

**BARGERSVILLE WATER UTILITY
RATE INCREASE**

**A CONSTITUTIONAL ISSUE:
TAXATION WITHOUT REPRESENTATION**

Purpose of the Document

On September 9, 2010, the Town council of Bargersville, acting as the Board of Directors of the Bargersville Municipal Water Utility, passed ordinance 2010-15 increasing water rates. That increase is 77% more than existing rates.

Information provided by Bargersville during two public meetings was limited and did not provide justification for a capital expansion exceeding \$20 million. Public questions of any type were not permitted at these meetings, and if asked, were not answered.

A group of citizens conducted extensive analysis of Indiana Utility Regulatory Commission and State Board of Accounts reports on current and past performance of the Bargersville utility. Internet data of other local utility rates was also reviewed.

It was decided that the proposed rate increase was unreasonable and unfair, so a petition of opposition was filed with the Town Clerk of the Town of Bargersville asking the Superior Court of Johnson County to hear the opposition. Legal representation was to have been provided by Lewis and Kappes of Indianapolis, Indiana. A decision by Judge Kevin M. Barton ruled that the group of citizens (White River Citizens United) did not have standing under Indiana Statute IC 8-1.5 to file the petition.

There is therefore no other recourse than for the citizens to appeal to the Indiana State Legislature for corrective amendments to the Statutes. Those amendments should be designed such as to prevent such grievous abuse of taxation without representation as has been demonstrated by the Bargersville Municipal Water Utility.

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I. Executive Summary

The Bargersville Municipal Water Utility district is defined by nearly all of White River Township, all of Union Township, the northern third of Hensley Township, the western third of Franklin Township, and the south western corner of Pleasant Township in Johnson County, Indiana. This area exceeds 90 square miles and contains a highly urban section in the north, and open rural area in the south. The utility serves approximately 10,000 customers. Eighty percent of those customers are located in unincorporated portions of the county; twenty percent are residents of the corporate limits of the Town of Bargersville. It is important to recognize that the 80% of nonresident customers do not have political representation on the Town Council, which is the regulating body of the utility, and therefore do not have political recourse to the actions of the Council regarding water rates.

The Town Council has passed an Ordinance (2010-15, dated September 9, 2010) increasing water rates by 77% of current levels. This increase has been necessitated by their decision to construct a new well field, a new water treatment plant, and new large diameter water distribution system. The cost of this project exceeds \$20 million.

Opposition to the utility capital expansion project and the method to finance it entirely through a user rate structure increase was voiced at two public hearings. This opposition was ignored by virtue of the manner in which the meetings were conducted. Any citizen was authorized to speak (only once per session; thereby limiting dialogue), but it was announced that no questions were to be asked because the Council would not answer them. Thus, the provisions of IC 8-1.5 requiring a public meeting were satisfied, but the Town Council could not, and would not be accountable for their actions through open dialogue with constituents.

A group of concerned citizens, who are customers of the utility, conducted a search and analysis of available data on the utility. This included past reviews by the Indiana Utility Regulatory Commission and the State Board of Accounts. Rate structure data of other local water utilities available on the Internet was also examined for comparison. There was sufficient factual data to support the conclusion that the rate structure and operating efficiency of the utility was unreasonable and unfair.

That group of citizens, as members of a community advocacy group White River Citizens United, petitioned the Town Clerk that they opposed the Town Council water rate increase ordinance. That petition was filed with the Superior Court of Johnson County, and a hearing was scheduled before Judge Kevin M. Barton. The office of Lewis and Kappes, Indianapolis, Indiana was retained as legal council. Preparing for the case to be argued was initiated by sharing with legal council all the pertinent data that had been accumulated in the search and analysis. A consultant with Brubaker and Associates of St. Louis, Missouri, Mr. Mike Gorman, was retained as an expert in utility operations by Lewis and Kappes. He was provided with Indiana Utility Regulatory Commission documentation of past review cases, as well as the financial analysis of the rate increase performed by Umbaugh and Associates as a means to prepare him for testimony. An application for legal expense assistance was made to the Indiana Utility Rate Fund. That application was approved. All preparations possible had been made

to pursue the only avenue open to the citizens; that was to have a court hearing of the facts in which the Bargersville Water Utility would have to justify their decision to raise water rates to such an extent.

Legal council for the Town of Bargersville filed for a Summary Judgment before the case could be heard. Their claim was that the White River Citizens United organization did not satisfy the requirement of IC 8-1.5 for petitioning the court for a hearing. Judge Kevin Barton upheld the Bargersville claim that WRCU did not have "standing" by virtue that it did not own property in Johnson County, nor was it a customer of the water utility. Representing Homeowners Associations that did satisfy these requirements was insufficient.

It is the conclusion of a number of citizens that this water rate increase, and the manner in which it has been applied to the customers, is UNREASONABLE and UNFAIR. However, because of the nature of Indiana Statutes, which regulates municipal utilities, the citizens are unable to have their concerns aired and properly addressed. It is truly a situation in which a few can impose excessive economic burden on the many in a classic case of "Taxation without Representation". A solution must come from legislative action.

II. Indiana Legislative District Overlay

The conclusion of the citizens opposed to the Bargersville Water rate increase is that the solution to what has happened can only be corrected through legislative action. Last year, a proposed amendment to IC 8-1.5 was introduced by members of the House of Representatives in the form of HB 1107. That bill was passed by the House, but failed to exit Senate committee action.

It is the purpose of this section of the report to demonstrate which Legislative districts overlay the Bargersville Water Utility service district, and thereby define those legislatures who have constituents affected. It is imperative that those legislatures acquaint themselves with the facts presented in this report, and lead the effort for legislative utility reform.

