

CITY OF SPOONER

COUNTY OF WASHBURN

Findings of Fact, Conclusions . . .
VALIDATING Annexation adopted on
December 18, 1986

OFFICE OF THE SECRETARY OF STATE
State of Wisconsin

Filed May 9, 1988

Kissack & Mulligan, S.C.

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May 4, 1988

Mrs. Pat Pierick
c/o Secretary of State's Office
P. O. Box 7848
Madison, WI 53707

Ref: Town of Beaver Brook vs. City of Spooner, et al

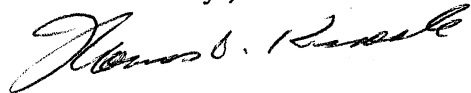
Dear Mrs. Pierick:

Pursuant to our telephone conversation of this date, I enclose herewith a copy of the Findings of Fact, Conclusions of Law and Judgment rendered in the above-referenced action.

It is my understanding that you will be sending notification to the appropriate state agencies and municipalities regarding the effect of Judge Gallagher's decision. As discussed, the Supervisor of Assessment's office in Eau Claire has requested a certificate or notification of some type from your office so as to direct the City of Spooner to proceed with assessing the property in the annexed territory as being located within the City limits.

If I can be of any further assistance or if you need additional information, please contact me accordingly.

Sincerely,



Thomas G. Kissack

TGK/meb

cc: Catherine Nelson
Eugene Harrington
William Thiel

STATE OF WISCONSIN
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MAY 09 1988

2 - D.O.T
1 - Revenue

DOUGLAS LA FOLLE
SECRETARY OF STATE

TOWN OF BEAVER BROOK,
a Wisconsin Municipality,

Plaintiff,

-vs-

CITY OF SPOONER,
a Wisconsin Municipality
City Hall
Spooner, WI 54801,

Defendant.

and

EUGENE and VONNIE DURAND
Route 2, Box 2536
Spooner, WI 54801,

and

RAWN COMPANY, INC.
P. O. Box 9
Spooner, WI 54801,

Intervening Defendants.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT

STATE OF WISCONSIN
RECEIVED AND FILED

MAY 09 1988

DOUGLAS LA FOLLET
SECRETARY OF STATE

Case No. 86 CV 295

COPY

I. TRIAL.

1.1 Parties: The plaintiff, Town of Beaver Brook, a Wisconsin municipality, whose mailing address is Spooner, Wisconsin, constitutes an unincorporated civil town organized as a body politic and corporate under the laws of Wisconsin. The defendant, City of Spooner, is a Wisconsin municipality whose mailing address is City Hall, Spooner,

Wisconsin, duly organized as a body politic and corporate under Wisconsin law. The intervening defendant, Eugene and Vonnie Durand, constitute adult residents of the State of Wisconsin, whose mailing address is Route 2, Box 2536, Spooner, Wisconsin, and whose occupations are as owners and operators of a manufacturing facility known as Dur-A-Built. The intervening defendant, Rawn Company, Inc., is a Wisconsin corporation, whose mailing address is P. O. Box 9, Spooner, Wisconsin, and whose business is that of the manufacture of aerosol products and other items.

1.2 Hearing Date. A trial was held to the Court in this matter on September 11, 1987.

1.3 Appearances. The plaintiff, Town of Beaver Brook, appeared through its attorney, Eugene D. Harrington of Spooner, Wisconsin. The defendant, City of Spooner, appeared through its city attorney, Robert Zum Brunnen of Spooner, Wisconsin. The intervening defendants, Eugene and Vonnie Durand and Rawn Company, Inc., both appeared through their attorney, William G. Thiel, of Jordan, Herrell & Thiel, Eau Claire, Wisconsin.

1.4 Purpose. To judicially resolve a dispute as to the validity of a certain annexation ordinance adopted by the City of Spooner pursuant to Sec. 66.021(7)(a),

Stats. the instant lawsuit constituting a declaratory judgment action in accord with Sec. 66.021(10)(a), Stats., commenced by the plaintiff town in its capacity as an interested party under said statute.

