

October 12, 2009

Plan Commission Members,

My name is Gregory Haynes and I live at 5127 County Road 19 Garrett, Indiana and I am against the September 2009 Proposed ETJ zoning map. I believe I am not in the Exhibit A: Extra-Territorial Map submitted and agreed to on October 1, 2007. According to the Inter-local Cooperation agreement between DeKalb county and the city of Auburn section 6.5 states the terms of this agreement commencing on October 1, 2007 and ending May 31, 2011. In section 5.3 of the agreement the county reserves the right to increase but not decrease the Static Extra-Territorial boundaries by amending the Exhibit A Map. But I talked to Clint Knauer, Zoning Administrator of DeKalb county on October 7, 2009, and he said there has been no amendments to the Exhibit A map. which means no further land was given to the city of Auburn. Also, I believe neither of the causes for amendments have been met according to section 6.5 letter D of the agreement. I also have inclosed the original Inter-Local Cooperation agreement between DeKalb county and the city of Auburn incuding the Exhibit A ETJ map and a letter from Clint Knauer, Zoning Administrator of DeKalb county, which I received from him on October 9, 2009.

Respectfully,

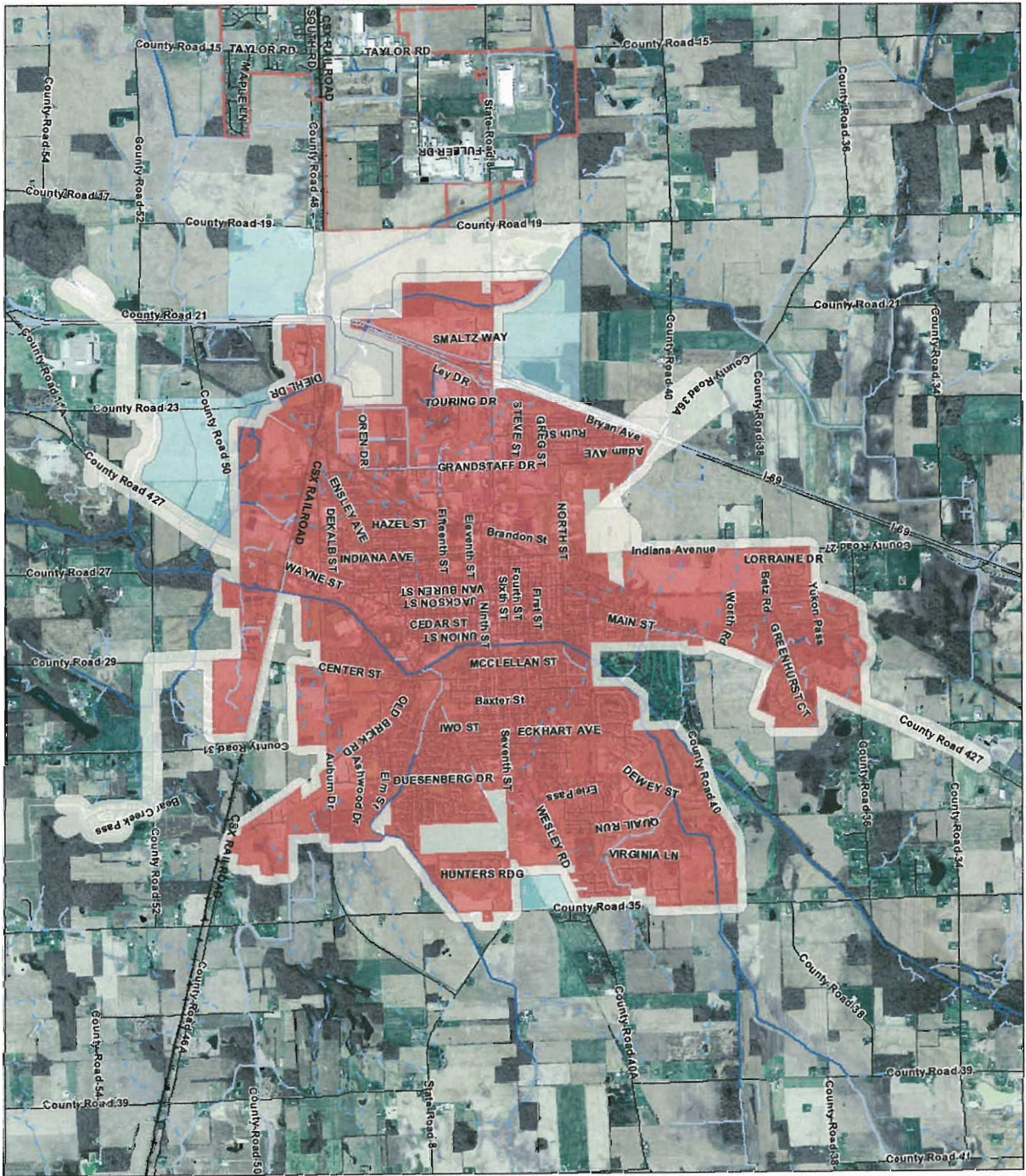


Greg Haynes

CITY OF AUBURN
DEPARTMENT OF BUILDING,
PLANNING AND DEVELOPMENT

OCT 13 2009

RECEIVED



- Legend**
- Auburn Discretionary Areas
 - Auburn Static ETJ
 - Participating Communities



**INTER-LOCAL COOPERATION AGREEMENT
BETWEEN