Figure II-1 demonstrates the State Senators having a portion of their districts within the Bargersville Water utility service district. Figure II-2 demonstrates the same for State Representatives. The table below summarizes those legislators and their contact information:

Political Districts within the Bargersville Water utility District

NAME	DISTRICT	E-MAIL	PHONE
<u>Senators:</u>			
Michael Young	35	<u>s35@in.gov</u>	232 9427
Brent Waltz	36	<u>s36@in.gov</u>	232 9814
Richard Bray	37	<u>s37@in.gov</u>	232 9840
Greg Walker	41	<u>s41@in.gov</u>	232 9400
<u>Representatives:</u>			
Ralph Foley	47	<u>h47@in.gov</u>	232 9789
Woody Burton	58	<u>h58@in.gov</u>	232 9824
Milo Smith	59	<u>h59@in.gov</u>	232 9669
Dave Frizzell	93	<u>h93@in.gov</u>	232 9600

Figure II-1
 Indiana State Senate District
 Overlap with Bargersville Water Utility District

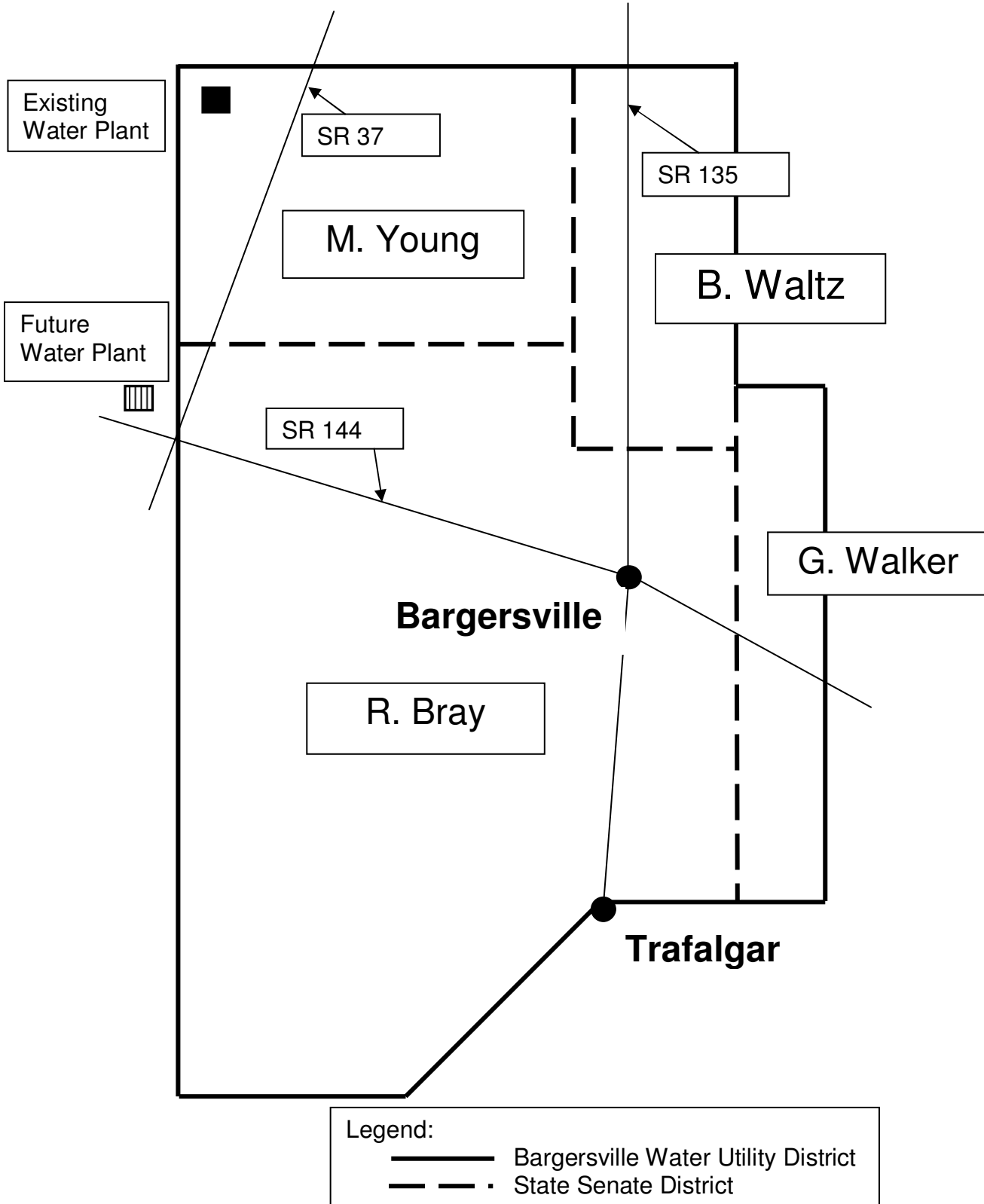
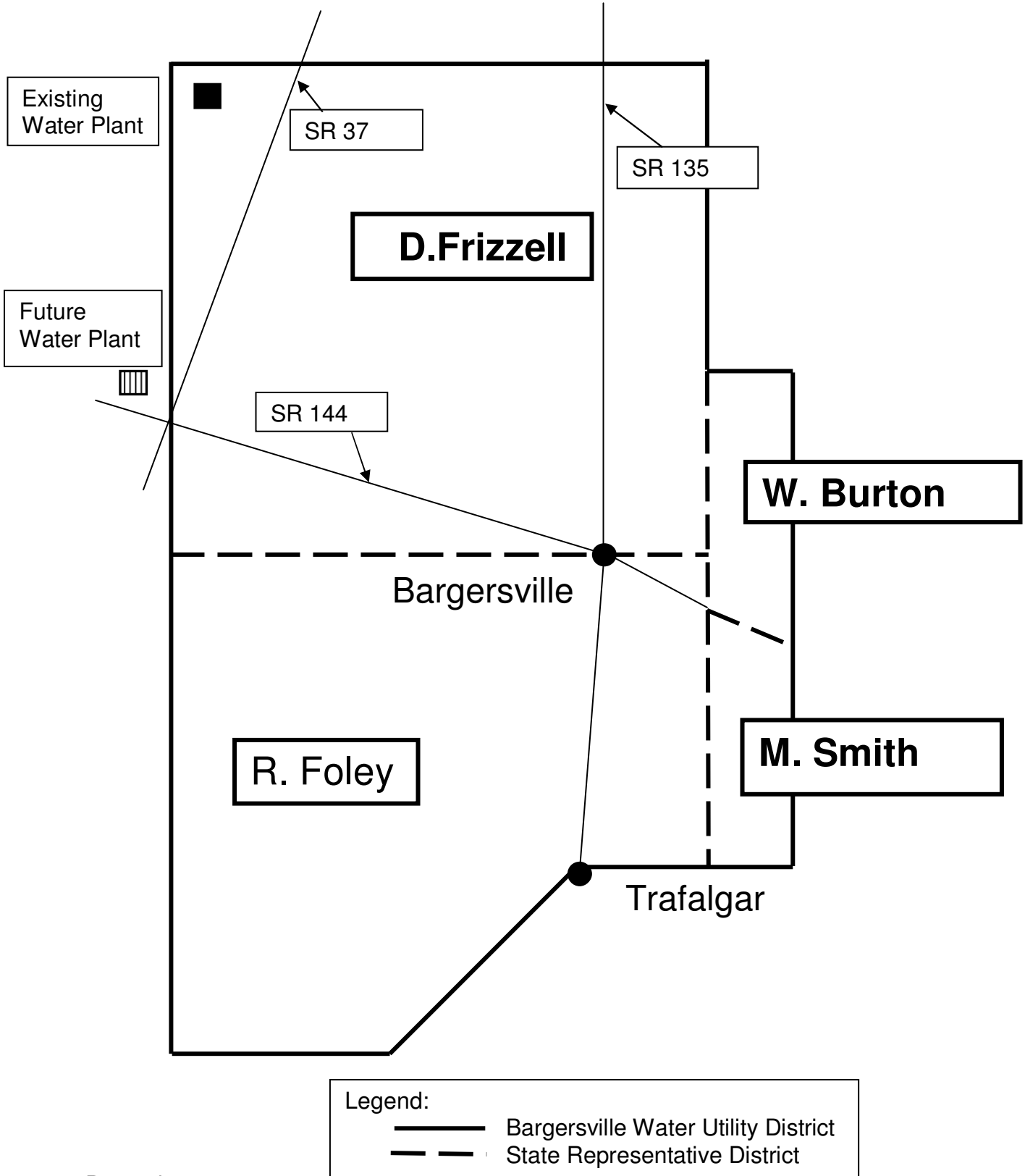


