

CITY OF SUN PRAIRIE

COUNTY OF DANE

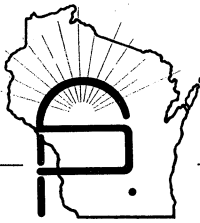
Notice of Litigation

Between the Town of Burke and The City

Re: Ordinance No. 32, adopted April 5, 1988

OFFICE OF THE SECRETARY OF STATE
State of Wisconsin

Filed June 22, 1988



CITY OF SUN PRAIRIE

OFFICE OF THE CITY CLERK
124 COLUMBUS STREET
SUN PRAIRIE, WISCONSIN 53590-2299
(608) 837-2511

June 21, 1988

Secretary of State
201 East Washington Avenue
Madison, WI 53703

Gentlemen:

According to Wisconsin State Statutes 66.026, please find enclosed four (4) copies of the Summons and Complaint in regards to the recent annexation lawsuit between the Town of Burke -vs- City of Sun Prairie (Simon-Windfield annexation).

If you should have any question, please feel free to contact me at 837-2511.

Sincerely,

Edna E. Markstahler
City Clerk

Encls.

CC: City Administrator
City Attorney

STATE OF WISCONSIN
RECEIVED AND FILED

JUN 22 1988

DOUGLAS LA FOLLET
SECRETARY OF STATE

RECEIVED

MAY 31 1988

6/22/88 2:30 pm
GEORGE NORTHRUP
Circuit Court BR 14

STATE OF WISCONSIN
CITY CLERKS OFFICE

CIRCUIT COURT

DANE COUNTY

TOWN OF BURKE, a municipal
corporation,

Plaintiff,

v.

CITY OF SUN PRAIRIE, a
municipal corporation,

Defendant.

SUMMONS

State of Wisconsin
County of Dane
I hereby certify this is a true
copy of the original Summons
Complaint, filed in my office
Jest: MD
Clerk of Courts
by Deputy CC

STATE OF WISCONSIN
RECEIVED AND FILED

JUN 22 1988

DOUGLAS LA FOLLET
SECRETARY OF STATE

Case No.

88CV2973

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has
filed a lawsuit or other legal action against you. The
Complaint, which is attached, states the nature and basis of the
legal action.

Within twenty days (20) of receiving this Summons, you must
respond with a written answer, as that term is used in ch. 802 of
the Wisconsin Statutes, to the Complaint. The court may reject
or disregard an answer that does not follow the requirements of
the statutes. The answer must be sent or delivered to the court,
whose address is Clerk of Courts, 210 Martin Luther King, Jr.
Boulevard, Madison, WI 53709, and to Axley Brynerson, plaintiff's
attorneys, whose address is 122 West Washington Avenue, Post
Office Box 1767, Madison, WI 53701-1767. You may have an
attorney help or represent you.

If you do not provide a proper answer within twenty (20)
days, the court may grant judgment against you for the award of
money or other legal action requested in the Complaint, and you

may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 23rd day of May, 1988.

AXLEY BRYNELSON



Frank J. Bucaida
Michael J. Westcott
Attorneys for Plaintiff
122 West Washington Avenue
Post Office Box 1767
Madison, WI 53701-1767
(608) 257-5661

TOWN OF BURKE, a municipal
corporation,

Plaintiff,

COMPLAINT

v.

CITY OF SUN PRAIRIE, a
municipal corporation,

Defendant.

Case No.

88CV2973

NOW COMES the plaintiff, Town of Burke, by its attorneys Axley Brynelson by Frank J. Bucaida and Michael J. Westcott and for its complaint states as follows:

1. Plaintiff, Town of Burke, is a municipal corporation organized and existing under the laws of the State of Wisconsin with offices located at 4016 East Washington Avenue, Madison, WI.

2. Defendant, City of Sun Prairie, is a municipal corporation organized and existing under the laws of the State of Wisconsin with offices located at 124 Columbus Street, Sun Prairie, WI.