1.5 Evidence. As evidence, the Court considered a Stipulation of Facts entered into by and between each of the parties to this lawsuit and submitted to the Court in the course of trial. In addition, the Court duly considered Exhibits "1" through "14", duly stipulated to entry by and between all parties to the instant cause of action and placed in evidence before the Court. The Court heard further testimony of Robert Eichhorn and Mel Anderson, on behalf of the intervening defendants, and, in rebuttal, on behalf of the plaintiff, James Jorgenson.

1.6 Pre-Trial Motions. Prior to commencing its hearing on the merits of the plaintiff's Complaint, this Court duly heard and disposed of the following Motions raised by the intervening defendants:

(1) Dismissal of the lawsuit for failure of the plaintiff to have served the Wisconsin Attorney General with a copy of the Summons and Complaint -- Denied upon the basis that on or about September 10, 1987, such service was accomplished by the plaintiff and, as affirmed

in a telephone call to James Jeffries, Assistant Attorney General, the Wisconsin Department of Justice had no interest in appearing in the case and participating.

(2) Dismissal of the plaintiff's res judicata claim, set forth in its second cause of action, which claim was raised relative to a prior decision of the Washburn County Circuit Court in case 85 CV 161 -- Granted.

(3) Dismissal of the plaintiff's damages claim set forth in its second cause of action -- Granted upon the basis that the statutes which govern annexation matters do not provide a legal remedy to the plaintiff in this respect.

(4) Dismissal of the plaintiff's injunctive relief claim set forth in its second cause of action -- Granted upon the basis that this Court lacks the authority to prohibit the defendant City of Spooner from exercising its right of legislative prerogative.

II. FINDINGS OF FACT.

In bringing this lawsuit, it is the plaintiff's contention that the adoption by the City of Spooner of an annexation ordinance on December 18, 1986, under which ordinance the defendant City effectively annexed to it the territory subject to this lawsuit, in accord with the

annexation petition of September 2, 1986, Exhibit "12", violated the "rule of reason" used in judicial review of annexation ordinances. As this Court views the so-called rule of reason, it consists of three (3) criteria:

(1) The territory subject to the annexation petition must not be irregular in shape and arbitrary. Nonetheless, in the instant case, this is not an issue as all parties hereto have so agreed. Hence, no Findings of Fact are so required.

(2) Some reasonable present or future demonstrable need for annexation must be shown. The Court will pertain its recitation of facts in these Findings to this criteria, hereinafter.

(3) No other factors must exist which support the contention that adoption of the ordinance constituted an abuse of discretion which, typically, in case law has to do with the avoidance of undue influence or pressure exerted upon the petitioners for annexation by the annexing city. The parties to this lawsuit having stipulated that this is not an issue, the sole criteria under the rule of reason upon which this Court's decision is based is that of (2), above, -- whether some reasonable present or future demonstrable need for the annexation has been shown to this

Court.

Numerous cases of the Wisconsin Appellate Courts have established factors which Courts recognize as being relevant to this issue. In this Court's opinion, the recitation of said factors set forth in Town of Pleasant Prairie v. City of Kenosha, 75 Wis.2d 322, 249 N.W.2d 581 (1977), is exemplary; however, as based upon this Court's reading of the relevant cases, the factors set forth therein do not constitute an exhaustive list and the Court may, if furnished with evidence of other factors which have a bearing upon the legal conclusion that the rule of reason has been satisfied, consider other factors. It is, in any event, the conclusion of this Court, as set forth below, that sufficient evidence under the specific factors set forth in Wisconsin case law to date have been established to validate the annexation ordinance under the rule of reason.

In this case, it is the Court's finding of fact that the City of Spooner does not have any need to expand for purposes of industrial, residential or commercial growth. No evidence has been presented to this Court that the territory in question is needed for orderly and planned urban development by the City of Spooner. Further, no need has been established to the satisfaction of this Court for

the City of Spooner to annex the territory in question due to any existing or anticipated growth in population nor as to industrial, residential or commercial growth.

