

BEFORE THE MUNICIPAL COMMISSION OF
THE STATE OF MINNESOTA

Docket No.
A-348-62

Joseph Robbie
Robert W. Johnson
F. Robert Edman

Chairman
Vice-Chairman
Secretary

IN THE MATTER OF THE PETITION OF C. C. COBORN AND JOHN B.
AND FLORENCE K. NEURURER FOR THE ANNEXATION OF ADJOINING
UNINCORPORATED PROPERTY TO THE VILLAGE OF FEDERAL DAM,
CASS COUNTY, MINNESOTA.

The Petition by C. C. Coborn and John B. Neururer and Florence K. Neururer for the proposed annexation of 398 acres of adjoining unincorporated property to the Village of Federal Dam, Cass County, Minnesota, came regularly on for Hearing before the Minnesota Municipal Commission at Federal Dam, Cass County, Minnesota, on the 7th day of May, 1962, at 11 o'clock in the forenoon. Joseph Robbie, Chairman, and F. Robert Edman, Secretary, were present. Robert W. Johnson, Vice-Chairman, was not present but has fully examined the Record. Robert G. Renner of Peterson and Renner, Walker, Minnesota, appeared for the Petitioners. Thomas Hilligan appeared for the Village of Federal Dam. Paul Shaw appeared for the only resident taxpayer who appeared of record in opposition to the Petition. No other appearances were noted on the Record either by interested parties or counsel.

Evidence was taken and testimony heard from all parties appearing and indicating a desire to be heard. Certain exhibits were allowed in evidence. The Commission viewed the property proposed for annexation with all counsel of record. All parties were allowed leave to file briefs and to submit additional information to the Commission by service upon all counsel of record.

The Commission having carefully considered the evidence and upon all of the files and records now makes and files the following Findings of Fact, Conclusions of Law, Order and Memorandum Opinion:

FINDINGS OF FACT

I.

A petition for the annexation of adjoining unincorporated property was filed by the legally required number of petitioners residing in the area proposed to be annexed.

II.

The hearing upon such petition was held pursuant to due, timely and adequate legal notice as provided by statute on May 7, 1962.

III.

The area proposed for annexation in such petition is legally described as follows:

Lot 6, the SW $\frac{1}{4}$, of SE $\frac{1}{4}$, and the S $\frac{1}{2}$ of SW $\frac{1}{4}$, all in Section 33, Township 144, Range 28; the S $\frac{1}{2}$ of SE $\frac{1}{4}$, the NW $\frac{1}{4}$ of SE $\frac{1}{4}$, the NE $\frac{1}{4}$ of SW $\frac{1}{4}$, and the E $\frac{1}{2}$ of NW $\frac{1}{4}$, except the Plat of Lakeview, all in Section 32, Township 144, Range 28, together with Blocks 1, 2 and 3 of the Plat of Lakeview, all being in the County of Cass and State of Minnesota.

IV.

The total area proposed for annexation consists of 398 acres of which the petitioners own 198 acres. The petitioners are the majority of landowners in number.

V.

The resident population of the area proposed for annexation is five people. The population of the Village of Federal Dam is 187.

VI.

There are within the area proposed for annexation two buildings used for residence. The lodge apartment has three occupants. The garage apartment has two occupants.

VII.

The number and character of existing buildings in the area proposed for annexation is as follows:

- A. One, two story lodge (120' x 50') with 22 sleeping rooms, dining area (50' x 70') commercial kitchen, and private apartment.
- B. Seven cabins (22' x 26')
- C. One garage apartment (30' x 80')
- D. Utility Service building

VIII.

There are no existing facilities for fire and police protection within the area proposed for annexation.

IX.

The Village of Federal Dam does not have a central water or sewage disposal system. It has no fire protection. Police protection is provided by two elected constables who are on call. Twenty Dollars has been expended for police protection in the last reported year. (Commission Exhibit 4, page 6.)

X.

The Village of Federal Dam operates on an annual budget of less than \$3,000 per year from all income sources and has no funds with which to provide additional services for persons living within the present Village limits.

XI.

The assessed valuation of the area proposed for annexation is 28 per cent of the total assessed valuation of the property within the present Village limits of Federal Dam. The prospect of furnishing municipal services including fire and police protection will be materially improved if the proposed area is annexed to the Village of Federal Dam.

XII.

There is a close unity of interest between the present Village of Federal Dam and the area proposed for annexation. The Petitioner, C. C. Coborn, and his two sons own and operate a resort. There are other resorts within the present Village. The Petitioner Coborn participates in community and civic activities and assists in the promotion of the tourist trade for the Federal Dam area. He and his sons have extensive plans to expand the facilities of the Coborn resort to accommodate conventions and large groups.

XIII.

The proposed annexation is to the best interests of the area proposed for annexation and the annexing Village.

XIV.

The property included in the area proposed for annexation is about to become urban in character in the sense that the developed resort areas and the small villages in northern Minnesota are urban.

XV.

Municipal Government of the area proposed for annexation is required to protect the public health, safety and welfare in reference to development and construction which may be reasonably expected to occur within a reasonable time.

XVI.