Figure II-2
Indiana State Representative District
Overlap with Bargersville Water Utility District



III. Proposed Remedies:

Utility Legislative Reform

The case of the Bargersville Water Utility rate increase strongly indicates a necessity to review and modify Indiana statutes regarding the operations of Municipal Utilities within the state. Section V of this report (Issues and Analysis) presents multiple arguments in support of this conclusion. Therefore, the following are presented as “thought provokers” for the Indiana Legislatures relative to the need for utility reform:

1. House Bill HB 1107 was introduced in 2009 as a corrective measure for the discriminatory practice of a municipal utility charging “Outside” corporate boundary customers a higher rate than “Inside” customers. Reintroduction of this bill with possible amendments should be considered. Amendments could be of the following nature;
 - a. A municipal utility with a non-corporate customer base exceeding ____ % of total customer base are to return and remain under IURC oversight.
 - b. A municipal utility with a non-corporate customer base exceeding ____ % of total customer base are to establish separate utility governing boards composed of individuals who represent a fair cross section of the customer base.
 - c. A municipal utility proposing either a ____ % increase in capacity, or a ____ % increase of service rate must have a review by the IURC prior to local approval.
 - d. The State of Indiana shall review it’s utility regulatory policy and procedures, compare them to the efficiency of other states (Wisconsin) and revise them to include:
 - I. Cost of Service analysis
 - II. Fire Protection fee
 - III. Debt to Asset ratio
 - IV. Employee compensation
 - V. Alternative supply costs
 - VI. Customer billing vs. property tax as a utility revenue source.
 - VII. Utility financial isolation from corporate service providing activities
 - VIII. Enforcement of “Growth shall support growth” policy
 - IX. Full disclosure of utility operations
 - X. Quality service at least possible cost
 - XI. Rigorous review of utility financial reports by State Board of Accounts.
 - XII. Define and enforce “Conflict of Interest” related to utility governing bodies.
2. Avoid utility capacity redundancy through regional planning oversight.

IV. Chronology of Events

The following is a chronological listing of the principle events associated with the Bargersville Water Utility rate increase:

July 15, 2010: Public hearing held at Center Grove High School to receive comments on proposed rate increase. White River Citizens United (WRCU) presented facts defining and challenging the necessity of the increase. Meeting concludes with Bargersville agreeing to take another look at the proposed increase

August, 2010: WRCU engages law firm of Lewis & Kappes to assist in preparing legal opposition to the proposed rate increase.

August 24, 2010: Second Public hearing held at Bargersville Community Building to receive comments on a revised rate proposal. Building was overflowing and many attendees had to be seated outdoors. WRCU updated their presentation based on the new proposal, but Town Council would not allow it to be presented. Four individuals from WRCU spoke in opposition to the proposed 77% rate increase.

Sept 9, 2010: Bargersville Town Council passes ordinance 2010-15 approving 77% increase. Fire protection fee is applied differently between Bargersville residents and nonresidents. The ordinance contains no System Development Charge.

Sept 14, 2010: WRCU files petition to preserve its option of filing suit challenging the validity of the rate increase. Bargersville responds asking court for a summary judgment denying the validity of the petition based on the fact that WRCU is not a property owner, nor a water company customer.

Sept 28, 2010: WRCU is notified by the State of Indiana Rate Payer Trust Fund that it will provide financial assistance to WRCU to support opposition to the proposed rate increase.

September 30, 2010: Court hearing held in Johnson Superior Court to determine if WRCU has status to legally oppose the proposed rate increase. Judge hears both litigants and states he will render a verdict the following week.

Week of Oct 4th: Judge rules in favor of Bargersville stating that WRCU lacks the status (not a property owner and not a customer) to take any legal action against Bargersville Water Utility.

October 27, 2010: Lewis & Kappes asks WRCU if it wishes to appeal the judge's ruling or file suit under a different statute. Because litigation time in either approach would be excessive, WRCU decides to pursue Indiana Legislative changes instead.

V. Issues and Analysis

Bargersville Water Utility has proposed and approved a water rate increase for the purpose of financing the constructing of a new well field, treatment plant, and several water mains of various sizes in southern White River Township. There are a multitude of issues that have been raised by this action. It is the purpose of this document to list those issues, and to state the analysis and reasons why objections to that issue exist.

A. PUBLIC HEARINGS:

Two Public Hearing meetings were conducted by the Bargersville Water Utility Board (Bargersville Town Council). The first was on July 15, 2010 at 5:00pm in the Center Grove High School auditorium. The second was held on August 24, 2010 at 7:00 pm in the Bargersville Town Hall. The second meeting was necessary because the rate structure presented prior to the July meeting could not be supported by the tax rate structure expected from annexations by Bargersville. They were negated by a court action.

1. Conduct of the meeting: The meetings were not controlled by the President of the Utility Board/Town Council (Mr. Combs). Consulting Attorney Nicholas Kile initiated the meeting by announcing that this was a public hearing and that comments from the public would be heard, but that there would be no questions answered by the Board members. This, of course, limited the interchange of ideas and most importantly, an interchange of information as to why the expansion was needed. A consulting engineer presented information on system peak demand (at the first meeting) and how cost reduction efforts had been made for the treatment plant (at the second meeting). There was no information presented to justify that an expansion of the magnitude being proposed was necessary to solve current water system problems, or how it would satisfy the expected future needs.

