

STATE OF WISCONSIN

CIRCUIT COURT

LA CROSSE COUNTY

CITY OF ONALASKA,

Plaintiff,

vs.

MEMORANDUM DECISION and ORDER

Case No. 93-CV-862

CITY OF LA CROSSE,

Defendant.

The parties to this action for declaratory judgment have adopted competing ordinances, seeking to annex overlapping portions of the Town of Medary in La Crosse County. In a pretrial ruling the court determined that Onalaska's "Pralle" annexation ordinance was first in time and, therefore, had priority over La Crosse's "Schroeder" annexation ordinance.

At separate trials, each city presented evidence as to why the other's ordinance violated the "rule of reason". It is the court's conclusion that the Pralle annexation ordinance survives analysis under the rule and is therefore valid. While this conclusion makes it unnecessary for the court to decide the validity of the Schroeder annexation ordinance, the court has chosen to do so, in order to complete the record for appellate review. The court concludes that the Schroeder annexation ordinance is invalid, because its boundaries are arbitrarily drawn.

Some of the evidence tended to compare the two cities--in terms of which ordinance conformed best to the legal requirements and which city had the greater need to annex territory in the disputed area. It is, therefore, important to emphasize that the court's role is not to decide whether one ordinance is "better" than the other or which city has the greater

need. The court's function is to decide whether each annexation ordinance satisfies the requirements of the rule of reason. In making its factual findings the court has only addressed those disputes in the evidence which need to be resolved in order to decide whether the ordinances meet the test.

FINDINGS OF FACT

The area in dispute is a portion of the Town of Medary, located east of Onalaska and northeast of La Crosse. In recent years there has been significant residential growth and economic development in and around this area. By most accounts this growth and development will continue in the foreseeable future. There is a present and future need for the orderly development of the area for the benefit of the citizens of both cities, as well as the citizens of the surrounding communities.

In 1990, recognizing the strategic importance of this area for future growth and tax base, La Crosse attempted to annex approximately 1700 acres, lying north of the La Crosse River, east of Onalaska and northeast of La Crosse. This attempt was defeated by area residents.

Thereafter, the mayor of La Crosse met with Medary residents in an attempt to encourage annexation to La Crosse. One such resident was Edgar Schroeder. Schroeder is a member of the La Crosse Plugs, a service club which promotes La Crosse by travelling to surrounding cities, towns and villages and encouraging people to come to La Crosse to shop and receive services not available in their own communities. Schroeder preferred annexation to La Crosse over other alternatives and was amenable to the initiation of an annexation petition.

The mayor also attempted to persuade other residents to annex to La Crosse, including Bernard Pralle and Eleanor Robinson. Pralle is a landowner and developer with an interest in obtaining city services. Robinson is a landowner and resident with a critical need for city water, due to ground water contamination from the county landfill.

Pralle preferred to annex to Onalaska and began circulating his own annexation petition with the advice and assistance of Onalaska officials. This hasty effort resulted in the first Pralle annexation ordinance. It was challenged by La Crosse and after protracted legal proceedings it was struck down by the court of appeals in 1993.

When it became apparent that the first Pralle ordinance would be invalidated, both cities began to maneuver for the next round. Pralle started circulating his second annexation petition even before the decision of the court of appeals became final. Robinson was one of the signers. Schroeder began circulating his petition shortly after the decision became final.

Both Pralle and Schroeder continued to receive technical advice and assistance from the respective city officials prior to and throughout the circulation and adoption process. Relying upon that advice and assistance each of them sought to include or exclude landowners and electors so as to insure success.

Pralle excluded some residents opposed to annexation to Onalaska, such as Schroeder whose land lies near the northwest corner of the Pralle annexation. Schroeder's exclusion leads to some irregularity in the shape of the annexation as is evident from maps included in the record. However, not all of the residents and landowners included were in favor of annexation, and the Pralle annexation is reasonably compact and contiguous to Onalaska as a result.

The La Crosse Diocese owns property in Medary and also wanted to annex to La Crosse. A map was drawn for Schroeder by La Crosse officials in conjunction with the diocese. Boundary lines were established so as to exclude residents who did not want to annex to La Crosse, such as Pralle and Robinson. The City of La Crosse also owns lands included in the annexation and the mayor of La Crosse signed the annexation petition on behalf of the city.

The resulting Schroeder annexation consists of two parts: (1) territory south of the La Crosse River contiguous to the northeast corner of La Crosse and the southeast corner of Onalaska; (2) a strip of land running north and south from the river to Highway 16, which creates a near island of territory between the eastern edge of Onalaska and the proposed annexation. Schroeder's land is in the small, northern-most triangular piece of the annexation, on the south side of Highway 16. As the various maps in the record reflect, the resulting annexation is highly irregular in shape when viewed in juxtaposition with the existing boundaries of the two cities.

