

COALITION FOR A BETTER JEFFERSON and
PATTI LORBECKI, a qualified elector of the
City of Jefferson,

Petitioners,

v.

CITY OF JEFFERSON and
COMMON COUNCIL OF THE
CITY OF JEFFERSON,

Respondents.

MAR 15 2006

Case No. 05-CV-582
Case Code 30704

FINDINGS AND ORDERS FROM HEARING ON FEBRUARY 20, 2006

The above-captioned matter came on for a hearing before the Honorable John M. Ullsvik on February 20, 2006, at 1:00 p.m. The Petitioners appeared in person, and by Attorney David Halbrooks. The City of Jefferson appeared ~~in person, and by~~ Attorney Bennett J. Brantmeier. As a result of the hearing and the file herein, the court hereby makes the following:

FINDINGS OF FACT

1. The proposed ordinance submitted to the Common Council would require various impact studies to be completed before the City could decide to annex land, including an environmental impact study, economic impact study, traffic impact study, ~~and consider community economic standards.~~

CONCLUSIONS OF LAW

(compliance with)

2. The court concludes that the direct legislation necessarily depends on what the use of the annexed land would be or what use the land could be put to according to the City's Zoning Ordinances.

3. The court concludes that Chapter 62.23, Wis. Stats., authorizes the City's Planning Commission to make a plan, including land outside its boundaries, which addresses future development. The Master Plan has to take into consideration harmonious developments, which promote public health, safety, morals, order, convenience, prosperity, and general welfare. That is work the Planning Commission would do before or after annexation was accomplished. The ordinance would impose on the City these studies whether or not the Planning Commission thought those studies were consistent with the functions of the Planning Commission. For example: If the City wanted to annex a farm for no particular reason, just because it is available, and the City thinks in 10 or 20 years there will be growth in this direction for some purpose, i.e. recreation,

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residential, bypass, ~~it is~~ unknown, ~~yet~~, this ordinance would require the City to do these studies in relation to how the land would be used without knowing yet how the land would be used.

4. The court concludes the proposed ordinance is a mixture of both annexation and land use considerations. Land use is correctly a subject for the City Council or the Planning Commission to act on as it is already within their authority, i.e.: zoning laws, Big Box Ordinance, etc.

5. The court concludes that the proposed ordinance modifies the statutory procedures and functions of the Planning Commission, which direct legislation cannot lawfully do.

6. The court concludes that this study for future land use effect is administrative, not legislative, to the extent it tells the City what to do with regard to what should be studied for a particular land use, a particular zoning. This is administrative work, and not the proper subject for direct legislation.

7. The court concludes the proposed direct legislation is too much about zoning, repeals various ordinances the City has enacted with regard to zoning: i.e. the Big Box Ordinance, the traffic regulations, which are part of the City Code. To the extent the proposed ordinance adds studies on a subject a zoning ordinance has already addressed, the proposed ordinance has the effect of repealing the existing ordinance or as the court concluded, imposing administrative action on the City.

8. For the reasons stated, the court concludes the proposed ordinance is not the proper subject for direct legislation under §9.20, Wis. Stats.

JUDGMENT

9. The court denies Petitioner's Motion to Dismiss the Pleadings in this case, and denies Respondent's Motion to Dismiss for failure to add or join necessary parties.

10. The court grants dismissal as requested by the Defendants because this direct legislation is not the proper subject under §9.20, Wis. Stats.

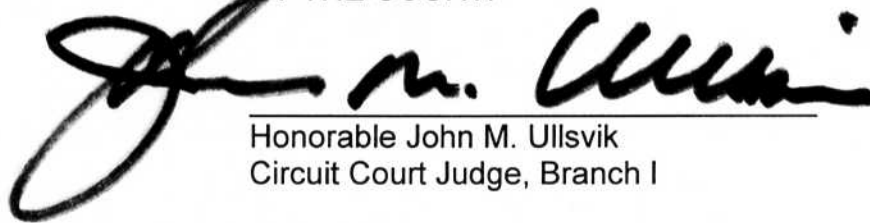
11. The court terminates its temporary restraining order and temporary injunction. The Writ of Mandamus shall not issue. The Writ and Petition are dismissed for the reasons stated by the court.

12. The court further concludes that no evidence is necessary, as the court can decide this issue as a matter of law.

13. This order will take effect March 2, 2006.

Dated this 15th day of March, 2006.

BY THE COURT:

A large, stylized handwritten signature in black ink, appearing to read "John M. Ullsvik". The signature is written over a horizontal line.

Honorable John M. Ullsvik
Circuit Court Judge, Branch I

BJB/Jefferson-Coalition/Findings and Order 022106