DEKALB COUNTY AND THE CITY OF AUBURN
INDIANA REGARDING PLANNING, ZONING, SUBDIVISION CONTROL,
PERMITTING AND ENFORCEMENT JURISDICTION**

- WHEREAS, Indiana Code § 36-1-7-1 et seq. permits governmental entities to jointly exercise powers through Inter-Local Cooperation Agreements; and
- WHEREAS, Indiana Code § 36-7-4-205 authorizes a municipality to exercise planning and zoning jurisdiction in unincorporated areas up to two (2) miles beyond the corporate boundaries, with permission of the County; and
- WHEREAS, The governmental entities have determined that it is prudent, rational, and in the best interest of the citizens for the City to exercise planning, zoning, subdivision control, permit issuance, and enforcement over specific unincorporated areas that are surrounded by or immediately adjacent to areas within the City boundaries, to be know as Extra-territorial Jurisdiction (ETJ); and
- WHEREAS, This Inter-Local Cooperation Agreement reflects the commitments and understandings agreed to by the legislative bodies of the governmental entities in order to efficiently and effectively provide the delegation of powers from DeKalb County to the City of Auburn.
- NOW, THEREFORE, DeKalb County and the City of Auburn, Indiana hereby agree as follows:

PART 1: DEFINITIONS

- Agreement:** Shall mean the Inter-Local Cooperation Agreement between DeKalb County and the City of Auburn, Indiana regarding planning, zoning, subdivision control, permitting and enforcement jurisdiction.
- City:** Shall mean the City of Auburn.
- County:** Shall mean DeKalb County.

