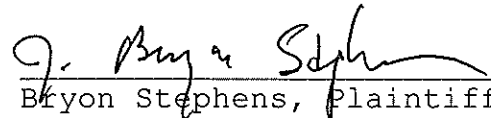
development project as public business.

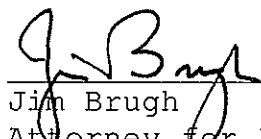
G. Voiding the E.D.A. is "a necessary prerequisite to a substantial reconsideration of the subject matter." The Open Door Law gives the public the right to observe the government in action. Here the County government operated behind closed doors. Justice requires that the WSP Development be reconsidered in the light of day instead of accepting what the County did in the dark.

H. The public interest is served by voiding the E.D.A. because the benefit to the public accomplishes the purpose of the Open Door Law which is citizens' participation in the County government's conduct of public affairs; otherwise the result is the County creating this E.D.A. with WSP in secret.

There is no burden or prejudice to the public if the E.D.A. is voided. It is inequitable to consider WSP as part of "the public." WSP has unclean hands. It has aggressively pursued construction of the Development, despite the E.D.A. reference to construction commencing after WSP had all of its permits. It is common knowledge that WSP is required to obtain an air permit from the State IDEM to discharge its emissions. That process is not concluded; WSP does not have that permit.

WHEREFORE, the Plaintiff Bryon Stephens, by counsel Jim Brugh, petitions the Court, pursuant to the Open Door Law, I.C. 5-14-1.5-7, to declare void the Economic Development Agreement which the County Commissioners and the County Economic Development Commission signed on March 2, 2020, for the reasons stated herein. Further, Bryon Stephens petitions the Court to enjoin the Commissioners and the R.D.C. from future violations of the Open Door Law.


Bryon Stephens, Plaintiff

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