

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 16, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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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.

No. 97-2994

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

IN THE MATTER OF THE INCORPORATION AS A VILLAGE
OF CERTAIN TERRITORY IN THE TOWN OF CAMPBELL,

CITY OF LA CROSSE,

INTERVENOR-APPELLANT,

v.

NEIL COLLINS AND LINDA GREENE, DESIGNATED
REPRESENTATIVE AND ALTERNATIVE DESIGNATED
REPRESENTATIVE FOR THE INCORPORATION AS A
VILLAGE OF CERTAIN TERRITORY IN THE TOWN OF
CAMPBELL,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for La Crosse County:
DENNIS G. MONTABON, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

VERGERONT, J. The City of La Crosse appeals the trial court order determining that the petition for incorporation as a village of all of the territory within the Town of Campbell met the requirements of §§ 66.014 and 66.015, STATS. The City contends that the petition did not meet the statutory requirement of § 66.014(2)(c)¹ that a scale map be attached to the petition “reasonably showing the boundaries of the territory sought to be incorporated.” We conclude that the trial court correctly determined that the petition and map met the statutory requirements and we therefore affirm.

Neil Collins and Linda Greene are the designated representatives for the Town of Campbell’s residents in the incorporation proceedings. After they filed the petition, the notice of filing the petition, and the notice of hearing, as required by § 66.014(4), STATS., the court granted permission for the City of La Crosse to intervene. At the hearing to determine whether the petition met the requirements set forth in §§ 66.014 and 66.015, STATS., the City of La Crosse argued that the scale map attached to the petition did not reasonably show the boundaries of the territory sought to be incorporated. The court heard the following testimony on this issue.

¹ Section 66.014(2)(c), STATS., provides:

(c) The petition shall designate a representative of the petitioners, and an alternate, who shall be an elector or freeholder in the territory, and state that person's address; describe the territory to be incorporated with sufficient accuracy to determine its location and have attached thereto a scale map reasonably showing the boundaries thereof; specify the current resident population of the territory by number in accordance with the definition given in s. 66.013 (2) (b); set forth facts substantially establishing the standards for incorporation required herein; and request the circuit court to order a referendum and to certify the incorporation of the village or city when it is found that all requirements have been met.

Michael Davy, an engineer, testified that the petitioners employed him to prepare the legal description of the property contained in the petition and the scale map. The scale map attached to the petition is on a sheet of paper 8 x 11 inches. He testified that in preparing the map the objective was to have a document that could be used for publication, distribution and could be copied easily. That required a scale of one inch to 3,000 feet, and, with that scale, it was impossible to accurately delineate individual lots.

The map is an overview of the boundary and cannot be used to determine whether individual lots on the fringe are inside or outside the boundaries. However, Davy testified that the legal description did that, and the legal description was accurate. A map that permitted individuals to determine the status of each lot would have to be double the size. The boundary line along Nakomis Avenue changes on a lot-by-lot basis and that was difficult to depict on the map. The intent was to get the overall concept of the boundary on Nakomis Avenue rather than try to outline the individual lots, which are very small. Davy believes that to a reasonable degree of probability within his field of expertise, the map reasonably portrayed the boundaries. In his view, most residents understood the map because those who live in the areas where the boundaries varied lot-by-lot knew whether they were in the City or the town, and the petition sought to incorporate all of the Town of Campbell.² Davy acknowledged that the Ace Hardware annexation to the City was included on the map in the area sought to be incorporated.

² The petition states that it includes all of the Town of Campbell.

The City of La Crosse called Daniel Leis, a draftsman employed by the City. When asked on cross-examination whether the scale map was a “reasonable, proper portrayal of the area,” he answered: “within reason. It differs around the Nakomis area now and there is some other annexations around the airport now.” He acknowledge that the map showed the “general location” of the area sought to be incorporated.

The City also called Dennis Myers, assistant engineer with the City. Myers testified that the scale map showed scattered annexations (to the City of La Crosse) along Nakomis that were included within the boundaries of the territory sought to be incorporated, and there were other annexations. He acknowledged that some of those annexations were filed on December 20, 1996, just four days before the petitioners published their notice of intent to incorporate. He testified that the scale map reasonably showed where the territory sought to be incorporated was in relation to the City but the boundary between them “and what’s in the city does [sic] not depict as accurate as it should be.” However, he also said that the legal description was accurate and anyone reading the legal description and aware of the fact that certain areas had been annexed by the City would be able to determine the area proposed for incorporation. According to Myers, .15 square miles of land area and .33 square miles of total area were included according to the scale map but should have been excluded.

The trial court found that the total number of square miles actually within the Town of Campbell was 4.07 square miles of land and 4.16 square miles including ponds. The court found that by a preponderance of the evidence the scale map did not define the exact boundaries of the area sought to be incorporated. It noted that the Ace Hardware annexation should have been included in the map. However, it also found that the map was sufficiently accurate

to determine the location and boundaries of the territory; it was an accurate plat map and anyone would reasonably be put on notice of what was included. The court observed that if you were already annexed to the City, you would know that and would know that you could not be incorporated into the village. The court concluded that the statutory requirement for the petition had been met and therefore referred it to the Department of Commerce under § 66.014(8)(b), STATS.

The City of La Crosse argues that the scale map did not “reasonably” show the boundaries of the territory sought to be incorporated because it contained a total of 209 acres of area annexed by the City. The petitioners respond that, based on all the evidence, the map did reasonably show the boundaries. We do not reverse a trial court’s findings of fact unless they are clearly erroneous. Section 805.17(2), STATS. The determination of what is “reasonable” involves the application of a legal standard to a set of facts and is therefore a question of law. See *Wassenaar v. Panos*, 111 Wis.2d 518, 525, 331 N.W.2d 357, 361 (1983). Generally we do not defer to the trial court’s determination of a question of law. *Id.* However, when the legal question is intertwined with factual findings supporting that conclusion, we give weight to the trial court’s decision, although it is not controlling. *Id.*

We conclude that because the factual questions here are so intertwined with the legal determination of whether the map reasonably shows the boundaries, we should defer to the trial court’s determination that the map did reasonably show the boundaries. According deference to the trial court’s decision, we conclude that the trial court did correctly decide that the map reasonably showed the boundaries.

The following evidence supports the trial court's determination. The petition made clear that the incorporation involved all of the territory within the Town of Campbell. The legal description was accurate. There was no testimony that anyone was misled. All of the erroneously included territory was land annexed to the City, which one would reasonably understand was not included in the territory sought to be incorporated into a village. Some of the erroneously included annexations occurred just days before the proceeding was initiated. The scale of the map was to a large extent the reason for the inaccuracies and the explanations for preparing a map of that size were reasonable. Davy testified that the map did reasonably portray the boundaries and Leis testified that it showed the "general location" of the territory "within reason." Based on this evidence, the trial court correctly concluded that the map reasonably showed the boundaries of the territory sought to be incorporated.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