A resident of Highland Park subdivision (Mr. Dickey), who attended the July 15 meeting, commented at the meeting and also several days later, that he found the procedure objectionable in that there was no interchange of information between utility representatives and the public. Several senior citizens expressed gratitude that White River Citizens United had made a presentation speaking up on their behalf.

August 24 Public Meeting attendee, Mr. Gary Tomey, (not a member of WRCU) wrote a letter to the editor that appeared in the September 22, 2010 edition of the Daily Journal. He expressed his disappointment at the way the meeting was conducted, pointing out that it was "orchestrated by the councils attorney", and reported on specifics to which he objected.

State Representative Frizzell, co-author of HB 1107 regarding excess rates by municipal utilities, attended the meeting. He also spoke advising the Council of their obligation to be fair and reasonable.

2. Opposition suppressed: Bargersville Town Council member Mr. Kehl was opposed to the expansion. He had expressed this position in previous Town Council meetings and was quoted in the Daily Journal as having boycotted a Council meeting because of his opposition. The format and conduct of the Public Hearings did not permit his views to be heard. After the council meeting on September 9, 2010, at which the rate ordinance was approved, Mr. Kehl spoke to a WRCU representative and said he had talked with the utility employees who operate the water treatment plant, and they had told him this expansion was not needed. It would appear that Mr. Kehl had utility operating knowledge that differed with what the consulting engineering representative reported, and that the conduct of the Public Hearings did not permit this to be heard.
3. Presentation suppressed: White River Citizens United was permitted to deliver a presentation in opposition to the proposed rate increase at the first hearing. A planned presentation was not permitted at the second hearing. Prior to that meeting, when the Town Clerk was contacted relative to the availability of presentation facilities, WRCU was advised that the Council had ordered that presentation facilities be removed from the meeting room, and that no presentations would be permitted. However, the consulting engineering representative was recognized by the Council to deliver a presentation on the water treatment plant cost reduction history. In that presentation, no information was made available relative to the total scope of the project; nor to the total cost. Presentation projection equipment was present in the meeting room; being permanently attached to the ceiling.

B. MASTER PLAN

1. New Water Plant: The Water Utility Master Planning Report (Executive Summary dated November 2002, and prepared by Commonwealth Engineers, Inc. presents a multiple phased development plan for the utility system. It, and several associated documents are contained in the Indiana Regulatory Commission Cause #42555, and filed dated February 10, 2004. The review of this document set generates the following issues.
 - a. "Phase IIC" is the designation given in the plan to the current proposal of constructing a new well field, a new treatment plant, a new clear well, and a 30" transmission main. The estimated cost of these items was given on page 4 of the summary as \$15,782,000. However in the testimony given by Mr. G.E.Tinkle II, on page GET-10, he estimates the same project would cost \$14,410,000. There is therefore some uncertainty on the part of the various consultants as to what was the cost of the project in 2004. Does that same uncertainty exists in the current plans?
 - b. The Phase IIC project was delayed to further study the cost. Now the cost is estimated at \$20,450,000. We were told in the August 24 hearing that considerable cost reduction had been achieved on the treatment plant,

however current project cost estimates are at least \$5,000,000 above the 2004 numbers in paragraph (a) above.

- c. The size of the water main size is specified as 30" in these documents. The proposed project has the mains reduced to 24". This suggests that perhaps there are other system parameters that have been over stated in the master plan, but not as yet corrected
 - d. The need for Phase IIC is supported by the phrase, "...to be completed by 2005 to keep up with *anticipated* growth."(Page 4 of the Executive Summary). There is neither in the Master Plan nor in materials made available to the utility customers to date, data that supports that anticipated growth has actually taken place, or can reasonable be expected in the future. On the contrary, evidence was presented at the August 24 Public Hearing by Mr. William Shakal that a considerable reduction in home building permits has taken place in the last several years. A critical question of justification for this project remains unanswered.
 - e. Following Phase IIC in the Master Plan are three additional phases: Phase IA South, IIA South, and IIIA South. These are reported to be necessary if water service is to be extended to the Town of Trafalgar, and to Brown County (Page 5, Executive Summary). Certainly this objective of utility expansion to these communities cannot be meet without the completion of Phase IIC, which would increase the water availability by over 50% from current capacity. The question is then generated as to the true need for the current proposal; is it a preparation to serve this far southern reach of the utility district, or is it to solve a current capacity problem in the far northern district where 87% of the current customers are located?
2. Master Plan Deviation: A Master Plan should be considered as a guide that requires updating. This is so stated in the IURC annual 2010 Legislature Report. The Master Plan needs to be adapted to the community growth and changes that has taken place since 2002. A typical example of the process is a City/Town Comprehensive plan that guides a community's development. It requires updates to assure that it is compatible with current conditions. Given the significant economic slow down the past several years, and the recovery forecast, it would be prudent to re-evaluate the 2002 Master Plan for the water utility before embarking on a \$20M expansion.
- a. Data supplied by consulting engineering representatives at the public hearing defines the most pressing current problem to be a peak hour system demand. We have been told that peak hour demand has exceeded threshold values on several occasions this summer season. There has been no discussion offered on alternatives that would be appropriate for that problem, only that a new water plant is needed. There is therefore the question that we are being asked to pay for a new water plant when there could be other less costly solutions. Those solutions may even be appropriate for any supply problems that will exist in the southern district of the utility in the near future.

- b. A deviation from the current Master Plan should now contain consideration of the “water commitments” that are reported in the Bargersville letter of September 1, 2010. This letter is a response to concerns expressed by the customers at the several hearings. A customer concern relative to the practice of conservation was countered with the response that Bargersville has committed future availability of water supply to potential future customers, and therefore conservation is not a solution to any current supply problem. If that is true, then it should become a part of the revised Master Plan and consideration be given as to how that future customer will pay for their fair share of the system expansion expense.
- c. The existing water treatment plant has been equipped with a Fluidized Bed Reactor that is used only in the summer months to supplement peak capacity by 1.5MGD. Modifying the Master Plan to repeat such an expansion methodology would add to existing capacity during peak demand months in a similar cost effective manner.

