

CITY OF SPOONER

COUNTY OF WASHBURN

Court Decision invalidating  
an annexation filed in this office  
on June 28, 1985

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DOUGLAS LA FOLLETTE

Secretary of State

Filed May 19, 1986

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May 16, 1986

Secretary of State  
State Capitol  
Madison, WI 53707

Ref: Town of Beaver Brook vs City of Spooner  
Case #85 CV 161

Dear Sir or Madam:

I enclose pursuant to Wisconsin Statutes, § 66.026, four copies of the Court's Memorandum Decision, Findings of Fact, Conclusions of Law and Judgment with reference to the above entitled matter. You will please note the Court's conclusion that the City of Spooner's Ordinance 154 is invalid.

Sincerely,

  
Eugene D. Harrington  
Attorney for Plaintiff

EDH/kp  
Enclosures

*#102*

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Town of Beaver Brook, A  
Wisconsin Municipality,

Plaintiff,

-vs-

City of Spooner, a  
Wisconsin Municipality,

Defendant.

MEMORANDUM DECISION,  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND JUDGMENT

Case Number: 85 CV 161

NATURE OF THE CASE

Plaintiff seeks an order of declaratory judgment invalidating an Annexation Ordinance No. 154, adopted by the Defendant City of Spooner, which resulted in an annexation of a portion of Plaintiff's territory.

ISSUES

I

Has the Plaintiff overcome the presumptive validity of the Defendant's Annexation Ordinance?

II

If so, has the Defendant City reasserted the Ordinance's validity with competent proof?

DECISION

Issue No. I: Answered by the Court: Yes.

Issue No. II: Answered by the Court: No. The presumptive validity has been refuted. There is no competent proof of validity and the Ordinance is declared invalidated.

RATIONALE

The Court analyzes this case, recognizing that a substantial number of the citizens located in the area which is the subject of the annexation strongly desire and support the

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annexation. It cannot be even hinted that the City of Spooner has solicited or gone fishing for this petition or these petitioners.

No question exists but that the Ordinance enjoys a presumption of validity and the burden of overcoming the presumption with proof that the Ordinance is invalid rests on the party so claiming, see Town of LaFayette v. City of Chippewa Falls, 70 W2d 610.

"Further, the rule of reason does not authorize a court to inquire into the wisdom of the annexation before it or to determine whether the annexation is in the best interest of the parties to the proceeding or of the public. These matters are inherently legislative and not judicial in character". See Town of Pleasant Prairie v. City of Kenosha, 75 W2d 322.

In other words, the Court must pay substantial deference to the machinations of the legislative branch, in this case the City Council of the City of Spooner.

This is not to say, however, that the law supports the Defendant's contention found in Defendant's brief that the:

"reasonable need for the City of Spooner to annex is contained within the presumption"

and if it were, it seems to the Court that should Plaintiff offer evidence which arguably rebuts the presumptive validity of the ordinance, it becomes incumbent upon the City to go forward with some (emphasis supplied) evidence re-establishing the reasonable need to acquire the property at issue.

Prior appellate authority gives this court substantial guidance in assessing an annexation ordinance. First, the annexation must be viewed in its entirety. Secondly, any increases in population and overflow in growth beyond the boundaries of the city ought to be considered. Third, need for additional area for construction of homes and industry to accommodate the present or reasonably anticipated future growth of the city ought to be scrutinized. Fourth, extension of police, fire, sanitary protection or other services to substantial numbers of residents of adjacent areas is also a consideration.

During trial, the Plaintiff advanced certain uncontroverted evidence which the Court adopts and upon which predicates findings:

1) Prior to the ordinance at hand, the City of Spooner had passed other annexation ordinances, see Exhibits 17 and 18, as recently as 1981.

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2) Land annexed by the City of Spooner was designated and zoned for industrial usage. Although available for "heavy industrial" usage since 1981, no building permits have been issued by the City Clerk for development.

3) A City industrial park was created subsequent to the aforementioned annexation and subsequently that park has enjoyed utterly no development, despite the fact that sewer and water are available.

4) Actual development in Spooner since 1980 has increased (when one takes into account both new and remodeling construction), but not to a degree that supports a finding that the City requires additional expansion space.

5) Census figures (see Exhibit 9), support a finding that Spooner is not likely to grow beyond its present needs. That the future portends no major population changes, no major development and no major growth, industrially, commercially or residentially.

6) On the evidence, there is no demonstrated need for additional land mass for homes nor industry. Expansion for residential as well as commercial purposes appears to be accommodatable within the present City boundaries.

7) The area subject to this ordinance appears adequately served by the present police/fire protection available. The District Office of the Wisconsin State Patrol is situated in the immediate vicinity, further police protection is provided by the County Sheriff. The area is served by a Town Constable on an on-call basis, and in all events there is no showing that this area is in need of further police protection.

Furthermore, fire protection is adequate, if not ample, with both the City and Town equipment presently being jointly housed and jointly responsive to calls on both sides of the Town/City lines.

8) A sanitary district is apparently available to serve both municipalities, but the Town itself, has forestalled serious planning for three years in development of its own unique sanitary district, apparently because of the vagaries attendant to the petition underpinning this Ordinance.

9) A majority of residents/inhabitants of the area at issue want to be annexed.

10) Substantial building is conceded to have taken place on a southerly course from the City of Spooner to the area subject to the Ordinance and under consideration here.

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11) Although there was no actual testimonial or evidentiary offer made by the City or the original Petitioners in support of this Ordinance, proposed annexation is probably desirable from the standpoint of the Petitioners. It seems reasonable to assume they would act in their own self interest, but there is not actual evidence that a "reasonable need" on the part of the City of Spooner exists requiring validation of this Ordinance.

### CONCLUSIONS OF LAW

Upon the aforementioned Findings, the Court concludes:

- 1) The City enacted a presumptively valid Annexation Ordinance on or about June 10, 1985;
- 2) That the Town of Beaver Brook has standing to contest the validity of said Ordinance;
- 3) That the Town of Beaver Brook has by competent evidence, rebutted the presumption of validity of the Ordinance;
- 4) That the aforementioned Ordinance and its annexation of Plaintiff's property and domain is unsupported by competent evidence of a reasonable basis or need therefore;
- 5) Without a showing of some "reasonable need", the annexation in legal terms, is arbitrary and capricious and contrary to the rule of reason.

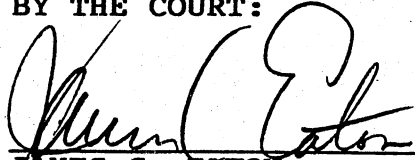
### JUDGEMENT

**THEREFORE, IT IS ADJUDGED:**

- 1) That the aforementioned Annexation Ordinance No. 154 of the City of Spooner is declared invalid.
- 2) Plaintiff is awarded statutory costs, disbursements and attorney fees.

Dated this 18 day of May, 1986.

BY THE COURT:

  
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JAMES C. EATON  
Circuit Judge

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