3. This action is brought pursuant to sec 66.029, Stats. for declaratory relief finding defendant, City of Sun Prairie's, annexation of certain property from plaintiff, Town of Burke, to be void and invalid.

4. On or about April 5, 1988, the Common Council of the City of Sun Prairie purported to pass ordinance Number 32 (hereafter "ordinance"). A true and correct copy of said

ordinance is attached hereto as Exhibit A and incorporated herein by reference.

5. The boundaries of the territory purportedly annexed from the plaintiff, Town of Burke, to defendant, City of Sun Prairie, (hereafter "territory") are described as:

Part or all of the following tracts:

South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 12
Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 12
South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 13
Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 13
Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 13
Northwest $\frac{1}{4}$ of Section 13
North $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 13
Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 13
North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 13
East $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 14

all located in township 8 North, Range 10 East, in the Town of Burke, Dane County,

together with part or all of the following tracts:

West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 18

all located in Township 8 North, Range 11 East, in the Town of Sun Prairie, Dane County, Wisconsin.

Said lands are more fully described as follows:

Beginning at the East $\frac{1}{4}$ corner of said Section 13, T8N, R10E;

Thence Northerly, 720 feet \pm along the east line of said Section 13, to the Northerly right of way of the railroad;

Thence Northeasterly along the Northerly right of way of said railroad 440 feet \pm to the west line of lands described in Volume 516 Records Page 73, Dane County, Wisconsin Registry; Thence along said West line, N1°44'57"W, 955.83 feet;

Thence Westerly 330 feet more or less to the West line of said Section 18, T8N, R11E, at a point 811 feet South of the Northwest corner of said Section 18;

Thence Westerly parallel to the North line of said Section 13, 1320 feet \pm ;

Thence Northerly 811 feet along the east line of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 13;

Thence Northerly 1320 feet \pm along the East line of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 12;

Thence Westerly 1320 feet \pm along the North line of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 12;
Thence southerly 667.5 feet along the North-South $\frac{1}{4}$ line of said Section 12;
Thence Westerly parallel to the South line of said Section 12, 358 feet;
Thence Northerly, 667.5 feet parallel to the North-South $\frac{1}{4}$ line of said Section 12;
Thence Westerly 391 feet \pm along the North line of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 12, to the Southeasterly right of way of U.S. H.151;
Thence Southwesterly 277.9 feet along the southeasterly right of way of U.S. H.151;
Thence Southeasterly at right angles to said right of way 253.0 feet;
Thence Southwesterly parallel to said right of way, 372.5 feet;
Thence Northwesterly at right angles to said right of way 253.0 feet;
Thence Southwesterly along said right of way 307.0 feet;
Thence Southeasterly at right angles to said right of way 386.8 feet;
Thence Southwesterly parallel to said right of way 385.40 feet;
Thence Southeasterly at right angles to said right of way, 144.2 feet to the intersection with the South line of said Section 12;
Thence Westerly 748.8 feet along the North line of said Section 13 to the Southeasterly right of way of said U.S. H.151;
Thence Southwesterly 865.4 feet along said right of way;
Thence Northwesterly at right angles 15 feet along said right of way;
Thence Southwesterly 815 feet \pm along said right of way to the intersection with the centerline of Reiner Road;
Thence Southeasterly and Southerly 1460 feet \pm along the centerline of Reiner Road;
Thence S $64^{\circ} 07' 40''$ E, 8.37 feet to the West $\frac{1}{4}$ corner of said Section 13;
Thence Southerly 1326.6 feet \pm along the West line of said Section 13;
Thence Easterly 1320.8 feet \pm along the South line of the North $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 13;
Thence Southerly 540 feet \pm along the West line of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 13;
Thence Northeasterly 3500 feet \pm along the Northerly right of way of the railroad to the East-West $\frac{1}{4}$ line of said Section 13;

Thence Easterly 1110 feet ± along said East-West ½ line of said Section 13, to the point of beginning of this description, in part of Sections 12, 13 and 14, T8N, R10E, Town of Burke and part of Section 18, T8N, R11E, Town of Sun Prairie, Dane County, Wisconsin

Said parcel contains 465.82 acres.