COPY

PART 2: ZONING

- Section 2.1** The City shall have zoning jurisdiction over the unincorporated areas designated in Exhibit A, Extra-territorial Jurisdiction Map.
- Section 2.2** The City shall maintain a valid comprehensive plan that acknowledges the boundaries of the ETJ and designates future land uses consistent with the County's comprehensive plan.
- Section 2.3** The City shall maintain a valid zoning ordinance that is complementary of the City's comprehensive plan, especially the future land use plan.
- Section 2.4** The City's zoning ordinance shall contain, and meet or exceed the following development standards.
- A. Drainage
 1. Require all industrial and commercial developments, and planned unit developments to not exceed .2 CFS per acre outlet into a regulated open drain; or .02 CFS per acre outlet into a drain tile.
 2. Allow industrial, commercial and planned unit development developers to seek a waiver of the above listed standards from the County Surveyor. Waivers from the County Surveyor shall not exceed 0.4 CFS outlet into a regulated open drain; or as per the County Surveyor when outletting into a drain tile.
 3. Require all dry detention facilities to drain within 30 hours after any 1% storm event.
 4. Require all wet detention facilities to drain to normal pool elevation within 60 hours after any 1% storm event.
 - B. Floodplain Management
 1. Restrict all structures from the floodway, except bridges, pedestrian trails, park equipment, park structures, open pavilions and stages, ball fields, flood mitigation measures, dams, levies, and underground utilities.
 2. Restrict all residential uses from building in the flood fringe.
 3. Require homes within 75 feet of the flood fringe to be established at an elevation where the lowest habitable floor is two (2) feet above the established 100-year flood elevation.
 4. Restrict filling of the floodplain that will result in an increase to the base flood elevation by fourteen-hundredths (0.14) of one foot or greater.
 - C. Wellhead Protection
 1. Restrict dry cleaners, gas stations, chemical or fuel storage over 500 gallons, junk yards, hazardous waste or material storage, transfer stations, confined feeding operations, waste treatment facilities, cemeteries, chemical processing, open lagoons associated with raising of farm animals or industrial use, and automobile mechanics from locating within wellhead protection areas.
 2. Require any facility that stores 50 gallons or more of fuel or chemicals for over 24 hours to establish a secondary containment area equal to 110% of the volume in the tank. Such secondary containment shall be built to control the escape of contaminants into ground water for a minimum of 72 hours, and to not contain rainwater, such that it impairs the capacity to contain a 100% spill.

3. Allow a special exception or conditional use provision for gas stations if they can prove that no other viable sites are available within the appropriate zoning in the community. Special exceptions or conditional uses shall only be granted if the underground fuel storage tanks are double walled, have a release detection system, all piping has release detection, and maintenance of the facilities is required. Also, a provision that would allow the municipality, at its discretion, to require the gas station to pay for up to two test wells to be drilled per any given calendar year to monitor for contaminants shall be written into the ordinance.
 4. Excavation Activities:
 - a. Require the extraction of sand, gravel or other minerals when done below the ground water level to be done so with dragline, floating dredge, or alternative wet excavation method.
 - b. Restrict de-watering of sites utilized for mining or extraction.
 - c. Excavation sites shall not utilize anything other than clean natural earth fill materials to fill or alter the contour of the site. Construction debris shall not be considered clean natural earth fill.
 - d. Restrict all fuel, oil, lubricant, hydraulic fluid, petroleum products or similar material from being stored on site without fully being within a secondary containment area with 110% capacity to contain a 100% spill.
- D. Sewer Hookup
1. Require all new development and new construction of homes, businesses, industries, and institutions within 300 feet of a gravity sewer system to hook into the municipal system. Require all other new development and new construction of homes, businesses, industries, and institutions to hook into the city sewer system unless the cost of doing so is two times (2X) the cost of installing a septic system on the site. For developments with two or more lots, the cumulative cost of installing septic systems for each lot shall be used. The City may bridge the financial gap on a project where sewer hookup will exceed the two times (2X) rule in order to require the development to connect to the sewer system.
- E. Airport Overlay
1. If the City's extra-territorial jurisdiction extends within five (5) nautical miles of the DeKalb County airport, the City shall adopt the county's overlay district designed to protect this vital component of the regional and national transportation network.
 2. The County reserves the right to revoke extra-territorial jurisdiction within five (5) nautical miles of the airport if the City grants one or more waivers or variances allowing incompatible uses or structures into the airport protection areas, counter to FAA Advisory Circulars, terms of the DeKalb County Airport's Grant-In-Aid contracts, or best management practices.