C. WATER RATE ELEMENTS

- 1. Fire Protection fee: A fire protection fee of \$868 per fireplug per year is in the current rate structure. Those customers who are not residents of the Town of Bargersville are currently charged \$10.53 per month for this service. Residents of the Town of Bargersville do not receive this charge on their water bill. Instead, it is reported that they pay an “equivalent” fee through their town property tax rate. There are several problems with this practice;
 - a. Communities surrounding the Bargersville Water Utility service area, which are served by Indiana American Water Company, are charged significantly less. The city of Franklin pays \$39.05 per month per fireplug (\$468.60 per year per fireplug). Customers not in a municipality pay \$2.64 per month.
 - b. A customer paying this fee through property tax can claim this expense on their federal income tax as a deduction, however a customer paying this fee as a monthly water bill charge cannot.
 - c. Indiana has initiated a cap on property taxes. Including a partial payment of a property owner’s water bill as a portion of the tax bill subjects the utility to the tax cap credits that will be prevalent in the years to come. Many Bargersville residents are already subject to those credits because of the large town and fire tax rates.
 - d. The proposed rate increase will increase the monthly fee for the non-town resident to \$20.00 making the difference from surrounding communities that much more. However, if one increases the existing fire protection fee of \$868 by 77%, and calculates the monthly “equivalent” rate a Bargersville town resident customer will be charged through property tax, one finds that a difference exists between it and the non-town resident rate. That difference exists because of the difference in the ratio of fireplugs to customers within the town and outside the town. It

accentuates the difference in treatment between town residents and non-residents regarding this fee.

- e. We are told that the Town of Bargersville makes a quarterly transfer of funds from revenue received from property tax into the utility account. The expected transfer, on an annual basis, should be approximately \$219,000 (253 fire plugs in the Town X \$868). A review of the Annual City and Town Financial Report (CTAR-1) revised 2009, obtained from the State Board of Accounts, did not indicate clearly such a transfer of funds. A receipt of \$290,592.19 into the 6503 Water Utility Operating Fund is noted, but cannot be traced to its origin. A note in capital letters on page 2 of Part 1 reads "TRANSFERS IN DO NOT MATCH TRANSFERS OUT! PLEASE CORRECT". It is assumed this is a note placed on the report by SBA, indicating poor accounting practices, so from this report one can not be sure the required tax revenue transfers actually took place.
 - f. When inquires were made relative to the origin of the cost basis of the fire protection fee, we were directed to an IURC cause #40187 dated April 20, 1995. Since then, any rate increase percentage has been applied to this fee without reverting to a repeat of the cost of services derivation. However, in a review of the referenced cause, we could find no basis for that derivation. A possible relevant document found in the IURC archives was a report by an engineering firm named SEICO. It was entitled "Report on Technical Phase of Cost of Service Study and Related Work for Bargersville Water Utility". The cost of service derivation contained within this document is relative to the "Sprinkler vs. No-Sprinkler" rate difference and the derivation of the "Base Extra Capacity" method of allocating operating costs.
2. Sprinkler vs. No Sprinkler Rate Difference: Bargersville Water utility claims that summer season peak hour demand is the result of customers who have in ground sprinkler systems. They have therefore designed a water rate structure such as to charge customers with an in ground sprinkler system a higher monthly meter fee than a customer without. A number of issues are present with this rate structure;
- a. Cost of Service: The document referenced in paragraph C-1-f above is a cost of service study performed in 1995. While it should be considered out of date for today's rate structure, it never the less is the basis for this rate feature. On page 3, an analysis is performed on customers with sprinkler systems vs. without regarding their water consumption records in the 5 months in which sprinklers are most likely to be used. In considering a sample of 17 customers with sprinklers, and 22 with out, it fails to note that 6 of the 17 customers with sprinklers have peak to average consumption less than the criteria utilized of greater that 2.5, and 2 of the 22 customers with out sprinklers exceed the criteria. The data being analyzed indicates there is a sufficient number of customers in each category that fails the criteria test, that a conclusion of the effect of sprinklers is erroneous.

- b. A handout at the August 24 hearing presents a graph of average water consumption per month for each type of customers. Those that have sprinkler systems demonstrate a peak monthly average consumption of 23,200 gallons. Those that do not have sprinklers have a peak monthly average consumption of 8,600 gallons per month. This data is intended to enforce the conclusion that system peak demand is caused by customers with sprinklers. A more careful analysis of the data, using customer quantities in each category that is obtained from the Umbaugh rate analysis of August 17, 2010 reveals just the opposite. The 1729 customers with sprinklers create a peak monthly demand of just over 40M gallons. The 8155 customers without sprinklers create a monthly demand of just over 70M gallons. The system peak demand is therefore more dependent on the usage of non sprinkler customers than it is on the sprinkler customers. The graph also indicates that during the non-sprinkler usage months, the average monthly demand of the sprinkler customers is approximately 1000 gallons per month LESS than the non-sprinkler customers. With the data supplied by Umbaugh, it is obvious that customers who own sprinkler systems are unfairly being penalized because they are not the major consumers of the water. They individually may have a higher peak to average usage, but in total consumption that group is not the major consumers of water.
3. System Development Charge: The current System Development Charge (SDC) of \$625 per new customer connection was developed in conjunction with a rate increase proposal presented to the IURC in 2004. That is documented in Cause #42555, and reports that the "Equity (Buy-in) Method" was employed. In that method, as stated on Page 7 of the testimony of J.F. Doninger of Umbaugh Associates, "the goal is to charge a fee for new customers sufficient to allow customer user rates to be revenue-neutral with respect to growth". The current proposed rate increase fails to address several aspects of the SDC fee;
 1. There is some uncertainty as to the correct calculation of the SDC fee in the 2004 Cause #42555. In Mr. Tinkle's testimony (page GET-6, lines 8-11), the consulting engineer estimates future growth in terms of equivalent dwelling units to be 4,891 (This is the sum of 2755 units in the next five years, and 2136 units for the Intermediate-Term, with no Long-Term projection.) The EDU's used by Umbaugh in calculating the current SDC fee is shown on page 23 of their report to the Town Council dated February 10, 2004 as 8,831. This larger EDU number has resulted in a smaller SDC fee than if the estimated EDU's of the consulting engineer had been used. This condition needs to be reviewed and predictions updated.
 2. There has been a failure to apply the Equity Buy-in Method to the Phase IIC expansion project. No recalculation of an SDC rate has been made. Requests that there be consideration of adjusting the SDC has been rejected by the Director of Utility (Mr. Davis). It would seem reasonable

that in a case such as this, where it is obvious that the project is for the benefit of future customers, that those customers need to be defined (as accurately as possible), and that they match the investment current customers have in the existing system.