FIRST CAUSE OF ACTION

6. Plaintiff realleges and reincorporates herein paragraphs 1 through 5 of this complaint.

7. Upon information and belief defendant, City of Sun Prairie, failed to strictly comply with the procedural requirements of sec. 66.021, Stats. thereby rendering the purported ordinance void and unenforceable.

SECOND CAUSE OF ACTION

8. Plaintiff realleges and reincorporates herein paragraphs 1 through 5 of this complaint.

9. Upon information and belief the purported annexation excludes lands which are owned by individuals which are opposed to the purported annexation of the territory. The sole purpose for said exclusion was to insure the successful passage of the purported ordinance.

10. As a result of the aforementioned exclusion of property owners, irregularities in the boundaries have been created, which in addition to the already irregular boundaries of the defendant, create a "crazy-quilt" boundary.

11. Defendant, City of Sun Prairie has not enjoyed a substantial increase in population sufficient to justify the purported annexation.

12. Defendant, City of Sun Prairie, has no need for additional area for construction of homes, mercantile, manufacturing or industrial establishments.

13. Defendant, City of Sun Prairie has no need for additional land in which to accommodate present or anticipated future growth.

14. The defendant's actions in accepting the petition for ordinance and adopting the purported ordinance were arbitrary, capricious and an abuse of discretion.

THIRD CAUSE OF ACTION

15. Plaintiff realleges and reincorporates paragraphs 1 through 5 of this complaint.

16. Defendant, City of Sun Prairie, has therefore failed to demonstrate, nor does it have, a reasonable present or demonstrable future need for the territory annexed vis a vis the subject ordinance.

FOURTH CAUSE OF ACTION

17. Plaintiff realleges and reincorporates paragraphs 1 through 5 of this complaint.

18. Defendant, City of Sun Prairie, was not contiguous to the territory within the meaning of sec. 66.021, Stats., so as to justify the annexation of the subject territory.

19. The sole connection of the purportedly annexed territory and that of defendant is a utility corridor designated as "Clairmar Drive" set forth on the "proposed annexation map" a copy of which is attached hereto as Exhibit B and incorporated herein.

20. The territory purportedly annexed is, due to the aforementioned corridor, merely a "shoestring" annexation, resulting in gerrymandering boundaries and is therefore arbitrary, capricious and an abuse of discretion.

FIFTH CAUSE OF ACTION

21. The purported annexation will effectively force the development and increased maintenance of Reiner Road, the major access point to the territory, at the expense of plaintiff Town of Burke; with no concomitant benefit of increased tax revenues accruing to plaintiff.

22. Defendant, City of Sun Prairie, has, upon information and belief, failed to consider this deleterious effect of the purported annexation on the Town of Burke and therefore acted arbitrarily and capriciously.

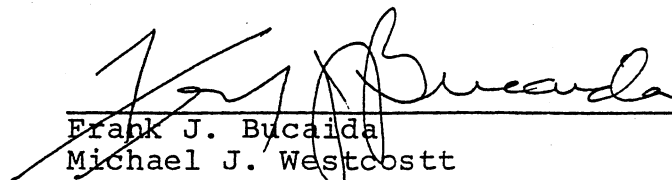
WHEREFORE plaintiff demands judgment:

- A. Declaring the defendant, City of Sun Prairie's annexation ordinance Number 32 arbitrary, capricious, unreasonable, void and unenforceable;
- B. Enjoining the defendant, City of Sun Prairie from applying and/or enforcing said annexation ordinance;
- C. Awarding plaintiff its costs and disbursements of this action; and

D. Granting plaintiff such other and further relief as
this court may deem just and equitable.

Dated this 23rd day of May, 1988.

AXLEY BRYNELSON



Frank J. Bucalida
Michael J. Westcott
Attorneys for Plaintiff
122 West Washington Avenue
Post Office Box 1767
Madison, WI 53701-1767
(608) 257-5661

City of Sun Prairie, Wisconsin

AN ORDINANCE

ANNEXING TERRITORY TO THE CITY
OF SUN PRAIRIE

Presented..... April 5, 1988

Referred to.....