PART 3: SUBDIVISION CONTROL

- Section 3.1** The City shall have subdivision control jurisdiction over the unincorporated areas designated in Exhibit A, Extra-territorial Jurisdiction Map.
- Section 3.2** The City shall maintain a valid subdivision control ordinance that is complementary of the City's comprehensive plan and zoning ordinance.
- Section 3.3** The City's subdivision control ordinance shall contain, and meet or exceed the following design standards.
- A. Drainage
 - a. Require all subdivision designs to not exceed 0.2 CFS per acre outlet into a regulated open drain; or 0.02 CFS per acre outlet into a drain tile.
 - b. Allow developers of subdivisions to seek a waiver of the above listed standards from the County Surveyor. Waivers from the County Surveyor shall not exceed 0.4 CFS outlet into a regulated open drain; or as per the County Surveyor when outletting into a drain tile.
 - c. Require all dry detention facilities to drain within 30 hours after any 1% storm event.
 - d. Require all wet detention facilities to drain to normal pool elevation within 60 hours after any 1% storm event.
 - B. Street Standards
 - a. As per Exhibit B
 - C. Sidewalk Standards
 - a. As per Exhibit C
 - D. Cul-de-sac Standards
 - a. As per Exhibit D

PART 4: PERMITTING, ADMINISTRATION, PETITIONS, APPEALS AND ENFORCEMENT

Section 4.1 The City shall have permitting, administration, petitions, appeals and enforcement jurisdiction over the unincorporated areas designated in Exhibit A, Extra-territorial Jurisdiction Map.

Section 4.2 Permitting shall include:

- A. Improvement Location Permits (to include zoning compliance and building code/permits compliance)

Section 4.3 Administration shall include:

- A. Receiving submittals and collecting payments
- B. Reviewing plans and developments
- C. Determining compliance with the zoning and subdivision control ordinance.
- D. Exercising administrative discretions, as the City's ordinances allow
- E. Maintaining records and archiving
- F. Scheduling projects for hearings and review by the Plan Commission and BZA
- G. Assuring that documents and drawings are recorded as mandated by law (e.g. covenants, commitments, conditions, plats).

Section 4.4 Petitions shall include:

- A. Utilizing the City's Board of Zoning Appeals to hear and decide variance requests, conditional uses, and special exceptions when applicable.
- B. Utilizing the City's Plan Commission to hear and decide waiver requests, rezoning requests, and planned development requests.

Section 4.5 Appeals shall include:

- A. Utilizing the City's Board of Zoning Appeals to hear administrative appeals.

Section 4.6 Enforcement shall include:

- A. Documenting complaints
- B. Investigating complaints and notices of violations
- C. Searching for violations as staff resources allow
- D. Citing violators and correcting violation
- E. Litigating violations as appropriate and necessary

PART 5: EXTRA-TERRITORIAL JURISDICTION AREA DETERMINATION

Section 5.1 The determination of extra-territorial jurisdiction shall be both static and dynamic. The static jurisdiction shall be documented on Exhibit A, Extra-territorial Jurisdiction Map. The dynamic jurisdiction shall be documented by policy. When the policy positively determines that a development proposal should be the City's jurisdiction, then the City shall have the planning jurisdiction determined by this Agreement.

Section 5.2 Static jurisdiction shall be comprised of the following criteria. This criteria shall be directly translated to Exhibit A, Extra-territorial Jurisdiction Map.

- A. Wellhead protection areas: The following methods for interpretation apply:
 - 1. All areas within the one-year and five-year flow district as delineated by a certified wellhead protection area study shall be included in Exhibit A, Extra-territorial Jurisdiction Map.
 - 2. All areas within the ten-year flow district as delineated by a certified wellhead protection areas study, and within one-half mile of the City's corporate limit shall be included in Exhibit A, Extra-territorial Jurisdiction Map.
- B. Projected growth areas: The following methods for interpretation apply:
 - 1. Through the use of formula, the estimated land area necessary to accommodate ten years of growth and development shall be included in Exhibit A, Extra-territorial Jurisdiction Map. The formula for calculating the projected growth areas shall be as follows:
 - a. The best available information shall be used to determine the projected growth rate for the municipality over the next ten years. If sufficient data is not available, the growth rate of 6.5% over ten years shall be used. This percentage is based on U.S. Census Bureau projections for DeKalb County. Use this percentage to calculate the projected population in ten years.
 - b. Determine the projected increase in population by subtracting the current population from the projected population.
 - c. Determine the average number of persons per acreage within the City's corporate limit.
 - d. Determine the amount of land necessary to accommodate ten years of projected growth. Do this by multiplying the projected increase in population by the average number of persons per acreage. This number is the acreage necessary to accommodate 10 years of growth and development in the City.
 - 2. The geographic placement of this area shall be determined by the City.
- C. Island areas: The following methods for interpretation apply:
 - 1. Any area that is fully surrounded by City jurisdiction (i.e. an island) as of the effective date of this Agreement shall be included in Exhibit A, Extra-territorial Jurisdiction Map.
- D. Immediate fringe areas: The following methods for interpretation apply:
 - 1. All areas within 300 feet of the City's corporate limit shall be included in Exhibit A, Extra-territorial Jurisdiction Map.