3. The letter from the Town of Bargersville announcing the second Public Hearing, dated August 9, 2010, has as an attachment of the proposed rates. That schedule fails to include the SDC fee, so there is no evidence to assure the customers that there will even be an SDC fee, let alone any adjustment. Bargersville Ordinance 2010-15, which authorizes the new rate schedule, also does not contain any reference to an SDC fee.
4. Revenue from Future Growth: Rather than place the cost burden of a new facility on just the existing customers, past revenue review cases with the IURC by Bargersville Water Utility have contained alternatives to such financing. The use of an SDC fee (mentioned above), as well as other techniques, have been put forth by the consultants advising the Town. They are worthy of further consideration;
 - a. Delayed Payment of Principle: In cause #42555, Umbaugh proposed that a delay of payment on the principle of the Bond issue be made. In this manner, any new customers added to the water system, who are major beneficiaries of these improvements, would pay a larger portion of the proposed debt. On page 8 of his testimony, Mr J.F.Doninger of Umbaugh declares; "In my opinion, this is a fair and reasonable approach of extending the burden of funding the proposed improvements to both the present and future ratepayers of the Bargersville Water Utility....". While this exact bonding method may not be applicable to the current system needs, it is paramount that considerations of this type be made so that a fair and reasonable cost allocation between existing and future customers is accomplished.
 - b. Cost Allocation to SDC: On page 96 of the 2002 Master Plan (not the Executive Summary), a proposal is made regarding a "Water Availability Fee" relative to Phase IIC funding. It was proposed that the project cost should be split in half. One half to be funded by the "Water Availability Fee" (currently referred to as SDC) from future customers, and the second half to be included in the rates paid by existing customers. The percent sharing should of course be performed based on the allocation of future benefits to be derived by both classes of customers, and not necessarily the 50/50 split sited. Her again we see that SDC fees are considered by the consultants advising Bargersville in the past to be a significant factor in arriving at a fair and reasonable rate structure.
 - c. Revenue from Future Customers: The proposed rate structure assures that bond debt obligations will be meet by applying the whole debt to existing customers. There are no provisions for the revenue that will be realized from new customers. With existing customers paying the rates necessary to finance the debt and to pay the additional operating

expenses, and new customer revenue will be free and clear "PROFIT". That is not fair and reasonable.

5. Base Maximum Method of cost allocation; In paragraph C-1-f above, reference is made to a 1994 IURC cause number 40187 in which a document by SEICO, entitled "Report on Technical Phase of Cost of Service Study and Related Work for Bargersville Water Utility" is referenced. In that document, the cost sharing percentages are derived that are allocated to Base, Peak Day, and Peak Hour categories for classifying operating costs. The derivations on page 6 contain computation errors relative to number rounding. They result in percentages that are used in the accompanying Umbaugh Rate Analysis which are in error, thus propagating the round off error through out the rate structure derivation. Through out the years, any rate changes have been made as changes to these rates, thereby propagating the error to the proposed rate structure of Town ordinance 2010-15. In both public hearings, reference was made to the rate structure as "when you add a room to a crooked house....you end up with a crooked room"; this mathematical error is what was being referred to.

D. EXPANSION PLAN

1. The Total Project: The total scope of the expansion project has never been revealed to the public. There were never any charts or diagrams to indicate the full extent or cost. Only in the June 23 and August 17 Rate Studies has there been any record of the project scope and its associated costs. Public Hearing presentation information has been limited to the cost of the new water treatment plant, which is only half of the total project cost.
2. System Requirements Document: A verbal request was made to the Town Clerk at the time she supplied a number of requested documents for a copy of a "Systems Requirement Document". It was expected that the consulting engineering firms would have been given a document describing the needs of the Water Utility to meet current and expected system capacity needs, and which defined the scope of their design efforts. This document was described to her as quoted, but she was also advised of the purpose of such a document so that she could correlate the request with any document of that nature. She responded that no such document existed. If that is truly the case, one is left with the question as to what were the design objectives that defined the needs of the new facilities?
3. Is it Necessary? : The Town of Bargersville web site in July of 2009 was accessed for the purposes of obtaining the details of the water rate structure. Several items of "Key information" from that web site were noted at that time;
 - a. "Currently serving a customer base of approximately 9,000 people"
 - b. "The current design capacity is 7.5MGD, has an average daily production of 2.0MGD, and new customer availability of 3.2MGD"

This information indicated that there was adequate capacity for expansion. A year later a letter arrived from Bargersville advising of a 118% water rate increase in order to finance a new water plant. Although the increase of 118% was later retracted, a 77% increase is presently enacted. A credibility gap exists between the customers and the utility when a reported 40% surplus capacity disappears within a year, and we are asked to pay \$20 million for a 50% increase in capacity.

4. An Alternative Proposal; A review of the Bargersville Water Utility facilities map suggest that alternative solutions may exist that will not only solve current capacity problems (if they exist), but strengthen the integrity of the system for serving future customers. They are;
 - d. A 12" line runs south on SR 37 and then east on Travis Road to the Orchard Tank. This should be capable of supporting an initial commercial development at SR 144 and SR 37 with a very short extension. Very limited residential customers exist in this area. A booster pump station on SR 37 may be needed if pressure drops are excessive.
 - e. The system contained in the area defined by Smith Valley Road on the north, Stones Crossing Road on the south, Morgantown Road on the west, and SR 135 on the east contains the highest density residential and commercial area of the system. It experiences low water pressure at residences internal to the distribution mains network during peak summer demands. An additional water tower at Olive Branch Road and Morgantown Road may be a solution to this issue. Since this is a high population density area, a tank larger than 500K gallons may be needed to meet peak hour demands.
 - f. Of the four system elements (well, treatment, pump, and transmission), the weakest link is transmission. With an additional 1.5MGD Fluidized Bed Reactor for peak season use only at the existing treatment plant, the existing well and treatment plant should serve average day (4.2MGD), and peak day (9.8MGD) through 2020. Peak hour capacity of 16.1MGD may require a separate solution, if additional and existing water tanks do not.
 - g. System transmission problems are more likely to exist in the southern regions of the service area where current development is occurring. A solution would be to add a 12" line from the Orchard Tank down Morgantown Road to the Kinder Tank. This is open rural country and right of way would be easy to acquire. This would parallel the 8' line that runs from Stones Crossing Road to the Town of Bargersville along SR 135, and thereby improve the supply availability to the Town of Bargersville.
 - h. These changes would more tightly couple the North and South Hydraulic Systems, and thereby strengthen the integrity of the entire system.