Reported Back.....

Adopted..... Apr. 5, 1988 Placed
On File.....

Rules Suspended.....

Re-Referred to.....

Public Hearing.....

AN ORDINANCE

Ordinance No. 32

File Number..... 5167

By

The Common Council of the City of Sun Prairie, Wisconsin, do ordain as follows:

SECTION 1. Territory Annexed. In accordance with s. 66.021 of the Wisconsin Statutes, and the petition for direct annexation filed with the City clerk on the 14th day of March, 1988 signed by the owners of more than half of the land in area in the territory, the following described territory in the Town of Sun Prairie, Dane County, Wisconsin, is annexed to the City of Sun Prairie, Wisconsin:

Part or all of the following tracts:

South 1/2 of the Southwest 1/4 of Section 12
Southwest 1/4 of the Southeast 1/4 of Section 12
South 1/2 of the Northeast 1/4 of Section 13
Northwest 1/4 of the Northeast 1/4 of Section 13
Northeast 1/4 of the Northeast 1/4 of Section 13
Northwest 1/4 of Section 13
North 1/2 of the Southwest 1/4 of Section 13
Southeast 1/4 of the Southwest 1/4 of Section 13
North 1/2 of the Southeast 1/4 of Section 13
East 1/2 of the Northeast 1/4 of Section 14

all located in township 8 North, Range 10 East, in the Town of Burke, Dane County,

together with part or all of the following tracts:

West 1/2 of the Northwest 1/4 of Section 18

all located in Township 8 North, Range 11 East, in the Town of Sun Prairie, Dane County, Wisconsin.

Said lands are more fully described as follows:

Beginning at the East 1/4 corner of said Section 13, T8N, R10E;
Thence Northerly, 720 feet ± along the east line of said Section 13, to the Northerly right of way of the railroad;
Thence Northeasterly along the Northerly right of way of said railroad 440 feet ± to the west line of lands described in Volume 516 Records, page 73, Dane County, Wisconsin Registry; Thence along said West line, N 1°44'57"W, 955.83 feet;
Thence Westerly 330 feet more or less to the West line of said Section 18, T8N, R11E, at a point 811 feet South of the Northwest corner of said Section 18;

Thence Westerly parallel to the North line of said Section 13, 1320 feet \pm ;
Thence Northerly 811 feet along the east line of the Northwest 1/4 of the Northeast 1/4 of said Section 13;
Thence Northerly 1320 feet \pm along the East line of the Southwest 1/4 of the Southeast 1/4 of said Section 12;
Thence Westerly 1320 feet \pm along the North line of the Southwest 1/4 of the Southeast 1/4 of said Section 12;
Thence southerly 667.5 feet along the North-South 1/4 line of said Section 12;
Thence Westerly parallel to the South line of said Section 12, 358 feet;
Thence Northerly, 667.5 feet parallel to the North-South 1/4 line of said Section 12;
Thence Westerly 391 feet \pm along the North line of the Southeast 1/4 of the Southwest 1/4 of said Section 12, to the Southeasterly right of way of U.S. H.151;
Thence Southwesterly 277.9 feet along the southeasterly right of way of U.S. H.151;
Thence Southeasterly at right angles to said right of way 253.0 feet;
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Thence Southeasterly at right angles to said right of way 386.8 feet;
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Thence Southeasterly at right angles to said right of way, 144.2 feet to the intersection with the South line of said Section 12;
Thence Westerly 748.8 feet along the North line of said Section 13 to the Southeasterly right of way of said U.S. H.151;
Thence Southwesterly 865.4 feet along said right of way;
Thence Northwesterly at right angles 15 feet along said right of way;
Thence Southwesterly 815 feet \pm along said right of way to the intersection with the centerline of Reiner Road;
Thence Southeasterly and Southerly 1460 feet \pm along the centerline of Reiner Road;
Thence S $64^{\circ} 07' 40''$ E, 8.37 feet to the West 1/4 corner of said Section 13;
Thence Southerly 1326.6 feet \pm along the West line of said Section 13;
Thence Easterly 1320.8 feet \pm along the South line of the North 1/2 of the Southwest 1/4 of said Section 13;
Thence Southerly 540 feet \pm along the West line of the southeast 1/4 of the Southwest 1/4 of said Section 13;
Thence Northeasterly 3500 feet \pm along the Northerly right of way of the railroad to the East-West 1/4 line of said Section 13;
Thence Easterly 1110 feet \pm along said East-West 1/4 line of said Section 13, to the point of beginning of this description, in part of Sections 12, 13 and 14, T8N, R10E, Town of Burke and part of Section 18, T8N, R11E, Town of Sun Prairie, Dane County, Wisconsin

