

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 27, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 00-2376

Cir. Ct. No. 99-CV-10

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

TOWN OF HALLIE,

**PLAINTIFF-APPELLANT-CROSS-
RESPONDENT,**

v.

CITY OF EAU CLAIRE,

**DEFENDANT-RESPONDENT-CROSS-
APPELLANT.**

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Chippewa County: RODERICK A. CAMERON, Judge. Affirmed in part; reversed in part.

Before Hoover, P.J., Peterson and Deininger, JJ.

¶1 PER CURIAM. The Town of Hallie appeals that part of a summary judgment upholding two annexation ordinances. In turn, the City of Eau Claire

cross-appeals that part of the judgment holding that the City violated the sewer extension provisions of WIS. STAT. § 60.52(1).¹ With respect to the annexation ordinances, the Town argues that the ordinances are invalid due to: (1) the City's failure to comply with the statutory scale map requirements; and (2) the ordinances' creation of a town island. We reject the Town's arguments and affirm that part of the judgment. Further, because we conclude that the circuit court erred by holding that the City violated § 60.52(1), we reverse that part of the judgment.

BACKGROUND

¶2 In 1997, the City constructed a sewer interceptor line in an abandoned rail corridor located within the Town. The sewer interceptor originated with a connection to existing sewer facilities within the City and traversed the rail corridor in order to provide sewer service to additional properties located within the City.

¶3 In 1998, the City annexed two parcels of land comprising the corridor in which the sewer interceptor was located. The Town brought suit and ultimately filed a motion for summary judgment in which it argued that: (1) the City had impermissibly constructed "sewer and water facilities" within the Town without its permission, contrary to WIS. STAT. § 60.52(1); and (2) the annexation ordinances were invalid. The circuit court denied that part of the motion seeking to invalidate the annexation ordinances, but granted summary judgment on the issue of whether the City had constructed the sewer lines without the Town's permission. The circuit court determined that in order to remedy the City's

¹ All statutory references are to the 1997-1998 version unless otherwise noted.

violation of § 60.52(1), abutting property owners would be allowed to connect to the sewer line. The circuit court concluded, however, that only one owner's property abutted the sewer line. This appeal and cross-appeal followed.

ANALYSIS

¶4 This court reviews summary judgment decisions de novo, applying the same standards as the trial court. *Smith v. Dodgeville Mut. Ins. Co.*, 212 Wis. 2d 226, 232, 568 N.W.2d 31 (Ct. App.1997). Summary judgment is granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987).

A. The Annexation Ordinances

¶5 The Town argues that the annexation ordinances are invalid due to: (1) the City's failure to comply with the statutory scale map requirements; and (2) the ordinances' creation of a town island. We are not persuaded.

¶6 WISCONSIN STAT. § 66.021(3) provides that an "annexation shall be initiated by publishing in the territory proposed for annexation" a notice of intention to circulate an annexation petition. Relevant to this appeal, the statute further provides that the notice shall contain "a legal description of the territory proposed to be annexed and a copy of a scale map." WIS. STAT. § 66.021(3)(a)2. In turn, a "scale map" is defined as "a map that accurately reflects the legal description of the property to be annexed and the boundary of the annexing city or village, and that includes a graphic scale on the face of the map." WIS. STAT. § 66.021(1)(e).

¶7 Here, the Town argues that the maps published with the notices of intent neither reflected the City’s boundaries nor contained an accurate graphic scale. With respect to the City’s boundaries, the circuit court properly recognized that although the scale maps did not state how the boundary was indicated, a reasonable person reviewing the maps can conclude that the dark line consisting of alternate dots and dashes is the City boundary. Further, it is reasonable to conclude that the shaded area marked for annexation lies outside the City’s boundaries.

¶8 With respect to the graphic scale, the Town concedes that the full-size version of the maps contains a valid graphic scale. The Town nevertheless argues that because the copies attached to the notices are reduced in size, the scale is incorrect thus invalidating it. The statute, however, requires that the notice of intention to circulate an annexation petition contain a “*copy of a scale map.*” WIS. STAT. § 66.021(3)(a)2. (Emphasis added.) It does not require a petition to contain a full-size scale map. Here, consistent with § 66.021(3)(a)2, the petitions contained copies of the scale maps.

B. Town Island

¶9 The Town also argues that the annexation ordinances are invalid because they impermissibly create a town island. WISCONSIN STAT. § 66.021(15) states that “no city or village may, by annexation, create a town area which is completely surrounded by the city or village.”

