

**LETTER OPINION
2003-L-14**

March 4, 2003

Mr. Cameron D. Sillers
Langdon City Attorney
908 3rd St
Langdon, ND 58249-2413

Dear Mr. Sillers:

You asked whether a January 17, 1921, recording of a plat entitled Fairview Addition to the City of Langdon, where the plat states "SHOWING AUDITOR'S LOTS" 61 through 70, was sufficient to annex lot 70 to the city of Langdon (City).

Aside from the above-noted recorded plat, the City has no other record the property shown on that plat was annexed at that time, although there is an earlier passing reference to a proposed addition to the City called Fairview in city council minutes of September 6, 1897. The Fairview plat received from the city auditor, recorded July 15, 1897, does not include auditor's lots 61 through 70, and the plat appears to have been prepared as a townsite plat in Cavalier County and apparently later modified by merely writing a reference to the City on its title. It appears to contain the same lots, blocks, and dimensions as shown on the 1921 plat, exclusive of lots 61 through 70.

In May of 1972 most of lots 62 through 69 were annexed as Waslaski's Addition to the City.¹ No part of lots 61 or 70 were included in the recorded plat of Waslaski's Addition. You specifically ask whether recording of the plat of the Fairview Addition to the City of Langdon in 1921, which made reference to showing auditors lots 61 through 70, would justify taxing lot 70 as city property.²

¹ See May 9, 1972, Minutes of the Langdon City Commission, and a plat entitled "Annexation Plat to the City of Langdon, North Dakota, Waslaski's Addition (formerly a part of Fairview Addition)" covering most of lots 62 through 69, recorded in the office of the Register of Deeds June 1, 1972.

² The "showing" language is a reference to the platting requirement to include other lots on a plat for surveying purposes. It does not make those items merely "shown" part of the platted area. N.D.C.C. §40-50.1-01(8) (formerly N.D.C.C. §40-50-01, N.D.R.C. 1943 § 40-5001, and C.L.1913 § 3942).

Auditor's lot 70 was not included in the 1972 annexation and has been taxed as township property, not city property, until 2002.³ The facts as presented do not indicate the existence of any City records in the form of minutes or resolutions of the city council supporting the theory that the property was actually annexed in 1921. Thus, there is no record besides the 1921 recorded plat establishing a relationship to annexation. In fact, in 1921 plats could be prepared and recorded without specifically being annexed to a city. See C.L.1913 §§ 3942-3950. Compare C.L.1913 §§ 3750-3756 (relating to the power to extend city limits).

Moreover, the Waslaski's Addition plat recorded in 1972 contains a notation that the Langdon city limits were along the north line of lot 62 which is over 700 feet north of Auditor's lot 70, thus, indicating lot 70 was south and outside of the city limits.

While annexation procedures may be liberally construed since N.D.C.C. ch. 40-51.2 was enacted in 1969, the statutory requirements for annexation were strictly construed before that enactment. See Frey v. City of Jamestown, 548 N.W.2d 784, 790 (N.D. 1996); compare Red River Valley Brick Co. v. City of Grand Forks, 145 N.W. 725, 726 (N.D. 1914) (annexation statutes "must be strictly construed.") At the time the 1897 and 1921 plats of Fairview Addition were recorded the law required the city council to publish notice that a petition to annex had been made or to pass and publish a resolution to annex, consider protests, and upon annexation, to record a plat showing corporate boundaries of a city and any change to the boundaries.⁴ According to the facts you and the city auditor provided, no city records show these requirements were followed.

In addition to the failure of City records to show procedures to annex lot 70 had been followed, the property has never been included on the City tax rolls until 2002 according to the auditor.⁵

³ The city auditor advised that lot 70 and certain other blocks and lots shown in the 1921 plat were added to the city tax rolls in 2002.

⁴ See 1895 Rev. Codes §§ 2327 through 2332; C.L.1913 §§ 3750 through 3756 (1925 Supp.). See also C.L.1913 §§ 3968-3973 (providing an alternate annexation procedure by petition and ordinance or court order if the city doesn't act on the petition requiring recording of a map of the annexed territory together with a copy of the ordinance or court order).

⁵ Although estoppel could work against the lot owner, it doesn't under the facts presented because of the absence of evidence of exercising the power to tax before 2002. "[T]he owners of land over which the municipal corporation has exercised the powers and functions of government for a long period of time will be estopped from questioning the location of municipal boundaries." 2A E. McQuillan, The Law of Municipal Corporations, § 7.42 (3d ed. 1996). See also Weiderholt v. Lisbon Special

LETTER OPINION 2003-L-14
March 4, 2003
Page 3

Considering the absence of the record required by law that auditor's lot 70 was annexed to the City, and in light of the fact that the City treated the property as township property, it is my opinion that auditor's lot 70 was never annexed to the city of Langdon.

Sincerely,

Wayne Stenehjem
Attorney General

tam/vkk

School District, 178 N.W. 432, 433-34 (N.D. 1920) (persons who delayed nine months to challenge a school board annexation were guilty of laches precluding them from asserting the invalidity of the proceeding and recovering taxes paid).