The total assessed valuation of the area proposed for annexation is \$4,853. The total assessed valuation of the Village of Federal Dam is \$16,882.

XVII.

The present annual tax revenue to the Village of Federal Dam is \$378.23. The annual gross earnings of the Village of Federal Dam is presently \$1,508.

XVIII.

The Coborn tract on which the resort is located in the area proposed for annexation has its own water and sewage systems. The Village has none. The owner of this property has equipment to maintain and repair the road which connects the Coborn property to the Village of Federal Dam. The Village has no road equipment.

XIX.

The Village Council of Federal Dam has unanimously approved the proposed annexation.

XX.

The area proposed to be annexed is in unorganized territory of Cass County and has no township commission. It is presently administered by the Board of County Commissioners of Cass County.

XXI.

If the annexation is approved, the Village limits will be extended so as to abut on the waters of Leech Lake. Presently the Village is situated on the Leech River.

XXII.

The roadway which connects the Coborn resort property on Leech Lake in the area proposed for annexation to the present Village of Federal Dam is leased from the State of Minnesota on a five-year, standard lease and is maintained at the expense of the private property owner.

XXIII.

The government of the area proposed for annexation as unorganized territory by the Board of County Commissioners at a distance of approximately 45 miles is inadequate.

XXIV.

The ability of the Village of Federal Dam to furnish needed fire protection not now available to the present inhabitants and to those living or owning property in the area proposed for annexation will be materially increased by completing the proposed annexation. The ability to furnish or improve other services to the present Village and the affected area will also be increased.

XXV.

This petition is not primarily motivated to increase revenue for the annexing municipality. The increase in taxes to the annexed area will bear reasonable ^{relation} relief to the benefits conferred upon such area. This is effectively conceded in this proceeding by the fact that all of the private land owners in the annexed area have joined in the petition.

CONCLUSIONS OF LAW

I.

The area proposed for annexation is about to become urban in character in the sense that the villages and the developed resort areas of northern Minnesota are urban.

II.

The present government of the area proposed for annexation as unorganized territory by the Board of County Commissioners is inadequate.

III.

The proposed annexation is in the best interests of the annexing Village of the affected territory.

O R D E R

Based upon the evidence presented to the Minnesota Municipal Commission at a public hearing in the Village of Federal Dam, Cass County, Minnesota, on May 7, 1962; upon the attached Findings of Fact and Conclusions of Law; and upon all of the files and records, the Commission being fully advised in the premises,

IT IS ORDERED: That the following described property be and the same is hereby annexed to and made a part of the Village of Federal Dam, Cass County, Minnesota, as effectually as if it had originally been a part thereof.

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Lot 6, the SW $\frac{1}{4}$ of SE $\frac{1}{4}$, and the S $\frac{1}{2}$ of SW $\frac{1}{4}$, all in Section 33, Township 144, Range 28; the S $\frac{1}{2}$ of SE $\frac{1}{4}$, the NW $\frac{1}{4}$ of SE $\frac{1}{4}$, the NE $\frac{1}{4}$ of SW $\frac{1}{4}$, and the E $\frac{1}{2}$ of NW $\frac{1}{4}$, except the Plat of Lakeview, all in Section 32, Township 144, Range 28, together with Blocks 1, 2 and 3 of the Plat of Lakeview, all being in the County of Cass and State of Minnesota.

BY THE FULL COMMISSION

Joseph Robbie
Chairman

MEMORANDUM

Two owners of 198 acres of unincorporated property have petitioned to have their land annexed to the Village of Federal Dam along with 200 acres of state wetlands. The village council has consented to the annexation and appeared at the hearing with the proponents in support of the petition.¹

The only opponent of record is a resident and taxpayer of the village, Warren Bridge.

The state property connects the private holdings to the present village limits. John Bernard Neururer and Florence K. Neururer own approximately 78 acres adjacent to the village boundary. The 200 acres owned by the state connect this to 120 acres owned by Chester Coborn lying on Leech Lake. The Coborn property could not be included in the annexation as land adjacent to the village without including the state wetlands in the petition. Owners of the Coborn and the Neururer property have joined as petitioners. R. D. Hultengren, Land Administrator, Lands and Minerals, Department of Conservation advised the petitioners and the Commission that department policy prevented the state from joining in this type of petition, but on the other hand, Lands and Minerals had no objections to the inclusion of wastelands within incorporated territory.

If the State of Minnesota had joined in the Petition, the proposed annexation could have been accomplished without public hearings upon requisite statutory findings because then there would be consent of all owners in number and area.² This also would have been the situation had the petitioners deleted as few as three acres from the included state-owned property. The petition would then show the consent of the majority of land owners in number and area.

1 - Public hearing, Village of Federal Dam, May 7, 1962.
Also Council Resolution, March 19, 1962.

2 - MSA 414.03 (3) para. 2, as amended.

Coborn's property alone represents one-fourth of the present assessed valuation of the Village of Federal Dam. If his plans are consummated this contribution of additional tax base will become greater and may exceed half the total village valuation.

