

IN THE CIRCUIT COURT OF SHARP COUNTY, ARKANSAS

IN THE MATTER OF)
CHEROKEE VILLAGE ROAD AND STREET,)
RECREATIONAL AND FIRE DEPARTMENT,)
SUBURBAN IMPROVEMENT DISTRICT NO. 1)

SHARP COUNTY CIRCUIT
NO. 37

ORDER

The Court has before it the matters of acting on a Petition to establish a suburban improvement district under Act N. 41 of 1941, as amended ("Act No. 41") and the protests of certain persons (the "Remonstrants"), including a challenge that Act No. 41 is unconstitutional, the Petitioners being represented by their counsel, Messrs. John Mac Smith and Richard Smith of West Memphis, Arkansas; Mr. Harry Ponder of Walnut Ridge, Arkansas; Messrs. Carmack Sullivan and Gus Causbie of Hardy, Arkansas; and Mr. Hershel H. Friday of Little Rock, Arkansas; and the Remonstrants being represented by their counsel, Messrs. John Norman Harkey and Bill H. Walmsley of Batesville, Arkansas, and the Court having considered the Petition, the protests of Remonstrants, the testimony and evidence presented at the Hearing on June 16, 1969, and the arguments and briefs of counsel, makes the following Findings and Order:

FINDINGS

1.

A Petition, in several counterparts, was filed May 12, 1969, and at other times before the hearing on June 16, 1969, praying, generally stated, that a suburban improvement district (the "District") be established embodying the lands described in the Petition, for the purposes specified in the Petition and the benefits be assessed against the lands as provided by law. The Court entered an Order on May 13, 1969 fixing June 16, 1969 as the date on which the question of establishing the District would be heard.

2.

Notice of the filing of the Petition and of the Hearing was published in newspapers published and having a bona fide circulation in Sharp County, Arkansas and Fulton County, Arkansas on May 22, 1969 and on May 29, 1969.

3.

On June 16, 1969 the Remonstrants filed identical protests challenging the establishment of the proposed District and, in particular, challenging the constitutionality under the Constitution of the State of Arkansas and the Constitution of the United States of Act. No. 41.

4.

The Hearing was held on June 16, 1969 and in addition to documentary evidence, the following witnesses testified: Messrs. J. F. Gore, Registered surveyor and professional (civil) engineer, Fler Harris, abstractor, John A. Cooper, Jr., Joe N. Bosore, and James Nagy.

5.

The Petition was signed by a Majority in value and of area of the owner of the record title, as reflected by the deed records in the office of the Circuit Clerk and Ex Officio Recorder of the pertinent counties, of real property within the District.

6.

The lands within the District lie in Sharp and Fulton Counties, Arkansas, with largest portion of the lands in Sharp County, but no part of the lands within the District lies within the limits of any city or incorporated town.

There is no conflict of interest which disqualifies John A. Cooper, Jr. and Joe N. Bazore as proposed Commissioners of the District.

IT IS CONSIDERED, ORDERED AND ADJUDGED:

A. The Petition is proper and in accordance with the provisions of Act No. 41 and is, therefore, valid and not violative of any rights of the Remonstrants or other property owners within the boundaries of the District under the Constitution or laws of the State of Arkansas or under the Constitution or laws of the State of Arkansas or under the Constitution of the United States of America.

B. Act No. 41 does not constitute an unconstitutional delegation of legislative power or deprive Remonstrants of any rights or property without due process of law or violate any other rights of Remonstrants or property owners under the Constitution of the State of Arkansas or the Constitution of the United States of America, and, therefore, Act No. 41 is valid and constitutional.

C. The protests of Remonstrants are denied.

D. A suburban improvement district, designated Cherokee Village Road and Street, Recreational and Fire Department, Suburban Improvement District No. 1, is hereby established embodying the lands and for the purposes specified in the Petition.

E. John A. Cooper, Jr., Joe N. Bazore and Jim Napper, three property owners in the District are hereby appointed Commissioners of the District. Within thirty (30) days these appointees shall take and file with the Circuit Clerk of Sharp County, Arkansas their oath of office, in which they shall swear to support the Constitution of the United States and the Constitution of Arkansas, to discharge faithfully their duties as Commissioners, and that they will not be interested, directly or indirectly, in any contracts let by the Board.

ENTERED this 30th day of July, 1969.

/s/ Harrell Simpson
Circuit Judge

APPROVED AS TO FORM:

HARRY L. PONDER
Walnut Ridge, Arkansas on behalf of
Counsel for Remonstrants

/s/ Bill H. Walmsley

Filed and recorded August 13, 1969 @ 3 P.M.
Oris King, Clerk

By: Claudia Corwin D.C.



CERTIFIED COPY

State of Arkansas } ss
County of Sharp

I, Tommy Estes, Circuit & County Clerk and Ex-Officio Recorder in and for the said County and State, do hereby certify that the foregoing is a full, true and complete copy of the original as the same appears of record in my office in Book

Vol. 181 Page 20
Witness my hand and seal on this 13 day of July, 1969

Tommy Estes, Clerk & Recorder
By: [Signature] D.C.
Elkins Swyers Co., Springfield, MO. - V. 4114