COURT OF APPEALS DECISION DATED AND RELEASED

April 10, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2613

STATE OF WISCONSIN **IN COURT OF APPEALS DISTRICT IV**

TOWN OF BURKE, DANE COUNTY, WISCONSIN, A BODY CORPORATE AND POLITIC,

PLAINTIFF-APPELLANT,

V.

CITY OF SUN PRAIRIE, A WISCONSIN MUNICIPAL CORPORATION,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: DANIEL R. MOESER, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

PER CURIAM. The Town of Burke appeals from an order approving the City of Sun Prairie's annexation of 351 acres. The issue is whether the annexation passes muster under the "rule of reason." We conclude that it does and therefore affirm.

The 351 acres at issue is generally trapezoidal in shape. It has a 500 to 600 foot border with recently annexed parcels, but is otherwise surrounded by Town land. The parcels to which it is attached are, in turn, oddly shaped and connected by only a narrow corridor to the rest of the City. All owners and residents of the disputed area petitioned for annexation.

After hearing evidence from both sides, the court found that the boundaries were reasonable, that the land lay within the City's service area, and that the City needed the land. The court also deemed it immaterial whether the annexation aggravated the problem posed by the adjacent annexations, which cause an unusually shaped balloon-type addition to the City's southwest corner.

On review, the annexation must satisfy the three components of the "rule of reason." ***Town of Menasha v. City of Menasha***, 170 Wis.2d 181, 189, 488 N.W.2d 104, 108 (Ct. App. 1992). These are (1) that no arbitrary exclusions or irregularities appear in the boundary lines, (2) that some reasonable present or demonstrable future need exists for the property, and (3) that the municipality commits no other abuse of discretion in the process. ***Id***. An annexation is presumed valid, and the challenger bears the burden of proving an arbitrary or abusive annexation. ***Id***. Whether the annexation serves the public interest or that of the parties is a legislative determination that is not subject to review. ***Id***. at 188, 488 N.W.2d at 108.

The Town first contends that the annexation has created an unreasonable, crazy quilt boundary for the City. As the Town points out, "crazy quilt" borders do not comport with the legislative intent of § 66.021, STATS., the annexation statute. ***Mount Pleasant v. Racine***, 24 Wis.2d 41, 46, 127 N.W.2d

757, 760 (1964). However, if the City now has a crazy quilt border on its southwest side, that is the result of the previous, unchallenged annexations. This annexation has unexceptional, nearly trapezoidal borders, and the main body is directly connected to the City through a 500 to 600 foot strip. The supreme court has rejected as unreasonable the annexation of an "isolated area—connected by means of a technical strip a few feet wide," and hundreds of feet long. ***Id***. This area does not resemble that sort of disfavored annexation.

The Town next challenges the trial court's finding that Sun Prairie reasonably needs the annexation. The City's expert testified that the annexation would be needed within three years to provide space for smaller, moderately priced homes within the City. The trial court chose to give that testimony more weight than that of the Town's expert, who reached the opposite conclusion. That determination of credibility and weight is not subject to review. ***Rubi v. Paige***, 139 Wis.2d 300, 308, 407 N.W.2d 323, 326 (Ct. App. 1987). Having been accepted and given due weight, that testimony provides sufficient support for the trial court's finding of a reasonable and demonstrable future need for the property. It is not clearly erroneous and we therefore affirm it. *See* § 805.17(2), STATS.

Finally, the Town contends that the trial court erred by excluding evidence that the City induced the annexation petition by offering connection to a federally funded sewer system. "The arbitrariness of Sun Prairie's actions lies in the fact that Sun Prairie is using as its inducement an asset which the City acquired with funds provided by all the taxpayers, not just the taxpayers of the City of Sun Prairie." If the City is, in fact, using federal funds, that is not evidence of arbitrary decision making under the rule of reason. Municipalities are permitted to condition the extension of sewer services on annexation. ***Town of Hallie v. City***

of Chippewa Falls, 105 Wis.2d 533, 540-41, 314 N.W.2d 321, 325 (1982). The Town's remedy lies in another forum if it is aggrieved by the alleged misuse of federal funds.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.