This Court finds that there is a need, however, for extension of municipal sewer and water services to a substantial number of residents in the territory sought to be annexed. In addition, there is a need for extension of such municipal sewer and water services beyond the obvious need of simply supplying the resident electors of the territory sought to be annexed with the ability to properly dispose of their sewage and to procure a pure source of water and that the additional need is formulated upon the basis that there is a need to alleviate a pollution problem in the ground water of the territory sought to be annexed, which ground water pollution also threatens streams in the area that the ground water in the territory sought to be annexed drains into.

The Court finds that the ground water pollution problem constitutes a present need and evidence, in the form of the Wisconsin Department of Natural Resources' assessment of the water pollution problem, submitted as Exhibit "11", demonstrates that a future problem as to ground water pollution also exists, thus establishing a demonstrable

future need for annexation, in addition to the present need.

Furthermore, the defendant City of Spooner already has a water main in place which could serve a portion of the territory sought to be annexed. Intervening defendant, Rawn Company, Inc., has already hooked up to the main to serve its manufacturing facility but cannot use the water from said main because the defendant City will not allow it to do so until and unless its land is annexed to the City.

The plaintiff Town claims that it could provide municipal water and sewer services in the same manner as could the City of Spooner through the auspices of a town sanitary district and it further has argued that the sanitary district, already established, has a present ability, pursuant to a contract entered into with the City (Exhibit "2"), which contract was entered into in or about March, 1987, to provide such services to the territory sought for annexation. Nonetheless, this Court finds that the annexation ordinance in question was adopted by the City Council of the defendant city on December 18, 1986, and that municipal water and sewer services were not then available through the town sanitary district. It is the finding of this Court that on December 18, 1986, the Town of Beaver

Brook Sanitary District did not have the ability to furnish those services although subsequent to that date it did attempt to create such ability, as referenced by Exhibit "2", and, indeed, even in consideration of said agreement, the evidence is unclear to the Court as to whether the services can be provided in light of contingencies on the face of said contract which need to be met.

It is a further finding of this Court that municipal water service of the City of Spooner has been extended, via the placement of a water main, adjacent to the property of Rawn Company, Inc., situated in the territory subject to annexation and that this factor is relevant to the need issue.

It is the further finding of this Court that a showing of benefits to the territory sought to be annexed has been established in the following manner. The benefit to all of the territory sought to be annexed is the potential alleviation of the ground water pollution problem, which problem is evidenced by the Department of Natural Resources' Findings and Conclusions, herein considered by the Court, to the effect that all of the territory sought to be annexed would be benefited by the hooking up of their properties with municipal sewer and water services. In

addition, there is evidence before this Court that the two (2) intervening defendants, Rawn Company, Inc., and Eugene and Vonnie Durand, would have their properties benefited by the availability upon annexation of municipal sewer and water services provided to them through the City of Spooner and that Rawn Company, Inc., would be benefited, as based upon the evidence presented to this Court, by the availability to it of lower fire insurance premiums, a lower cost to it of sewage disposal, the provision to it of better quality water and even in the anticipated advantage of more extensive police and fire services being provided to its property by the City of Spooner. An improvement in police and fire services is believed by both intervening defendants to result from annexation of their properties to the City of Spooner. In addition, this Court finds that the Durands and their property within the territory sought to be annexed will benefit in that the zoning provisions of the City of Spooner, as opposed to the zoning provisions of the County of Washburn, presently in effect regarding their property situated in the Town of Beaver Brook, would be more advantageous to the Durands as to their business use of their property.

In addition to the above commentary, the Court makes the following specific Findings of Fact:

(1) That the defendant City of Spooner adopted the annexation ordinance subject to this lawsuit on December 18, 1986.

(2) That said ordinance was adopted pursuant to a petition for direct annexation submitted by electors and landowners in accord with Sec. 66.021(2)(a), Stats.

(3) That, in accord with the stipulation of the parties, the signing and submission of the direct petition for annexation by the intervening defendants and other electors and landowners with respect to the territory sought to be annexed was not subject to the imposition by the defendant City of any undue influence, pressure, coercion, threats or promises so as to induce the filing of said petition.