The State Department of Administration was well aware of the ongoing tug-o-war between the two cities. When the department was informed of the second Pralle annexation it took the position that the annexation was against the public interest. The department hoped that a negotiated settlement could be reached so as to avoid another round of litigation. Onalaska considered the department's position and adopted the Pralle annexation ordinance in spite of it.

Among the factors which the Onalaska City Council considered in approving the annexation were: (1) the area had been served by the Onalaska Fire Department for many

years; (2) it was located in the Onalaska School District; (3) it received mail service from the Onalaska Post Office; (4) residents of the annexation travelling north, south or west passed through a portion of Onalaska before reaching any other city or village; (5) Onalaska could provide other governmental services including zoning, water, sewer, recreational programs, library and police and had already bonded for such improvements; (6) Onalaska was the closest community capable of providing water and sewer; (7) Onalaska boundaries were contiguous to the area; (8) the projected population of Onalaska by the year 2010 was 20,000 to 25,000 residents; in order to reach this Onalaska needed to annex more land; and (9) the area was included in Onalaska's long range plan. The Pralle annexation contains approximately 178 acres committed to street and highway right of way, 657 undevelopable acres of wet lands and flood plain, 157 acres developable for residential purposes, and 168 acres developable as an economic zone.

Future growth of both cities is limited by the Mississippi River to the west and steep bluffs to the east. The La Crosse River and its marsh further limit La Crosse's eastern expansion. Onalaska is limited in its northern expansion by the Village of Holmen. La Crosse has some opportunities to grow to the south, although these opportunities are much less attractive at present.

La Crosse is the oldest and largest city in this part of Wisconsin. It may be accurately described as a "core community" or "dominant" or "central" city. The major health care providers for the area are based in La Crosse, as is most of the industry. Most of the area's major retailers are located in either La Crosse or Onalaska in the vicinity of the annexations. Together, the two cities were accurately described by at least one witness as a

"regional service center".

Presently, Onalaska is about one-fifth the size of La Crosse. However, it has experienced significant growth in the recent past, which will continue in the immediate and foreseeable future. Projections suggest that by the year 2010 its population will be at least 17,000 and perhaps as much as 25,000, which would represent a doubling or near doubling of the present population within 15 years.

Not long ago Onalaska could be accurately described as little more than a residential suburb of La Crosse, but that description has become less appropriate as job opportunities within Onalaska have increased and its residents have become less dependent on La Crosse for services and employment. Onalaska has an adequate supply of land for residential growth and commercial development for the immediate future, but will need additional lands in the next few to several years if its growth proceeds at the anticipated rate. Much of the vacant land presently located in Onalaska is already committed to residential or commercial development.

During the pendency of this case La Crosse County contracted with the City of La Crosse to provide water service to some of the residents in the disputed area. These water lines were installed to comply with a court order in another lawsuit, which dealt with the well contamination problems caused by the county landfill.

While Onalaska is dependent upon La Crosse for sewer service at the present time, the availability of such services in the area is, ultimately, regulated and controlled by the State Department of Natural Resources, which will prevent the arbitrary or unreasonable denial of sewer services to the disputed area regardless of whether it is annexed to Onalaska

or La Crosse.

LAW

Annexation ordinances are presumed valid and the burden of overcoming the presumption is on the party challenging the validity of the ordinance. *Town of Pleasant Prairie v. City of Kenosha*, 75 Wis. 2d 322, 327 (1977). "This is an especially heavy burden ... insofar as the Circuit Court is directed to be highly deferential to the actions taken by the city in annexing the property." *Town of Delavan v. City of Delavan*, 176 Wis. 2d 516, 500 (1993). "Upon judicial review, the courts may not inquire into the wisdom of an annexation ordinance or determine whether it is in the best interest of the parties to the proceeding or of the public." *Town of Menasha v. City of Menasha*, 170 Wis. 2d 181, 188 (Ct. App. 1992), citing *Town of Pleasant Prairie, supra*, at 327.

An annexation ordinance is valid if it satisfies the requirements of the "rule of reason". "Under this rule, (1) exclusions and irregularities in boundary lines must not be the result of arbitrariness, (2) some reasonable present or demonstrable future need for the property must be shown, and (3) no other factors must exist which would constitute an abuse of discretion." *Town of Pleasant Prairie, supra* at 327.

To satisfy the "arbitrary boundary" prong, the annexation must be "unexceptional" in its shape *and* the annexing city must not be a petitioner. *Town of Menasha, supra*, at 191.

