

451.21

CITY

145

---

CITY OF MADISON

COUNTY OF DANE

TERMINATION OF ANNEXATION LITIGATION  
CASE #91CV2345

---

OFFICE OF THE SECRETARY OF STATE  
*State of Wisconsin*

FILED: JUNE 3, 1992

---

## CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

Date:

*June 3, 1992*

File Ref:

*145*

To:

John Pamperin  
Department of Transportation  
Room 951, Hill Farm State Office Bldg.

From:

Secretary of State's Office  
Billie Zeien  
Government Records Division

Subject:

Municipal filings re: Chapter 66, Wis. Stats.

Enclosed please find the following:

☐ Annexation☐ Detachment☐ Notice of Litigation☒ Other: *Termination of Annexation Litigation*

City/Village of:

*Madison*

County of:

*Dane*

Land from Town/Village of:

Ordinance #:

*Case # 91CV2345*

Adoption date:

*March 19, 1991*

Population:

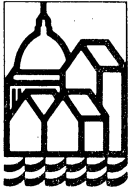
If you have any questions, please contact our office.

cc:

Ralph Taylor, Dept of Revenue  
Paul Endres, Dept of Public Instruction  
George Hall, DOA/Energy & Intergovernmental Relations  
Bob Naylor, Dept of Administration  
Kate Lawton, DATCP  
Clerk  
File

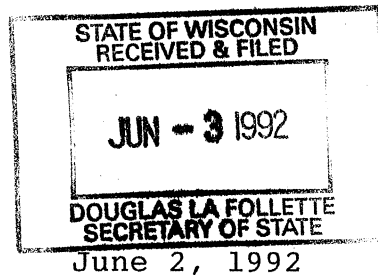
## Office of the City Attorney

City of  
Madison



Eunice Gibson, City Attorney

City-County Building, Room 401  
210 Martin Luther King, Jr. Boulevard  
Madison, Wisconsin 53710  
608 266 4511  
FAX 608 267 8715



### Assistant City Attorneys

William A. Jansen  
Larry W. O'Brien  
Robert E. Olsen  
James M. Voss  
John E. Rothschild  
James L. Martin  
Rick Petri  
Carolyn S. Hogg  
Sally P. Probasco  
Anne P. Zellhoefer  
Leila C. Pine

### Litigation Assistant

Patricia J. Sammataro

The Honorable Douglas LaFollette  
Secretary of State, State of Wisconsin  
10th Floor, 30 West Mifflin Street  
P.O. Box 7848  
Madison, WI 53707

Re: Town of Middleton v. City of Madison and Laverne L.  
Theis, Randall Theis and Karen Theis; Case No. 91CV2345

Dear Mr. LaFollette:

Enclosed please find the original plus 3 copies, pursuant to Sec. 66.026, Wis. Stats., of the Termination of Annexation Litigation -- Notice of Entry of Judgment and Affidavit of Mailing for same on behalf of the Defendant, City of Madison, in the above-entitled action. Please file these.

Also enclosed is a copy of this letter. Kindly indicate the date of filing of the above-described papers on the copy of this letter and return it to our office. Thank you.

Very truly yours,

A handwritten signature in cursive script, reading "James M. Voss".

James M. Voss  
Assistant City Attorney

JMV:sob  
Enclosures

cc: Attorney Thomas G. Voss  
Attorney David A. Geier  
Attorney William F. White  
Randall, Laverne & Karen Theis

BEFORE THE SECRETARY OF STATE  
STATE OF WISCONSIN

STATE OF WISCONSIN  
RECEIVED & FILED

JUN - 3 1992

TOWN OF MIDDLETON,  
Plaintiff,

TERMINATION OF ANNEXATION LITIGATION --  
NOTICE OF ENTRY OF JUDGMENT

vs.

CITY OF MADISON,

Defendant,

Case No. 91CV2345

and

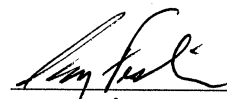
LAVERNE L. THEIS, RANDALL  
THEIS and KAREN THEIS,

Intervening Defendants.

TO: The Honorable Douglas LaFollette  
Secretary of State, State of Wisconsin  
10th Floor, 30 West Mifflin Street  
P.O. Box 7848  
Madison, WI 53707

PLEASE TAKE NOTICE that on the 21st day of May, 1992,  
judgment, a copy of which is attached hereto, was duly entered  
in the above captioned Dane County Circuit Court action in the  
Office of the Clerk of the Circuit Court declaring that City of  
Madison Annexation Ordinance No. 10,217, adopted by the Madison  
City Common Council on March 19, 1991, and the annexation  
effectuated thereby, are valid.

