

RESOLUTION NO. 2022-01

**RESOLUTION OF THE BOARD OF COMMISSIONERS
OF CASS COUNTY, INDIANA APPROVING THE ATTACHED AGREED
ORDER "EXHIBIT A" IN REFERENCE TO THE CASS COUNTY WAR MEMORIAL
IN CAUSE NO. 09C01-1905-PL-000040**

WHEREAS, The Board of Commissioners of Cass County, Indiana, believe that an agreement has been reached between the Board of Commissioners of Cass County, Indiana, and the City of Logansport, Indiana, in Cause No. 09C01-1905-PL-000040.

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Cass County, Indiana, that:

Section 1. The Board of Commissioners of Cass County, Indiana, do hereby approve the attached Agreed Order "Exhibit A" in reference to Cause No. 09C01-1905-PL-000040.

Section 2. That this Resolution shall be in full force and effect from and after its passage by the Board of Commissioners of Cass County, Indiana.

PASSED AND RESOLVED BY THE BOARD OF COMMISSIONERS OF CASS COUNTY, INDIANA this 22nd day of February, 2022.


Board of Commissioners of Cass County, Indiana:



Ryan Browning



Ruth Baker



Michael W. Stajduhar

Attest:



Cheryl Alcorn, County Auditor

STATE OF INDIANA)
COUNTY OF CASS)

IN THE CASS CIRCUIT COURT
2022 TERM

BOARD OF COMMISSIONERS OF)
CASS COUNTY, INDIANA)
Plaintiff)

CAUSE NO. 09C01-1905-PL-000040

VS.)

CITY OF LOGANSFORT, INDIANA)
Defendant)

AGREED ORDER

Comes now the Plaintiff, the Board of Commissioners of Cass County, Indiana (hereafter “Cass County”), by counsel, Jeffrey D. Stanton, and the Defendant, City of Logansport, Indiana (hereafter “Logansport”), by counsel, Kelly Leeman. Cass County and Logansport having reached an agreement regarding Cass County’s Petition To Compel Partition of Real Estate Held In Tenants In Common filed on May 10, 2019. The parties now agree as follows:

1. This cause of action originated by Cass County filing a Petition To Compel Partition of Real Estate Held In Tenants In Common between Cass County and Logansport.

2. Cass County and Logansport hold an interest in real estate (the “Property”), as tenants in common, located in Cass County, Indiana, described as follows:

Lots Numbered Forty Nine 49 and Fifty 50, in John Tipton’s 2nd Addition in the Town now City of Logansport together with that portion of the Alley on the East thereof belonging to said lots on the vacation of said Alley.

**More commonly known as: 706 E. Market Street, Logansport, IN, 46947.
Parcel #25-13-103-001-002**

3. The property is often referred to as a “War Memorial”.
4. Cass County requested that the real estate be partitioned pursuant to I.C. § 32-17-4-1 et seq.
5. Logansport filed its Answer. Likewise, a private citizen, Jim Brugh, intervened in the

cause.

6. The Intervenor filed several pleadings including a Motion To Dismiss, which was denied and a subsequent Motion To Correct Error, which was also denied.

7. On the 29th day of June, 2020, this Court entered an Order after a hearing on the Cass County's Petition to Partition and Intervenor's Complaint For Declaratory Judgment. In the Order, the Court held in pertinent part that "the Court cannot say that the County has no right to sell the property when the statutes and laws have clearly contemplated this". Further, the Court held that "this being a matter between the parties, it is the position of Petitioner (Cass County) and (now) Respondent (Logansport) that they should proceed under I.C. § 32-17-4 et al, ... and finds no reason why the parties here should not proceed as they intend". This Court referred the matter to mediation.

8. Intervenor, Jim Brugh, again filed a Motion To Correct Error regarding June 29, 2020, Order, which the Court denied.

9. Cass County and Logansport first attempted mediation in December of 2020, albeit unsuccessfully.

10. The matter came back before the Court for hearing on August 12, 2021, and the Court found as follows: "That this Court has previously entered its Order on hearing on June 29, 2020, and an Order Denying Jim Brugh's Motion To Correct Error on August 5, 2020. This cause shall continue to proceed under Indiana's Partition Statute as set forth at I.C. § 32-17-4-1 et seq."

11. The Court in its Order from the hearing of August 12, 2021, also provided that Cass County and Logansport agreed to return to mediation. In the same Order, the Court instructed that the mediation shall include Cass County and Logansport. The Intervenor was not included in the Courts instructions. The Court held that if the parties are unable to mediate a resolution the case was to proceed under Indiana Partition Statute. The Order from the hearing of August 12, 2021, was not appealed.

12. The parties recognize that as addressed in Judge Muehlhausen's Order of November 6, 2018, neither Cass County nor Logansport have asserted that the other has exercised bad faith as it relates

to the establishment, preservation or maintenance of the property, which is the subject of the Partition action. Cass County and Logansport recognize that they each have different objectives and financial obligations. Logansport and Cass County agree that they each have met to mediate the case and have conducted informal discussions in good faith to resolve Cass County's Petition to Partition.

13. Likewise, the Indiana Court of Appeals held that it is within Cass County and Logansport's sole discretion to determine how, when and at what amount of improvements are to be made to the property. That decision is wholly within Logansport and Cass County's prerogative.

14. Cass County and Logansport report to the Court that they have reached an agreement to resolve Cass County's, Petition to Partition the Real Estate. Cass County and Logansport agree that they have resolved this matter pursuant to Indiana's Partition Statute.

15. The Cass County Commissioners will convey by Quit Claim Deed to the City of Logansport the property, which is the subject of the Partition action, located at 706 East Market Street, Logansport, IN, 46947. In return, within ninety (90) days from the date of the entry of this Order, Cass County shall pay to the City of Logansport a sum of One Hundred Fifty Thousand Dollars (\$150,000.00).

16. Once this Order is signed by the Court, Cass County shall have no further financial or otherwise obligations or responsibilities for the management, maintenance, repair, improvement or upkeep, etc., of the real estate located at 706 East Market Street, Logansport, IN, 46947, including but not limited to any obligations set forth in any agreements or contracts between Cass County and Logansport or pursuant to prior Orders of the Court entered prior to this Agreed Order.

17. For its part Logansport agrees to continue to maintain the real estate located at 706 East Market Street, Logansport, IN, 46947 as a War Memorial as is defined by I.C. § 10-18.

18. Consistent with Indiana Law, once the City of Logansport receives sole ownership it may remove all or portions of structures and/or improvements with the real estate itself continuing to be maintained as a War Memorial. This is also consistent with this Court's prior Order of June 29, 2020, wherein the Court stated: "There being no statute or covenant dictating the War Memorial's form, whether

that War Memorial should be a home or statue is a political question, a matter of what local authorities should do”.

ALL THE ABOVE FINDINGS ARE HEREBY ORDERED, ADJUDGED AND DECREED

this _____

STEPHEN R. KITTS, II, JUDGE
CASS CIRCUIT COURT

Distribution:

Jeffrey D. Stanton, Esq.

Kelly Leeman, Esq.

Jim Brugh, Esq.