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## NOTE

### Losing Ground: *Seminole* and the Annexation Power of Municipalities in Oklahoma

#### *I. Introduction*

The power to annex property is an important tool of city and state legislatures.<sup>1</sup> The need for municipalities to extend their boundaries because of a growing population, or to extend services to an area outside the city's existing limits, often leads municipalities to annex outlying areas.<sup>2</sup> Annexation is the incorporation of additional territory into an existing political unit such as a country, state, city, or county.<sup>3</sup> The most common situations that lead to annexation are when (1) a city seeks to annex land to support its growing population and to increase its tax base,<sup>4</sup> or (2) a group of unincorporated, private landowners petitions the municipality for annexation with the hope that the municipality will then provide essential services such as fire and police protection and public works to those private landowners.<sup>5</sup> In the first situation, conflicts sometimes arise between private landowners seeking to protect their property interests and avoid additional tax liability, and municipalities seeking to both extend their boundaries and authority and, most importantly, to increase their tax base.<sup>6</sup> In addition, municipalities must balance their own needs with the interests of property owners.<sup>7</sup>

This note focuses on the impact of the Oklahoma Supreme Court's decision in *In re De-Annexation of Certain Real Property from the City of Seminole*<sup>8</sup> on two important issues — the appropriate level of judicial review to apply in annexation decisions and the standard of reasonableness used by Oklahoma courts. Oklahoma case law before *Seminole* approved of the strip annexation method in which a municipality uses a narrow strip or corridor of land to

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1. Alison Yurko, *A Practical Perspective About Annexation in Florida*, 25 STETSON L. REV. 699, 706 (1996).

2. *Id.* (“[A]nnexation is extremely important to a growing city as it presents economic opportunity, social equity and expanded urban services.”).

3. RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY 83 (2d ed. 1998).

4. Scott D. Makar & Michael L. Buckner, *Son of Snyder: Municipal Annexations and Quasi-Judicial Proceedings*, 1 FLA. COASTAL L.J. 133, 133-34 (1999) (“An obvious purpose of the annexation is to increase the city's tax base.”).

5. Yurko, *supra* note 1, at 699.

6. Makar & Buckner, *supra* note 4, at 136-37.

7. *Id.*

8. 2004 OK 60, 102 P.3d 120 (*reh'g denied* Nov. 15, 2004) [hereinafter *Seminole*].

connect its boundary to an outlying piece of land.<sup>9</sup> Prior case law also gave municipalities significant autonomy in determining how and in what direction those municipalities would extend their boundaries.<sup>10</sup> The *Seminole* decision may signify the beginning of a curtailment of that deference given to municipal authority and an expansion of judicial review into annexation decisions.

This note argues that the Oklahoma Supreme Court correctly applied the Oklahoma annexation statutes in finding that the use of a narrow strip of land to accomplish an annexation of outlying property is not a reasonable use of the annexation authority of municipalities. The court, however, failed to set forth the appropriate standard for strip annexations, and therefore, left the question open for future annexation proceedings. Part II of this note discusses Oklahoma precedent in the area of annexation. Part III discusses the background of the *Seminole* case, including the pertinent facts and procedure of the case. Part IV examines the holding in *Seminole*, and Part V analyzes the decision in light of related precedent and statutory interpretation.

## II. Case Law Before *Seminole*

### A. “Adjacency and Contiguity” and the Strip Annexation Method

State legislatures have full power to authorize the extension of boundaries without the consent of the residents of the annexed territory.<sup>11</sup> In Oklahoma, the state legislature delegated the authority to annex property to municipalities.<sup>12</sup> Under Oklahoma law, the territory to be annexed must be “adjacent and contiguous” to the existing municipality.<sup>13</sup> Generally, lands are contiguous if they are “not separated from a [municipality] by outside lands.”<sup>14</sup>

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9. See, e.g., *Botsford v. City of Norman*, 354 F.2d 491, 495 (10th Cir. 1965); *Town of Luther v. State ex rel. Harrod*, 1967 OK 59, ¶ 28, 425 P.2d 986, 991; *Sharp v. Oklahoma City*, 1937 OK 685, ¶ 24, 74 P.2d 383, 385-86.

10. See, e.g., *Botsford*, 354 F.2d at 495; *Town of Luther*, ¶¶ 26-27, 425 P.2d at 991; *Sharp*, ¶¶ 21-31, 74 P.2d at 385-86.

11. *Mount Pleasant v. Beckwith*, 100 U.S. 514, 533 (1879); *City of Bethany v. Dist. Court of Okla. County*, 1948 OK 38, ¶ 12, 191 P.2d 187, 189; 56 AM. JUR. 2D *Municipal Corporations, Counties, and Other Political Subdivisions* § 51 (2000) [hereinafter *Political Subdivisions*].

12. 11 OKLA. STAT. § 21-101 (2001) (“The municipal governing body by ordinance may add to the municipality territory adjacent or contiguous to its corporate limits and increase or diminish the corporate limits as the governing body deems desirable for the benefit of the municipality.”).

13. *Id.*; see also *id.* § 21-103(A) (stating “[b]efore the governing body of a city may annex any territory adjacent or contiguous to the city . . .”) (emphasis added).

14. *Political Subdivisions*, *supra* note 11, § 52.