With regard to shape, when an annexation is drawn by private property owners some exclusions and irregularities are tolerated. *Town of Medary v. City of La Crosse*, 88 Wis. 2d 101, 114-117 (Ct. App. 1979). This is not to say that gerrymandering in the extreme will be tolerated or that "crazy quilt" or "shoestring" annexations will be approved. *Id.*, citing

Mt. Pleasant v. Racine, 24 Wis. 2d 41 (1964). But generally, the petitioners may determine the annexation boundaries so as to exclude opposing landowners and insure success, even if this results in a "somewhat" irregular shape. *Town of Medary, supra*, at 117.

As to the annexing municipality's status as a petitioner,

Where the annexing municipality is shown to be the real controlling influence in the annexation proceedings, it effectively assumes the role of a petitioner. "Influencing" ... means more than providing mere technical assistance or recommendations to the petition signers ... rather, it means conduct by which the annexing authority dominates the petitioners so as to have effectively selected the boundaries.

Town of Menasha, supra, at 192.

When the annexing municipality is itself one of the petitioning landowners, the court is to scrutinize the boundaries for an abuse of municipal discretion. *Town of Pleasant Prairie, supra*, at 339-340, citing *Town of Fond du Lac v. City of Fond du Lac*, 22 Wis. 2d 533 (1964).

As to need, the second prong of the rule of reason, the annexing municipality must have a "reasonable" need for the territory; a "pressing, imperative" need is not required. The party challenging the annexation must show that no reasonable need exists. Any evidence of reasonable need is sufficient to satisfy the necessity prong of the rule of reason. *Town of Pleasant Prairie, supra*, at 335, citing *City of Beloit v. Town of Beloit* 47 Wis. 2d 377, 385 (1970). Accord, *Town of Lafayette v. City of Chippewa Falls*, 70 Wis. 2d. 610, 630 (1975). A showing of benefits to the annexed land can be considered in the overall question of need. *Town of Lafayette, supra*, at 629-630.

The third prong of the rule of reason--the absence of any other factors which would

constitute an abuse of discretion--is less clearly defined by the case law. It is apparent, however, that to defeat an annexation ordinance on this ground the opponent must demonstrate some factor or factors constituting an abuse of discretion, unrelated to arbitrary boundaries or absence of need. *See, Town of Medary, supra*, at 124.

§ 66.021(11), STATS., provides that in a county with a population of 50,000 or more any person who causes a notice of annexation to be published shall mail a copy of the notice to the State Department of Administration. The department "may" give notice to the parties that in its opinion the annexation is against the public interest. If such a notice is given, the annexing municipality shall review the department's advice before final action is taken. However, the rule of reason is not violated merely because the annexing municipality fails to follow the advice of the department. *Cf., Town of Medary, supra*, at 116-117.

DECISION

Any survey of annexation case law reveals that most annexation disputes are between a town and an annexing municipality. This dispute is, therefore, somewhat unique in that it is between two cities with the town residents caught in the middle, facing seemingly inevitable annexation by one city or the other. Nevertheless, the legal principles to be applied in the court's analysis are essentially the same.

Arbitrary Boundaries

Generally speaking, a direct annexation cannot be challenged successfully on a claim of arbitrary boundaries, if the shape of the annexation is unexceptional and the annexing municipality is not a petitioner. La Crosse challenges the Pralle annexation on grounds that Onalaska "improperly influenced" the annexation; that Onalaska, rather than Pralle

determined and drew the boundaries.

The rule is that the petitioners may receive technical advice and assistance from the annexing municipality. But if that advice and assistance reaches a level where the petitioners become nothing more than a surrogate for the municipality, the municipality then becomes the *de facto* petitioner.

La Crosse relies exclusively upon *Town of Menasha, supra*, a case where three owners of vacant lots sought annexation to Menasha to secure city services. An adjoining commercial property was included in the annexation over the objection of its owners. The trial court found that the city had played an improper role in the selection of the boundaries, as was evident from the fact that the boundaries were drawn by city officials for the vacant lot owners, who had not sought to include the commercial property in their annexation.

The Pralle annexation does not present similar facts. The fingerprints of Onalaska officials are all over Pralle's annexation. Onalaska desperately wants the court to approve the annexation and it gave Pralle advice, assistance and encouragement at every twist and turn. However, such machinations do not appear to be uncommon in annexation proceedings and are not condemned by the case law. Municipalities are not precluded from aggressively encouraging would-be petitioners; however, they are not allowed to draw boundary lines to suit their own purposes.

Onalaska helped Pralle draw the boundaries so as to insure a successful petition. Pralle and other signers had a real and legitimate reason for seeking annexation: a need for city services. With the assistance of Onalaska officials Pralle excluded some persons who were opposed to annexation, but--in order to avoid a claim of gerrymandering--included

some others. This is permitted under Wisconsin annexation law and is distinguishable from the facts of *Town of Menasha*.