Dated this 2ND day of June, 1992.

  
Ray Fisher, Acting City Clerk

TOWN OF MIDDLETON,

Plaintiff,

vs.

CITY OF MADISON,

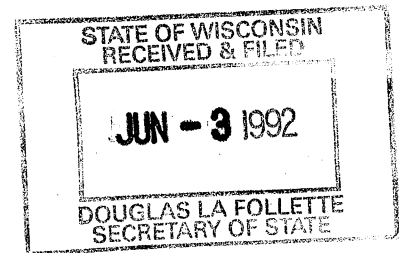
Case No. 91-CV-2345

Defendant

and

LAVERNE L. THEIS, RANDALL  
THEIS and KAREN THEIS,

Intervening Defendants.



---

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

---

This action was commenced by the Town of Middleton against the City of Madison to contest the validity of an annexation ordinance. Laverne, Randall and Karen Theis (the Theis family) moved the court for an order permitting them to intervene as defendants. The matter, having come on for hearing before the Honorable Mark A. Frankel, Dane County Circuit Judge, Branch 12, on the defendants' motions for summary judgment; and the court having considered the pleadings, record, affidavits, briefs and oral argument, and having ruled from the bench on April 22, 1992, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

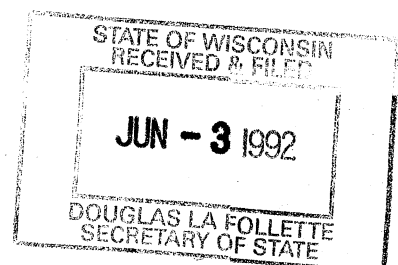
1. The City of Madison (City) is a Wisconsin municipal corporation located in Dane County, Wisconsin.
2. The Town of Middleton (Town) is a Wisconsin body corporate located in Dane County, Wisconsin.

3. Laverne and Randall Theis are residents and Laverne, Randall and Karen Theis are property owners within the annexed territory who initiated the annexation proceedings which are the subject of this action.

4. The annexation of approximately 840 acres from the Town to the City, known as the Middleton Junction annexation, is a direct annexation initiated by a number of qualified electors residing in such territory equal to at least the majority of votes cast for governor in the territory in the last gubernatorial election, and the property owners of at least one-half of the real property in assessed value within the annexed territory, pursuant to Sec. 66.021(2)(a)1., Wis. Stats. There were no substantive or procedural irregularities in the annexation notice, publication, petition or ordinance. No referendum was requested. The Town has conceded the validity of the annexation petition and its scale map on the record.

5. The Town conceded that the shape of the annexation created no town islands. The shape is otherwise unexceptional and was determined by the petitioners, the Theis family. Inclusion and exclusion of certain parts of Town roads from the territory annexed is reasonable and creates no unfair burden upon the Town for road maintenance or provision of services.

6. The Wisconsin Department of Development favorably reviewed the proposed annexation, including its shape, and found it not to be against the public interest.



7. The City of Madison Plan Commission held a public hearing on March 4, 1991, regarding the proposed annexation and thereafter recommended annexation of the subject property to the City of Madison Common Council, consistent with the City's adopted Peripheral Area Development Plan (PADP) and the Planning Unit Staff Report dated February 21, 1991.

8. The Common Council annexed the territory to the City on March 19, 1991, by adoption of Ordinance No. 10,217.

9. The Town commenced this action on June 14, 1991.

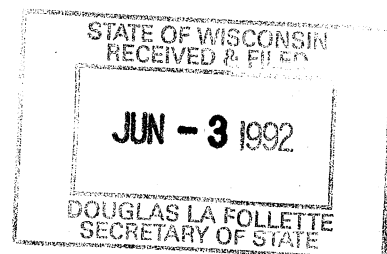
10. The motion of the Theis family to intervene was timely.

11. The Theis family has an ownership interest in a substantial portion of the property which is the subject of this action.

12. The Theis family was afforded significant benefits by this annexation and the Town offered no credible evidence to refute benefits provided to the Theis family.

13. The City has shown a demonstrable future need for the territory annexed, as established by its thorough and comprehensive PADP and Planning Unit staff report. Rapid urban development rates, especially on Madison's west side, together with the reduction of available vacant and agricultural lands within the City, even though substantial amounts of such lands have been annexed to Madison over the past 20 years, further supports the need for this annexation.

14. Alleged changes to prior City land use plans and the existence of extraterritorial growth control regulations do not



disprove the City's need for this annexation as established by Planning Unit Staff and the adopted PADP.

