

October 31, 2021

City of Verona, Plan Commission
C/o City Clerk
111 Lincoln Street
Verona, WI 53593

Re: Petition for Annexation by Marty

Dear Mayor and Plan Commissioners:

I have been retained by the Verona Rural Preservation Alliance, U.A. (“VRPA”) and have reviewed the proposed petition for annexation filed by Marty Century Farm Family Limited Partnership and set to be discussed at the upcoming Plan Commission meeting of November 1, 2021. VRPA opposes the annexation for the reasons discussed below and we ask that this correspondence be included in the record and as part of the consideration on this matter.

I. Wis. Stats. § 66.0217 controls this annexation.

The Petition purposes to be a petition for annexation by unanimous consent pursuant to Wis. Stats. § 66.0217 and (2).

The Petition includes signatures or consent from certain persons who claim to own most of the land in the annexation territory and or be electors residing in the proposed annexation territory. The Petition is deficient in this respect as further discussed below. More problematic is that the Petition does not include consent from owners of fee title in the property underlying the road that is being included in proposed annexation, Shady Oak Lane.

While the City/Town Intergovernmental Agreement (“IGA”) purports to allow for annexations by unanimous consent while ignoring the need for consent of owners of right of way – here Shady Oak Lane - that provision of the IGA is not compliant with the statutory language in Wis. Stats. § 66.0217 or with the precedent of how annexations are administered by the City.

II. Wis. Stats. § 66.0217 requires assent from all owners.

Annexation by unanimous consent is a special form of annexation provided for only by strict adherence to the statutory process:

(2) Direct annexation by unanimous approval. Except as provided in this subsection and sub. (14), and subject to ss. 66.0301(6)(d) and 66.0307(7), if a petition for direct annexation signed by all of the electors residing in the territory and the owners of all of the real property in the territory is filed with the city or village clerk, and with the town clerk of the town or towns in which the territory is located, together with a scale map and a legal description of the property to be annexed, an annexation ordinance for the annexation of the territory may be enacted by a two-thirds vote of the elected members of the governing body of the city or village

An “owner” is defined in the statute as follows:

(d) “Owner” means the holder of record of an estate in possession in fee simple, or for life, in land or real property,

Further it is well established under Wisconsin law that a public road is only held by the municipal government as an easement and that the abutting owner owns the fee interest to the centerline. *See Miller v. City of Wauwatosa*, 87 Wis.2d 676, 680 (1979) (“It is undisputed that the owner of land abutting a public highway holds title to the center of the highway subject to the public easement”).

Here, the owners of the property under 1/2 of Shady Oak Lane, including members of VRPA, have not been consulted, have not signed the petition and do oppose this annexation. The current Petition is therefore deficient and cannot proceed.

III. The City’s practice is to only annex to the centerline.

Even if the statutes are construed to allow an annexation of a road without obtaining the underlying owners consent, the City has already adopted the better approach of either obtaining that assent or only annexing to the centerline.

In 2018, the City annexed certain town territory that included only the property to the centerline of the road. The City determined that it was appropriate to only annex to the centerline. The minutes of the discussion by the City is excerpted below:

Mr. Sayre explained that we shared our intentions for this annexation with Town of Verona Administrator, Amanda Arnold. Some of this is a jurisdictional issue from a public safety standpoint. If the City annexes the entire roadway, it will cause there to be sections of Range Trail Road that are entirely in the City, and

sections that are entirely in the Town. It becomes an issue for law enforcement to determine in which jurisdiction each part of the road lies. In addition, property lines along old town roads sometimes extend to the centerline of the road. If we annex the entire road, we could inadvertently annex property that the property owner is not aware is being annexed. It is appropriate and within the spirit of the boundary agreement to annex just the western side of the road.

See Minutes of Verona City Council Meeting October 8, 2018 attached

IV. The proposed annexation is contrary to the spirit and intent of the IGA.

The proposed annexation purports to be consistent with the City/Town IGA but is not. The IGA is based on the fundamental agreement between the City and Town that all property owners will be considered in annexations by unanimous consent. Moreover, the IGA is designed to provide for orderly growth of the areas on the border of the Town and City. Section 8 of the IGA provides as follows:

The parties agree and acknowledge that the establishment of areas A, B, C and D within this Section 8 and the restrictions applicable to each Area are critical to this Agreement. Any action taken by the City or the Town that conflict with this Section 8 would substantially undermine the boundaries established by, or anticipated to be established by, this Agreement.

See IGA at Section 8.

The IGA also provides as follows:

WHEREAS, this Agreement between the City and Town is intended to enable the parties to determine their respective boundaries and to guide and accomplish a coordinated, well-planned and harmonious development of territory covered by the Agreement; and

...

The City and Town both desire that provisions be made for the timing and location of future urban development so that the eventual City-Town border is well-planned, with compatible development on both sides.

See IGA at p. 4, Whereas clauses.

The proposed annexation is being pursued to benefit a single property owner and developer. The current proposed plan for the development calls for a dense residential urban subdivision containing 400 dwellings, abutted by farm land on the west, east and south (including the portion of Epic Systems that is contiguous to the Marty property) and rural

single-family homes on 2-to-40 acre lots to the north and northeast. This is clearly contrary to the IGA's requirement for "well-planned, and compatible" development on both sides of the City/Town border. The resulting configuration of territory will be a long relatively narrow strip of property that is attached to the previous annexation for Epic. Yet, the previous annexation for Epic will very likely never be used by Epic other than as farm land nor will the future residents/commercial users benefit Epic.

V. *The petition is deficient as to ownership and residence.*

The Petition does not contain notarized signatures nor actual proof of ownership. Petitions for annexation are strictly construed and the lack of this information renders the Petition deficient.

In addition a comparison with the Petition previously submitted from the Marty legal counsel on October 5 indicates a total of 142 acres, which was the acreage used to calculate taxes owed to the Town under Wis. Stats. § 66.0217. However, the survey description shows that the applicant is actually seeking to have the City annex 147.988 acres. This raises two problems.

First, the Petition cannot be altered once submitted. Secondly, the need for proof of ownership and residence of electors is absent from the Petition and highlights the inconsistency in the acreage being included. A proper annexation petition includes the title ownership information and ties that to the territory being proposed for annexation. For both these reasons the Petition may not be approved in its current form.

VI. *Conclusion.*

The Petition in its current form is not approvable. The owners of the right of way for Shady Oak Lane and the Town lands that will abut this proposed annexation if it is approved believe that this annexation should be denied outright for the reasons stated above. However, it appears that the territory to be included could be adjusted to remove the ½ of Shady Oak Lane that is within the Town and owned by others not included in the unanimous consent petition. That would be the appropriate course of action so as to avoid indirectly increasing any tax burden on property owners that are not being consulted and oppose the annexation. As it currently stands, this annexation will result in what amounts to an indirect taking of property from Town property owners without their consent by subjecting them to increased taxes or special assessments for the benefit of another private property owner.

Very truly yours

Electronically signed by Joseph R. Cincotta

Joseph R. Cincotta
Attorney for VRPA