III. CONCLUSIONS OF LAW.

The Court hereby makes the following conclusions of law: In accord with the decisions of the Wisconsin Appellate Courts, as highlighted in Town of Pleasant Prairie v. City of Kenosha, 75 Wis.2d 322, 249 N.W.2d 581 (1977), as based upon a review of the evidentiary factors set forth above and as generally contained within

the evidence submitted to this Court, the plaintiff Town failed to carry its burden of proof and, accordingly, this Court declares that the presumption of validity, which attaches at common law to the City of Spooner annexation ordinance, is to be upheld and that said ordinance satisfies the so-called rule of reason, adopted by the appellate courts of this state for purposes of review of annexation ordinances. Furthermore, contrary to the plaintiff's contention, it is deemed by this Court that the rule of reason consists of more than a resort to a determination as to whether the annexing City has a present or demonstrable future need for expansion of industrial, commercial, residential or other urban purposes and that, as such, this Court may take into consideration other factors in determining need, inclusive of but not limited to benefit to the territory sought to be annexed.

It is the further conclusion of this Court that it is the state of the facts as they existed as of the date of adoption of the ordinance in question, on December 18, 1986, that should control this Court's decision.

In accord with the decision of Town of LaFayette v. City of Chippewa Falls, 70 Wis.2d 610, 235 N.W.2d 435 (1975), the rule of reason test can be satisfied

entirely upon a finding of benefits to the territory sought to be annexed without evidence of further need by the annexing municipality for the territory in question. Indeed, in said decision, the trial Court did find that there was no need for the annexed lands for commercial, business or residential uses by the annexing municipality.

It is this Court's further conclusion that if any of the factors which the Court can consider, in light of case law, establish some reasonable present or future need for the annexation, the rule of reason test is met.

It is the further conclusion of this Court that a legitimate need, on the part of the defendant City of Spooner, exists for the annexation relative to solution of the existing and future ground water pollution problem by the extension of municipal sewer and water service to the territory sought to be annexed. Furthermore, it is the conclusion of this Court that benefits will flow to the annexed land, which benefits are sufficient pursuant to the case of Town of LaFayette v. City of Chippewa Falls, supra., to satisfy the rule of reason.

In addition, this Court, in accord with Town of Waukesha v. City of Waukesha, 58 Wis.2d 525, 206 N.W.2d 585 (1973), deems that the will or wish of the petitioners,

herein the intervening defendants, is relevant and susceptible to consideration by this Court in its determination of the validity of the ordinance under the rule of reason test.

Furthermore, this Court does not deem it to be necessary that the benefits proven to this Court apply to all of the territory sought to be annexed. Pursuant to statutes, annexation may be triggered by the submission of a petition by less than all of the landowners whose property is sought to be annexed. It is the Court's determination that the benefits to the annexed territory are substantial enough and, even standing by themselves, in the absence of any other need by the City of Spooner, will satisfy the rule of reason test established by this state's Appellate Courts.

IV. ADJUDICATION.

On the basis of the foregoing, consisting of the evidence placed before the Court, including the stipulation of facts by the parties hereto and the additional testimony submitted to this Court,


IT IS HEREBY ADJUDGED:

That the plaintiff Town of Beaver Brook has failed to carry its burden of proof to establish that the challenged annexation ordinance of the defendant City of

Spooner violates the rule of reason and, for this reason, the annexation ordinance in question adopted by the City of Spooner on December 18, 1986, is hereby validated by this Court. This Court further awards taxation of costs to the defendants and intervening defendants and hereby orders, effective on the date of trial, September 11, 1987, that the plaintiff's Complaint be and hereby is dismissed. The Court further awards costs to the defendants in the amount of \$120.00.

Dated: 10/7/87

BY THE COURT:


Hon. Thomas J. Gallagher

STATE OF WISCONSIN
RECEIVED AND FILED

MAY 09 1988

DOUGLAS LA FOLLE
SECRETARY OF STATE