15. The twenty (20) year planning period used by the City is reasonable and is to be accorded legislative deference.

16. The City did not offer improper economic inducement or unlawfully delegate authority to the Theis family in effecting the annexation.

#### CONCLUSIONS OF LAW

Upon the foregoing findings of fact, the court reaches the following conclusions of law:

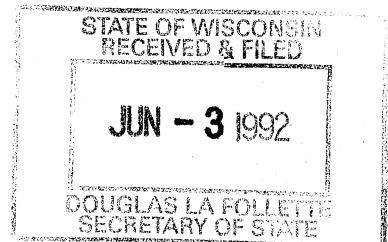
1. No genuine dispute as to material facts exist.

2. Defendants presented a prima facie case establishing a demonstrable future City need for the territory within the annexation consistent with the City's adopted PADP, and the property owners received substantial benefits from the annexation. The shape of the annexation is unexceptional and creates no unfair burden upon the Town for road maintenance or provision of services.

3. The City did not act in an arbitrary, capricious, or unreasonable manner in annexing this property.

4. The City did not abuse its discretion in annexing this property pursuant to the valid annexation petition filed by the Theis family in compliance with all applicable statutory annexation procedures and requirements.

5. The City and the Theis family are, therefore, entitled to summary judgment against the Town declaring Ordinance No.





10,217, adopted by the City's Common Council on March 19, 1991, and the annexation effectuated thereby to be valid.

6. The City and the Theis family are further entitled to judgment against the Town dismissing the amended complaint, upon its merits, with prejudice, together with taxable costs and disbursements.

#### JUDGMENT

Upon the foregoing findings of fact and conclusions of law:

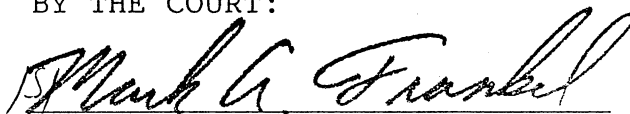
1. It is adjudged and declared that Ordinance No. 10,217, adopted by the City Common Council on March 19, 1991, and the annexation effectuated thereby, are valid; and

2. It is further adjudged that the amended complaint of the Town be and hereby is dismissed upon its merits and with prejudice; and

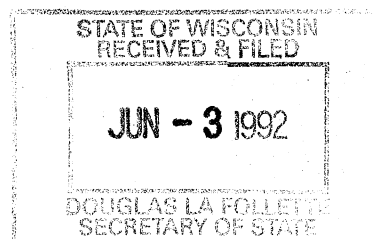
3. It is further adjudged that both the City and the Theis family do have and recover from the Town their costs and disbursements herein which shall be taxed by the Clerk.

Rendered this 21 day of May, 1992.

BY THE COURT:



Mark A. Frankel  
Circuit Judge, Dane County  
Court Branch 12



AFFIDAVIT OF MAILING

STATE OF WISCONSIN) )  
COUNTY OF DANE ) SS.

SUSAN L. O'BRIEN being first duly sworn on oath, deposes and says that:

1. She is a Secretary in the Office of the City Attorney, City of Madison, Dane County, Wisconsin, and did on the 2nd day of June, 1992, at approximately 2:40 in the afternoon, place in envelope(s) addressed:

Thomas G. Voss  
Voss, Nesson, Erbach & Voss, S.C.  
119 East Main St., P.O. Box 1348  
Madison, WI 53701-1348

David A. Geier  
LaRowe & Gerlach, S.C.  
110 E. Main St., Suite 816  
Madison, WI 53703

William F. White  
Michael, Best & Friedrich  
1 S. Pinckney Street, P.O. Box 1806  
Madison, WI 53701-1806

Randall, LaVerne, & Karen Theis  
c/o LaVerne Theis  
7093 Mineral Point Road  
Verona, WI 53593

a true and correct copy of the Termination of Annexation  
Litigation--Notice of Entry of Judgment attached hereto. (Case No.  
91CV2345)

2. She did seal said envelope(s) addressed as aforesaid and caused said envelope(s) to have affixed thereto sufficient and adequate postage.

3. On or about said time she personally deposited the said envelope(s) in a United States Post Office mail receptacle at 210 Martin Luther King Jr. Blvd., in the City of Madison, Dane County, Wisconsin.

Subscribed and sworn to before me  
this 2<sup>nd</sup> day of June, 1992.

Patricia A. Husted  
Notary Public, State of Wisconsin  
My Commission expires 5-14-95

Juan L O. Bues