¶10 Here, the City annexed land on either side of Michaud Street, leaving a small parcel of Town land connected to other Town lands via Michaud Street. Had Michaud Street not been omitted from the City’s annexations, the small parcel of Town land would have been completely surrounded by City land.

The Town, citing *Town of Lyons v. Lake Geneva*, 56 Wis. 2d 331, 336, 202 N.W.2d 228 (1972), argues that Michaud Street should be disregarded for purposes of determining whether the Town land is completely surrounded. *Town of Lyons*, however, addressed the contiguity of an annexation under WIS. STAT. § 66.021(2) and is thus inapplicable to the present case.

¶11 In *Wagner Mobil, Inc. v. City of Madison*, 190 Wis. 2d 585, 527 N.W.2d 301 (1995), however, our supreme court addressed the meaning of “completely surrounded by the city or village,” and held that this language is unambiguous. In so doing, the court overturned case law that prohibited an annexation’s creation of a “functional town island”—created when either natural or manmade barriers, employed in conjunction with corporate boundaries, isolated a portion of a town. See *Town of Sheboygan v. City of Sheboygan*, 168 Wis. 2d 268, 483 N.W.2d 306 (Ct. App. 1992); *Town of Hallie v. City of Eau Claire*, 176 Wis. 2d 391, 501 N.W.2d 49 (Ct. App. 1993). Here, the Town concedes that Michaud Street prevents the parcel from being completely surrounded by the City. Thus, we conclude that the annexations did not create a town island.

C. WISCONSIN STAT. § 60.52(1)

¶12 The City argues that the circuit court erred by concluding that it had violated the sewer extension provisions of WIS. STAT. § 60.52. The statute provides: “*With the approval of the town board*, any city or village adjoining a town may construct and maintain extensions of its sewer or water system in the town.” WIS. STAT. § 60.52(1) (emphasis added). The City contends that because the sewer interceptor is not a construction of the type referred to in WIS. STAT. § 60.52(1), it did not need the Town’s permission. We agree.

¶13 In *Danielson v. City of Sun Prairie*, 2000 WI App 227, 239 Wis. 2d 178, 619 N.W.2d 108, this court addressed the meaning of the statutory phrase “extensions of its sewer or water system in the town” as it applied to an interceptor for the city’s sewer system that had been constructed on town land. There, the Town of Burke contended that the phrase referred to “any construction of a part of a sewer system that occurs within the physical perimeter of a town.” *Id.* at ¶9. The City of Sun Prairie, however, argued that the phrase referred to “any construction of a part of a sewer system that extends sewer service in a town.” *Id.* The *Danielson* court, determining that the phrase is ambiguous, ultimately concluded that the legislative history of WIS. STAT. § 60.52 supports a construction of the statute which does not include interceptors as extensions of sewer or water systems in the town. *Id.* at ¶11.

¶14 Here, the interceptor was constructed to provide sewer service to City lands only. The Town nevertheless attempts to distinguish *Danielson*, arguing that the interceptor in the present case was built with “risers” that would allow for the future connection of building sewers on what was, at the time of its construction, Town land.² The parties stipulated, however, that “the City never intended to provide sanitary sewer service to the described [Town] properties unless the properties subsequently became annexed to the City.” We therefore conclude that the City did not extend its sewer system in the Town within the meaning of WIS. STAT. § 60.52(1). Because the City was not obligated to seek the

² The Town devotes much of its respondent’s brief to essentially attacking this court’s decision in *Danielson v. City of Sun Prairie*, 2000 WI App 227, 239 Wis. 2d 178, 619 N.W.2d 108. This court may not, however “overrule, modify or withdraw language from a previously published decision of the court of appeals.” *Cook v. Cook*, 208 Wis. 2d 166, 190, 560 N.W.2d 246 (1997).

Town's approval, we reverse that part of the judgment concluding that the City violated § 60.52(1).³

CONCLUSION

¶15 Because we conclude that the City complied with the statutory scale map requirements and that the annexations did not create a town island, we affirm that part of the circuit court's judgment concluding that the annexation ordinances are valid. We conclude, however, that the circuit court erred by concluding that the City violated the sewer extension provisions of WIS. STAT. § 60.52(1) and therefore reverse that part of the judgment.

By the Court.—Judgment affirmed in part; reversed in part. No costs on appeal.

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

³ The Town also appeals that part of the judgment concluding that there is only one property abutting the subject sewer lines. Because we reverse that part of the judgment concluding that the City violated WIS. STAT. § 60.52(1), we need not address the arguments regarding the proper remedy for that claimed violation.