- E. 5-year annexation areas: The following methods for interpretation apply:
1. Any area included in the City's 5-year annexation strategy as formally adopted and incorporated into its Comprehensive Plan shall be included in Exhibit A, Extra-territorial Jurisdiction Map.
 2. The formal adoption of the 5-year annexation strategy shall be complete by the effective date of this Agreement or by December 31, 2006, whichever is later.

* **Section 5.3** The County reserves the right to increase, but not decrease, the static extra-territorial jurisdiction boundaries by amending Exhibit A, Extra-territorial Jurisdiction Map, by vote of the County Commissioners at a normally scheduled County Commissioner meeting.

Section 5.4 Dynamic jurisdiction shall be comprised of the following policies.

- A. Sewer and water utility service availability: The following methods for interpretation apply:
1. Any parcel that is partially within the area served by water and sanitary sewer or in close proximity to that service area may be considered the City's planning jurisdiction if that parcel utilizes both utility services, and each of the following statements are true:
 - a. The owner of the property has submitted a full and complete application to improve the property and has paid the applicable application fee.
 - b. The owner wishes to be served by both water and sanitary sewers and has conveyed this in writing to the providing municipality. The letter shall state that the commitment is irrevocable for the duration of two years.
 - c. The owner signs an affidavit stating he/she/they understands the consequences of repealing their desire to utilize municipal utilities. (Affidavit template to be composed stating the petitioner understands that his/her/their approval will be voided if utilities are not utilized; and that he/she/they will have to begin the process from the start with the county.)
 - d. The city's utility has written a letter that indicates it has the capacity to serve the site/development; and either has the distribution system in place or has a plan to do so prior to occupancy of the improvement.
 2. As per State law, in no case shall ETJ be extended partially or fully beyond two-miles. If a parcel straddles the two-mile threshold, it shall be the County's planning jurisdiction.
- B. Any parcel that straddles an imaginary line created by applying the static rules in Section 5.2 shall be the City's planning jurisdiction if either of these statements are true.
- a. The owner of the property has submitted a full and complete application to improve the property and has paid the applicable application fee; and the proposed structure (not the lot) is fully within the City's jurisdiction.
 - b. The owner of the property has submitted a full and complete application to improve the property and has paid the applicable application fee; and 50% or more of the lot is fully within the City's jurisdiction.

PART 6: RECITALS OF COMMITMENT, PURPOSE, DURATION AND RENEWAL OF AGREEMENT

Section 6.1 The level of cooperation recited in this Agreement is intended to exist in perpetuity to provide government services to the citizens of DeKalb County in the most efficient and effective manner possible; and to reduce redundancy of process, to minimize county and municipal staff resources, to improve consistency of regulations, and to improve clarity in planning jurisdictions. However, both parties recognize that modifications may be required, both to the Agreement itself and to the practices, procedures and terms that bring the intent of the inter-local agreement to fruition.

Section 6.2 The spirit of good planning and fiscally responsible decision making shall prevail on behalf of the Cities, Towns and DeKalb County to the end that:

- A. Under no circumstances shall the City engage in approving a residential subdivision that it cannot feasibly annex within a three year period of time under current State Statutes.
- B. Under no circumstances shall the City fail to initiate annexation of residential subdivisions, commercial developments and industrial developments within a three year period from the time of the development's approval.
- C. Under no circumstances shall the City zone property or otherwise approve a tall structure within 5 nautical miles of any private or public airport unless the structure does not exceed the imaginary surfaces as defined by FAR part 77 or IC 8-21-10 and does not raise the published minimums at any public-use airport.
- D. Under no circumstances shall the City zone property or otherwise approve incompatible land uses (e.g. residential dwellings, nursing homes, schools, churches, and the like) within one statute mile of the municipal airport property.