Onalaska likewise relies upon *Town of Menasha* to argue that the Schroeder annexation boundaries are a product of undue municipal influence. While the question thus presented is a much closer one, the court concludes that the Schroeder annexation also survives analysis under the principles set forth in *Town of Menasha*.

After the unsuccessful 1990 attempt to annex a large piece of Medary, the mayor of La Crosse actively courted residents willing to annex to La Crosse. He found a willing partner in Schroeder, but his advances were rejected by others, such as Pralle and Robinson.

While the circumstantial evidence comes close to establishing that Schroeder was nothing more than a puppet, the court concludes that the line as to what constitutes undue influence is indistinct and has not been crossed. This is not a situation where a municipality grafted on territory over the objection of the owners and with no justification, as in *Town of Menasha*.

Nevertheless, the Schroeder annexation is subject to close scrutiny for arbitrary boundaries, because La Crosse is one of the signers of the annexation petition. And the highly irregular shape of annexation fails to survive such scrutiny.

Onalaska does not contest the first part of the annexation--that portion lying south of the La Crosse River contiguous to the northeast corner of La Crosse and the southeast corner of Onalaska. It takes issue with the second portion--a strip of land running north and south from the river to Highway 16, thereby creating a near island of territory between the west side of the annexation and the eastern Onalaska city limits. This island is artificially

connected to Medary by a narrow strip of land to the north.

The Schroeder annexation reaches out far into Medary to connect Edgar Schroeder to La Crosse. Annexations of this shape promote crazy quilt boundary patterns of the type which were condemned in *Mt. Pleasant, supra*. This annexation goes well beyond the "somewhat" irregularly shaped annexation which survived judicial scrutiny in *Town of Medary, supra*. These irregularities in shape are not explained in the evidence by geography or terrain or existing town lines or municipal boundaries. The annexation has been gerrymandered to connect Schroeder to La Crosse.

Need

Onalaska concedes its inability to prove that La Crosse does not have a reasonable need for the territory it seeks to annex. La Crosse contends that there is no demonstrable need for Onalaska's annexation of the territory included in the Pralle annexation. The court is well satisfied that La Crosse has failed to prove the absence of any reasonable need for the Pralle annexation.

La Crosse claims that Onalaska has an ample supply of land at present and no foreseeable need to annex territory for municipal growth. Its evidence in this regard consisted of the opinion testimony of its own city planner. Such testimony was self-serving and unpersuasive.

Additional opinion testimony from the professional planner retained by La Crosse as a consultant drifted into irrelevant areas, such as whether La Crosse had greater needs than Onalaska, whether La Crosse's growth and increase in tax base was critical to the area as a whole and whether Onalaska had fewer limitations and better growth options. As noted by

the case law, these are political decisions and are not matters for judicial scrutiny.

The evidence establishes that Onalaska has a reasonable need for additional territory in the foreseeable future to accommodate anticipated and predictable growth. This is not a case of a municipality merely gobbling up desirable, unclaimed territory. Furthermore, as noted previously, some residents in the Pralle annexation had a legitimate need for city services--especially water--when the annexation was commenced.

Not all residents of the annexation are of a like mind as to whether annexation should occur to Onalaska, La Crosse or either city. Some see no immediate benefits, perceive probable detriments and abhor the transition from bucolic countryside. However, not all residents and landowners included in the annexation are required to be of a like mind as to need. If any reasonable need is demonstrated, then the need prong of the rule of reason is satisfied.

Abuse of Discretion

The final prong of the rule of reason is the catchall category of abuse of discretion. La Crosse argues that Onalaska abused its discretion, in that it failed to "consider" the department's opinion that the Pralle annexation was not in the public interest. Onalaska appears to argue that La Crosse abused its discretion by engaging in bad urban planning.

As to La Crosse's contention, the evidence establishes that Onalaska did consider the department's opinion. It was not required to follow the department's opinion and its failure to do so is no cause to invalidate the Pralle annexation.

As to Onalaska's apparent contention, the protracted, chaotic and divisive litigation in this case and its predecessor causes this court to wonder whether "urban planning" is an

oxymoron. Whether La Crosse's planning is "bad" or "good" is an elusive concept, which cannot and need not be determined on this record. The court concludes that Onalaska has failed to prove that the Schroeder annexation represents an abuse of discretion.

DECLARATION AND ORDER

Based upon the foregoing, the court declares that the Pralle annexation ordinance satisfies the requirements of the rule of reason and is valid. The court further declares that the Schroeder annexation ordinance does not satisfy the arbitrary boundary requirement of the rule of reason and is invalid.

Within 10 days of the date below it is ordered that the plaintiff prepare and submit a proposed judgment in accord with the court's decision.

Dated: February 9, 1996

By the Court:


Michael J. Rosborough
Circuit Judge