E. UTILITY OPERATIONS

1. Operating Expenditures: The State Board of Accounts receives an annual financial report from the Town of Bargersville. That report is often referred to

as the CTAR-1 report. Report ID 41-3-702, the CTAR-1 for 2009, was reviewed, and the following observations are made relative to all Bargersville utility operations;

- a. Salaries and Wages vs. Benefits; The Water utility has a benefits expenditure that is 48.5% of the salary. The Wastewater utility has an employee benefit expenditure that is 31.8% of the salary. Why should these be different unless one utility has a better benefit package than the other? The Storm water utility has neither a salary nor benefit expenditure. It would appear there are no employees assigned to that utility, although there is a Storm Water Utility secretary and a Board. The Electric utility has a salary expenditure that is 72% of the water utility, but it has no benefits expenditure. Some other fund must be paying the benefits for these employees. Is it the Water utility because of its high benefit expenditure?
- b. Salaries and Benefits Rate of Rise: A survey of several IURC cause reports, the State Board of Accounts audit for 2005/6 of Bargersville Utilities, and the Umbaugh 2010 Rate Studies reveals that salaries and benefits since 1994 have risen at an elevated rate. The study indicates an average increase from 1994 to 2009 of 7.0% for wages and 7.7% for benefits. When viewed over a more limited space of time (2005 to 2009), the increases are 9.75% for wages and 11.0% for benefits. For this same period of time, the Consumer Price Index increased at a rate of 2.1% per year. This demonstrates that the rates of increase for wages and benefits are excessive and result in a water rate structure that is unreasonable and unfair to the customers.
- c. The Water utility SDC fund is reported in CTAR-1 to have a cash and investment balance of \$529,277.03 as of 12/31/2009. However, we are told that the Water utility had to borrow \$524,000 from the Wastewater utility in order to pay for the relocation of water mains in conjunction with the INDOT State Road 135 expansion project. That loan appears as a line item in the project cost sheet for the proposed new water plant. What happened to the Water Utility SDC funds?
- d. The water utility is reported in the 2009 CTAR-1 report to have a \$282,128.27 CD in its operating account investments. Why were not these funds used to fund the expenses outlined in paragraph "c" above?
- e. The disbursement from the Council of Governments Fund for Personal Services is recorded as \$96,378.20. Since there are five members on the Town Council, this would imply that each council member was paid \$19,275.64 in 2009. That seems excessive. The utility funds do not reveal if these same council members, who act as Board members to the utilities, are also paid for their services from the utility operating funds.
- f. Debt to Asset ratio: The Water Utility is currently obligated to a debt of approximately \$12.5M. Umbaugh records the December 31, 2009 asset value of the water utility to be \$32.5M. Upon issuance of the project bonds for \$20M, the utility will be obligated to a debt of \$36M (includes interest), causing the total debt to rise to \$48.5M. Upon completion of the new

water system, the asset value of the utility would increase by \$20M to be \$52.5M. The debt to asset ratio would then be \$48.5M/ \$52.5M, or 92%. With such a high debt ratio, the financial stability of the utility is questionable.

- g. Servicing City Streets: The Bargersville Fiscal Plan for the 135/Whiteland Road voluntary Annexation area, dated November 13, 2006, and the Fiscal Plan for North SR135 consensual Annexation, dated June 10, 2008 both contain references to the fact that the Town of Bargersville uses Utility employees and equipment to provide Street Department services to the Town streets and roads. In the second fiscal plan above, the following statement is contained; "Bargersville Utility employees are diverted to street department duties when circumstances dictate, such as for minor road repairs or snow removal". There is no indication in the Town financial reports reviewed to date that there is "job level" accounting being practiced so that water customers who do not live in the Town of Bargersville, and don't receive the benefits of these services, are not paying for them through their water bills. In the CTAR report for 2009, there is no evidence of the water utility being compensated from the town by a transfer of funds to pay for these services. Just the opposite occurs. A receipt of \$131,600 into the town occurs into the "In lieu of taxes" account. Without full disclosure, the assurance of fairness in allocating these expenses back to the town cannot be established.

F. CONFLICT OF INTEREST

1. Mr. Welch, who is a full time employee of the Water Utility, also serves as a Councilman on the Town council. In that capacity, unless he removes himself from a vote regarding the water utility operation, he is in a position to vote on issues in which he may personally benefit.
2. On September 9, 2010, when the vote was taken on the water rate increase ordinance, Mr. Welch did not excuse himself from the vote, on the grounds of this conflict of interest.
3. Of the five Council members eligible to vote on the ordinance, one was opposed, one was not present, three voted in favor, including Mr. Welch. In so doing, it can be considered that he cast the deciding vote on an ordinance that will benefit his future employment with the water utility. This is a glaring injustice to the more than 8700 utility customers who live outside the corporate boundaries and cannot express their concerns for his actions through the power of political representation.

VI. A Utility Expert Opinion

The utility expert, Mr. Mike Gorman, who would have testified in a courtroom hearing had the petition against the water rate increase ordinance been allowed to proceed, was contacted by a group of concerned citizens via telephone on November 18, 2010. It was the objective of that conversation to obtain his expert opinion of the facts surrounding the Bargersville Water Utility operations and actions that he may have formed as a result of his preliminary review of the documentation sent to him. The following are his opinions as expressed in that telephone conversation:

1. It is highly unusual for a utility to subsidize its revenue through the collection of property taxes. (This refers to the residents of Bargersville paying the fire protection fee via their property taxes while non-town residents pay it as a monthly fee.)
2. It is unusual for such a high percentage of municipal utility customers to not be represented in the governance of the utility.
3. A water utility employee (Mr. Steve Welch, member of the Town Council) having authority to approve a major expansion project is clearly a "conflict of interest".
4. From the review of documentation supplied, Mr. Gorman felt there was very limited justification provided by the Bargersville utility for their actions. He was unable to find any additional information via an internet search. In particular, the "cost of services" analysis was very weak.
5. It is not normal for the utility to include line (mains) extensions costs in a capital project. These are facilities normally paid for by the developers requiring water service to their properties.
6. It is not normal to have a residential declining water rate schedule. Conservation is promoted in other utilities by an inclining rate schedule.
7. It is not normal that there were no alternative plans for the capital expansion. If performed, they would have evaluated alternative choices which would meet the utility service and quality standards, at the least possible cost.
8. Mr. Gorman has no documentation of his analysis efforts to date which could be used to support our efforts with the Legislature. He was in the initial phases of his preparation for testimony, when the court ruled against WRCU.
9. He could provide an estimate of the discriminatory billing and/or economic injury to Bargersville utility customers if he were authorized to continue. When presented with the conclusion that wages and benefits had increased annually at a large rate, he suggested that from his experience utilities were experiencing large increases in retirement benefits because of the financial market down turn, but further investigation would be required. He did however support the concern about the excessive increases in wages.
10. The state of Wisconsin has a "streamlined" system of regulatory oversight. He would recommend it as a model for Indiana to consider. The analysis on proposed rate increases is performed by the state using standard forms and methodology.