The above statements of commitment may be waived under special circumstances by the County Commissioners if determined that the development is be well within the spirit of good planning and fiscally responsible decision making.

Section 6.3 The City shall maintain a legally established Plan Commission and BZA under State Law, including maintaining representation from the unincorporated planning jurisdiction.

Section 6.4 The City shall collect all fees associated with zoning and subdivision control processes, reviews, permits and the like in the areas noted in Exhibit A, Extra-territorial Jurisdiction Map. Until corporate limits change, all road funds shall continue to be collected by the County and used at their discretion to maintain the roads in the unincorporated areas.

Section 6.5 The Terms of this Agreement shall be valid for approximately five years, commencing on October 1, 2007 and ending May 31, 2011. Other terms of the Agreement include:

- A. Both parties agree to begin formal review and negotiation of extra-territorial jurisdiction boundaries at least three months prior to the expiration date of the Agreement.
- B. If both parties fail to take action on the Agreement prior to the expiration date, the Agreement and all its terms shall be renewed for six months, and will continue to renew every six months until the City or County legislative body takes action to revise or terminate the Agreement.

- C. Five-year revisions of the Agreement are intended to primarily adjust Exhibit A, Extra-territorial Jurisdiction Map, to reflect additional extra-territorial jurisdiction for the City; unless no annexation has occurred in the preceding five-year period of time.
- D. Amendments during each five-year term is discouraged. However, under certain circumstances, both parties should consider an amendment. Cause for amendments should include:
 - a. The needs of the residents in DeKalb County are clearly not being met by the Agreement,
 - b. A major industry or development proposal necessitates an adjustment to Exhibit A, Extra-territorial Jurisdiction Map.
- E. Termination of the Agreement may be initiated by the County Commissioners for cause. Cause shall be interpreted to mean that the participating municipality is not complying with the spirit, intent, or a term of the Agreement. Termination for cause shall be done in the two-step process as follows:
 - a. Step One - Notice: The City shall be given written notice that it no longer is in compliance with the spirit, intent or a term of the Agreement. The City shall have three (3) months to fully comply with the notice. If the City fully corrects the issue, the County shall not terminate the Agreement.
 - b. Step Two - Termination: After the three-month notice period, if the City still fails to comply with the spirit, intent, or a term of the Agreement identified in the notice, the County has the right to terminate the Agreement. Termination of the Agreement shall be initiated and decided at a regularly schedule meeting of the County Commissioners.

The County shall also have the right to terminate the agreement if the City repeats the same violation of spirit, intent or term of the agreement within two years from the original offense cited in Step One - Notice.
- F. Termination of the Agreement may be jointly initiated by the County and another municipality participating in the ETJ program if they believe the City is not making planning and zoning decisions beneficial to the overall county. The County Commissioners may terminate the Agreement at any point after receiving support in writing from another municipality participating in the ETJ program.
- G. The Agreement shall be void if any State of Indiana or Federal law; or case law is determined to prohibit such delegation of planning jurisdiction.

PART 7: SEVERABILITY

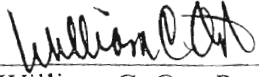
Section 7.1 If any provision of this agreement is declared, by court of competent jurisdiction, to be invalid, null, void, or unenforceable, the remaining provisions shall not be affected and shall have full force and effect.

This Agreement is effective once both entities have authorized its execution by appropriate ordinance.

PART 8: EXECUTION OF AGREEMENT

SO AGREED this 18 day of September, 2007.