Said parcel contains 465.82 acres.

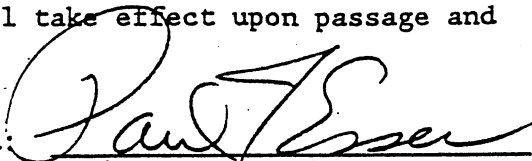
SECTION 2. Effect of Annexation. From and after the date of this ordinance, the territory described in Section 1 shall be a part of the City of Sun Prairie for any and all purposes provided by law and all persons coming or residing within such territory shall be subject to all ordinances, rules and regulations governing the City of Sun Prairie.

SECTION 3. Aldermanic District Designation. The territory in Section 1 of this ordinance is hereby made a part of the "3" Aldermanic District of the City of Sun Prairie, subject to the ordinances, rules and regulations of the City governing wards.

SECTION 4. Severability. If any provision of this ordinance is invalid or unconstitutional, or if the application of this ordinance to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or application of this ordinance which can be given effect without the invalid or unconstitutional provision or application.

SECTION 5. Effective Date. This ordinance shall take effect upon passage and publication as provided by law.


Approved:

A large, stylized handwritten signature in dark ink, appearing to read "Paul T. Esser".

Paul T. Esser, Mayor

Date Approved:

This is to certify that the foregoing Ordinance was adopted by the Common Council of the City of Sun Prairie at a meeting held on the 5th day of April, 1988.

A handwritten signature in dark ink, appearing to read "Edna E. Markstahler".

Edna Markstahler
City Clerk

Published: April 14, 1988



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

RECEIVED

JUN 15 1988

DONALD J. HANAWAY
ATTORNEY GENERAL

Mark E. Musolf
Deputy Attorney General

Michael W. Stead
Executive Assistant

Division of Legal Services
James D. Jeffries, Administrator

Justice Building
P.O. Box 7857
Madison, WI 53707-7857
608/266-0332

June 14, 1988

The Honorable George Northrup
Circuit Judge
Dane County Courthouse
210 Martin Luther King, Jr. Boulevard
Madison, Wisconsin 53709

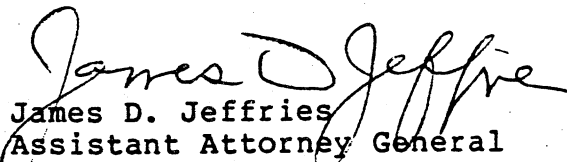
Re: Town of Burke v. City of Sun Prairie
Case No. 88-CV-2973

Dear Judge Northrup:

This is to advise that we have been furnished with a copy of the pleadings in the above-entitled matter. It does not appear from the face of the pleadings that this office should become involved in this matter at this time. This decision should not be construed to indicate any decision made on behalf of the Attorney General with respect to the merits of the issues raised by the pleadings.

We regret that budget constraints do not allow us to participate in all matters where our participation may be useful.

Sincerely yours,


James D. Jeffries
Assistant Attorney General
Administrator
Legal Services Division

JDJ:dhd/DJI-Ltr

cc: City of Sun Prairie
Frank J. Bucaida, Attorney

EXHIBIT B