11. In the past, the IURC has done a fairly reasonable job of reviewing municipal utility actions. Their ability to withdraw from the IURC has diluted that regulatory action.

VII. Conclusions

Indiana Statutes allows municipal utilities to withdraw from the Indiana Utility Regulatory Commission. Bargersville Water utility did so in 2008. The supposition that the utility will then be “self regulating” by virtue of the local political process is flawed. Utility customers outside the corporate limits are not represented, and in this case they constitute a large majority of the customers. Decisions makers are not required to respond to inquires from these utility customers, and suffer no consequences politically.

Local political representatives, such as Town council members and Town Clerk/Treasurer, do not have to have the necessary skills required to manage and operate a technology, and capital, intensive water utility. The function of the utility is therefore at risk when they are permitted to do so without the benefits of a competent oversight organization.

It is the conclusion of this report that as a result of these conditions, the passage of the Bargersville Water utility rate ordinance results in the following consequences;

UNREASONABLE:

1. There has been no substantive justification for the size and need of the capital expansion.
2. There has been no consideration of alternatives that could be more cost effective in serving the needs of the customers.
3. The Master Plan of 2002 has not been revised to reflect current and local anticipated growth. Instead, its plan to serve future water customers of Trafalgar and Brown County appears as the only justification for the project.
4. The fire Protection fee is excessive when compared to other local communities.
5. The debt to asset ratio that results from this project places the utility in a dangerous financial position.

UNFAIR:

1. Bargersville residents are billed for fire protection through their property tax which is very likely capped under current state law. Therefore they pay equivalently less for that service.
2. Only Bargersville residents have the benefit of utility resources being allocated to perform street maintenance services.
3. The current, and therefore future, rate structure is based on flawed cost of service analysis dating back to IURC cause # 40187. This effects the decision to charge in ground water sprinkler users a premium, as well as the “Base Extra Capacity” cost allocation model.
4. The cost of the new water facilities is placed on existing customers only. The philosophy supported by the IURC that “Growth should support Growth” has been ignored.
5. A utility employee was permitted to cast the deciding vote on the ordinance.
6. The majority of utility customers are not represented politically in the decision making process.

7. There has been an excessive rate of increase in wages and benefits for the utility employees. There is evidence to suggest that the electric and storm water utility employees are being compensated from the water utility.

VIII. References:

This list has been prepared as an aid to anyone wishing to familiarize themselves with the issues and facts relative to the proposed \$20M expansion project planned by the Bargersville Water Utility.

1. Cause 40187: This is an IURC set of documents relative to a rate increase request in 1995. There are two specific documents that are relevant:
 - a. The Supplemental Accounting Report by Umbaugh, dated Oct 9, 1995. This provides a past accounting basis for the Bargersville Utility, and the establishment of the 1995 water rates.
 - b. Report on Technical Phase of Cost of Service & Related Work for Bargersville Utility. This report by SIECO, dated July 1995, contains the basis of a "Base Extra Capacity Method" of establishing cost of services. There are mathematical errors in this derivation related to rounding of numbers and the consideration of correcting peak hour demand numbers where tank draw down is mentioned as a needed correction, but is not applied.
2. Cause 42555: This is an IURC set of documents relative to a rate increase request in 2004. There are four specific documents that are relevant:
 - a. Testimony by G.E. Tinkle (PE) describing the utility system and its capacities.
 - b. Water Utility Master Planning Report (Executive Summary) by Commonwealth Engineers, Inc., dated November 2002. An overview of the utilities master plan including plans for providing service to Trafalgar and Brown County.
 - c. Testimony of J.F. Doninger (CPA) describing the financial plan associated with planned expansions.
 - d. Accounting Report of Proposed Project and Bond Issue, Proposed Increase in Charges and Rates and Proposed System Development Charge, by Umbaugh, dated February 10, 2004.
3. Current Water Rates schedule from Bargersville Utility web site in 2009. It includes a System Development Charge, while some of the following documents fails to include it.
4. Letter from Umbaugh to Town Council dated August 5, 2010. It discusses the history of rates, contains a water usage graph emphasizing the peak demand problem, a summary of customer water usage, and proposed monthly bill quantities.
5. Rate study by Umbaugh dated Aug. 17, 2010. This presents the project cost and the rate study to substantiate financing the bond issue required. It comes in two parts because of file size.
6. Letter from Town of Bargersville dated Aug 9, 2010 announcing rate increase proposal. It contains current and proposed rates.

7. A series of documents prepared by representatives of White River Citizens United in which questions are posed, and data from the above documents is analyzed.
 - a. Bargersville Water Utility Expansion Questions dated July 28, 2010
 - b. Water Rate Increase Issues dated Aug. 20, 2010.
 - c. WRCU Concerns List dated Aug. 14, 2010
 - d. System map (simplified) demonstrating the geography of the water system in blue, the expansion in red, and the associated debt on each.
 - e. Water Billing Survey
 - f. Monthly Water Bill Differences, Sep. 8, 2010.
 - g. 2009 Water Usage Summary
 - h. 2009 Water Revenue Summary
 - i. Project Cost Sheet revised
8. Water Utility Master Plan: A "D" size drawing of the service area with topology and water main details. The drawing was created by Commonwealth Engineers Inc., and is dated July 2002. The end point of water mains is indicated by yellow markings on the original. Some main sizes have been written in by hand. Road and street names have also been entered by hand. The contrast ratio is limited, therefore it requires careful study to distinguish water mains from streets and roads. Not all existing water tanks are included. Those have been hand entered as well.
9. System Capacity Diagram: A hand drawn block diagram of the system indicating average and peak capacity numbers that have been extracted from various documents (primarily Cause #42555). It contains a recommended alternative to system capacity expansion as opposed to the proposed new well field and treatment plant.