We must approve a petition for the annexation of unincorporated property if we find that "the property to be annexed is now, or is about to become, urban or suburban in character" or we "may, in any case, approve the annexation if (we) find(s) that municipal government of the area is required to protect the public health, safety and welfare in reference to plat control or land development and construction which may be reasonably expected to occur within a reasonable time. . . and if (we) find(s) that the annexation would be to the best interest of the village. . . and of the territory affected."³ Statutory guides are furnished to aid this determination.

Federal Dam dropped in population from 225 to 187 in the decade of the 1950's. Its total revenue from all sources including taxes, gross receipts and licenses was \$2,855.09 for the year ended December 31, 1961. It has operated in the "red" for years.

It is obvious to us that expanding the boundaries of Federal Dam to include property which adds more than one-fourth to its present assessed valuation is a beneficial step. The village is presently without municipal fire or full-time police protection although elected constables are on call. The added valuation should assist in providing these facilities. The ability to furnish these services is imperative in a remote area which is developing tourist accommodations to house increasing numbers of people. The Coborn resort is now part of an unorganized township and subject to the Board of County Commissioners. Law Enforcement is the Sheriff's obligation. If the resort is about to become a convention center, this can be more properly and effectively furnished by municipal government.

Instead the petition we now consider reflects the desire of all of the private owners representing a fraction less than half of the land in area.

The clear purpose of the annexation is to include the Coborn resort in the village. Both Coborn and village officials agree that this would be to their mutual advantage. The lone opponent contends that this would add a tax burden to the village to provide police and fire protection to the resort or to replace the road constructed at his own expense by Chester Coborn through the state wetlands to provide access to his resort. The Department of Conservation has entered into a standard roadway lease (320-J) with Coborn calling for an annual payment of \$16.00. Coborn testified that 10,000 railroad ties went into this construction to provide the road's base. The opponent feared that because the water level on the date of the hearing was 5-3/4" below the road level, the road sometime might be submerged and the village would have the obligation of maintenance and of reconstructing or repairing it. This fear is supported by neither evidence nor law.

The incorporated Village of Federal Dam is located in Northern Minnesota in the hunting and fishing, lake and resort country. If the proposed annexation is accomplished, the village will border on Leech River and Leech Lake. The principal business or industry is to provide entertainment and necessary services to tourists and sportsmen who come mainly in the summer months but also, in increasing numbers, for winter ice fishing. The Coborn resort is a year-around business containing a lodge and seven cabins. The owner testified as to plans to construct a swimming pool, additional cabins, an airstrip and other facilities to attract more tourists and handle convention business. He said that he had to turn down a request to entertain a function of the Minneapolis Lions Club because it involved 150 people. He indicated that his plans will cause the employment of additional full-time persons who will live on the resort property. The opponent agreed that Coborn is continuing to develop his property and did not dispute the magnitude of future plans.

This case illustrates the vast difference between the wilderness and resort area as contrasted to the built-up communities in the farm country or, more particularly and dramatically, to the metropolitan region in determining what property may be approved for annexation. The Minnesota Supreme Court has long recognized this difference in applying the judicial test of what land is suitably conditioned to be properly subjected to local government.⁴ It would be ironic if we were to say that land devoted to a rapidly building and developing year-around resort and convention center in the heart of our Northern Lakes and wilderness must remain a part of unorganized townships, while adjacent villages lose in population and are without revenue or resources to properly govern themselves, all because of the concept of what is urban or suburban in character or may be properly included within municipal limits elsewhere in Minnesota under altogether different conditions. The tourist and resort trade is an essential part of the economic life of Northern Minnesota and furnishes much of whatever probability exists for future population growth.

We approve this annexation. We hold that resorts near the limits of existing villages in Northern Minnesota may be annexed where the conditions required by statute are met. We consider that the present proposed annexation is to the interest of the area to be annexed and the affected territory and will advance the public welfare.

We are aware that this annexation could have been accomplished by ordinance of the Village of Federal Dam without Commission review, a hearing or an election had Coborn and Neururer included their property and only a strip of state land sufficient to connect it so that Coborn's land would have been contiguous to the Village. By this means they could have included less than 200 acres of unplatted land in the petition and they would have represented the

4 - State ex rel. Township of Copley et al vs. Village of Webb et al, 83 N.W. 2d 788.

majority of land owners in number. But this would have involved a gerrymandered annexation pursuant to a loophole provision which remains in the Municipal Commission Act from earlier annexation procedures.⁵

We think that the petitioners served the public interest by subjecting their annexation proposal to the searching scrutiny of a public hearing to which all could come to observe, to testify or to inform themselves. In view of some extraneous matters which were brought up, we believe that the public hearing may have created better understanding of the real issues and advanced the community interest.

No approval of this annexation by election within the annexed area is required. M.S.A. 414.03, Subd. 5, provides for annexation elections of unincorporated property "where the petition for annexation has not been initiated by a majority of the land owners in number within the area to be annexed, and the area proposed for annexation is not located within the metropolitan area. . . ." The majority of land owners in number having joined in the petition now before us, no election is required.

BY THE FULL COMMISSION

Joseph Robbie
Chairman

OPINION BY:

Joseph Robbie
Chairman

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Dated: June 26, 1962

5 - MSA 414.03 (2).