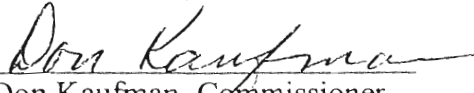
DEKALB COUNTY, INDIANA



William C. Ort, President
DeKalb County Commissioner



Connie R. Miles, Vice President
DeKalb County Commissioner

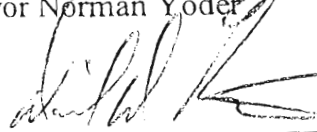


Don Kaufman, Commissioner
DeKalb County Commissioner

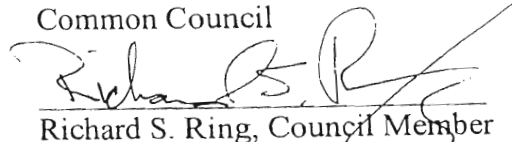
CITY OF AUBURN



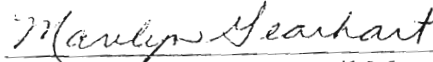
Mayor Norman Yoder



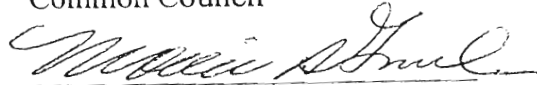
David Painter, President
Common Council



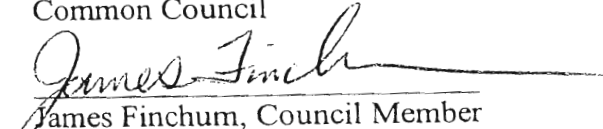
Richard S. Ring, Council Member
Common Council



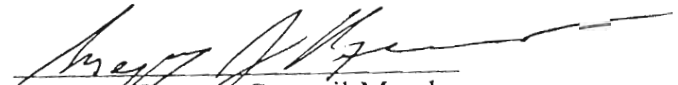
Marilyn Gearhart, Council Member
Common Council



Maurice S. Greenlee, Council Member
Common Council



James Finchum, Council Member
Common Council



Gregory Kenner, Council Member
Common Council



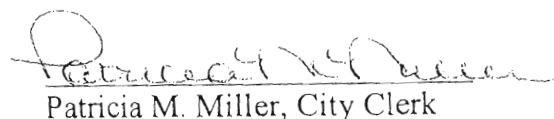
Michael Walter, Council Member
Common Council

ATTEST:



John Petters, Auditor

ATTEST:



Patricia M. Miller, City Clerk

DEKALB COUNTY PLAN COMMISSION

301 S Union St. Auburn, IN 46706

Phone: (260) 925-1923

Fax: (260) 927-4791

October 9, 2009

Gregory L. Haynes
5127 County Road 19
Garrett IN 46738

RE: Extra territorial Jurisdiction

Mr. Haynes

As per our conversation in of October 7, 2009 I will attempt to clarify the jurisdictional boundaries of the City of Auburn's Extra Territorial Jurisdiction (ETJ) as well as the DeKalb County Plan Commission's procedure for determining which properties are located within the ETJ.

On September 18, 2007 DeKalb County and the City of Auburn entered into an Inter-Local Cooperation Agreement which was designed to permit DeKalb County and the City of Auburn to jointly exercise powers in the ETJ. The ETJ is comprised of two distinct jurisdictional areas which are labeled Static and Dynamic. The static and dynamic areas have been mapped and referenced in the Inter-Local Cooperation Agreement as Exhibit A, Extra Territorial Jurisdiction Map. The purpose of Exhibit A is to simply show the boundaries (both static and dynamic) of the ETJ.

The Inter-Local Cooperation Agreement contains procedures for the expansion of the ETJ. In order for the City of Auburn to expand their ETJ it must follow the procedures in the Inter-Local Cooperation Agreement as well as amend Exhibit A. It is possible that on occasion the city of Auburn may expand the ETJ and update Exhibit A at a later date.

Currently the DeKalb County Plan Commission is referring to the original Exhibit A which was adopted with the Inter-Local Cooperation Agreement on September 18, 2007 even though it is apparent that the City of Auburn's ETJ has been expanded on January 1, 2009 through the procedures contained within the Inter-Local Cooperation Agreement. When Exhibit A is updated The DeKalb County Plan Commission will refer to the updated version.

Respectfully,



Clinton W. Knauer
Zoning Administrator
DeKalb County

C.c. Auburn department of Building & Planning