The Oklahoma annexation statute states that “[b]efore a city may annex any territory adjacent or contiguous to the city, it must obtain the written consent of the owners of at least a majority of the acres to be annexed to the municipality.”<sup>15</sup> There are two exceptions to this consent requirement: (1) where “[t]he territory to be annexed is subdivided into tracts or parcels of less than five . . . acres and contains more than one residence;”<sup>16</sup> or (2) where “[t]hree sides of the territory to be annexed are adjacent or contiguous to the property already within the [city] limits.”<sup>17</sup> The Oklahoma courts have not explicitly stated what constitutes contiguity for purposes of satisfying the statute, but they have applied the term in several cases.

In *City of Ada v. Whitaker*,<sup>18</sup> the plaintiff landowners claimed that they did not consent to the annexation of their property.<sup>19</sup> Under the statute in place at the time a municipality could only annex land *without* the consent of the owners of a majority of the acreage if three sides of the land were adjacent to or abutting property already within the city limits.<sup>20</sup> Here, the question before the Oklahoma Supreme Court was whether the plaintiff landowners’ property was indeed “abutting” or “adjacent” to the City of Ada, a question requiring a discussion of the definition and usage of these terms.<sup>21</sup> The plaintiffs’ land consisted of a ten-acre square parcel measuring 660 feet by 660 feet.<sup>22</sup> The north and east sides of the plaintiffs’ land were found to be completely adjacent to City of Ada property.<sup>23</sup> The west side of the plaintiffs’ land, however, was only adjacent to City of Ada property for 390 of the 660 acres.<sup>24</sup> The dispute before the court was whether the partial adjacency was sufficient to constitute adjacency under the statute.<sup>25</sup>

Equating the term “adjacent” to that of “contiguous,” the court cited with approval a Pennsylvania Supreme Court opinion on a similar matter, which

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15. 11 OKLA. STAT. § 21-103(A).

16. *Id.* § 21-103(A)(1).

17. *Id.* § 21-103(A)(2).

18. 1949 OK 266, 212 P.2d 482.

19. *Id.* ¶ 4, 212 P.2d at 483.

20. 11 OKLA. STAT. § 481 (1941), stating in pertinent part:

[I]n no case shall any additional territory . . . be added to the city limits without the consent in writing of the owners of a majority of the whole number of acres owned by residents . . . , except that when three sides of such additional territory is adjacent to, or abutting on, property already within the city limits, such territory may be added to the city limits without the consent hereinbefore mentioned . . .

*Id.*

21. *City of Ada*, ¶ 5, 212 P.2d at 483.

22. *Id.* ¶ 13, 212 P.2d at 483.

23. *Id.*

24. *Id.*

25. *Id.*

stated, “[t]he word “adjacent” we think is used in its primary and obvious sense as “adjoining” or “contiguous” . . . .”<sup>26</sup> The Oklahoma Supreme Court went on to reason that the term “adjacent” did not apply where there was intervening property between the current municipality and the proposed annexed property because such intervening property would render the primary purposes and obligations of establishing a municipality, such as the location and grading of streets and the laying of sewers, impracticable.<sup>27</sup> The Oklahoma Supreme Court agreed with the Pennsylvania Supreme Court, stating, “[i]t is . . . obvious that the legislature did not intend to provide for the annexation of territory to a city with intervening territory, except where such intervening territory is a strip less than four rods in width.”<sup>28</sup> In this case, the court held that the statutory requirements of adjacency were not satisfied.<sup>29</sup>

A seeming contradiction to the concept of adjacency and contiguity is strip or “shoestring” annexation. Under the strip annexation method,<sup>30</sup> “a city uses a narrow [strip or] corridor to connect its . . . boundary to an outlying noncontiguous area.”<sup>31</sup> Generally, courts disfavor finding one territory to be contiguous to another for annexation purposes where the only link between the two territories is a narrow corridor.<sup>32</sup> Annexations performed in this fashion are the equivalent of isolated areas of land connected solely by a “technical strip a few feet wide” and, therefore, are not considered consistent with legislative intent.<sup>33</sup> The use of such strip annexations is a frequent cause of

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26. *Id.* ¶ 21, 212 P.2d at 484 (citing *In re Sadler*, 21 A. 978 (Pa. 1891)).

27. *Id.* ¶ 22, 212 P.2d at 485.

28. *Id.* The Oklahoma statute in place at the time of this decision provided, in pertinent part, “where the territory sought to be added is separated from the city limits by an intervening strip less than four rods in width upon the land so detached by such strip shall be considered as adjacent or abutting within the meaning of this section.” *Id.* ¶ 18, 212 P.2d at 484 (quoting 11 OKLA. STAT. § 481 (1941)). A similar provision is currently codified at title 11, section 21-102 of the Oklahoma Statutes, which states “[w]here any territory to be annexed is separated from the corporate limits of the municipality only by a railway right-of-way, an intervening strip less than four (4) rods wide, or a highway right-of-way, the territory shall be considered adjacent or contiguous to the municipality.”

29. *City of Ada*, ¶ 22, 212 P.2d at 485.

30. The strip annexation method may also be referred to as “shoestring,” “lasso,” or “flag pole.” *Seminole*, *supra* note 8, ¶ 17 n.34, 102 P.3d at 128 n.34.

31. *Id.*

32. *Political Subdivisions*, *supra* note 11, § 53; 11 AM. JUR. PROOFOFACTS2D *Contiguity of Land Annexed by Municipality* § 5 (1976) (“Part of the adverse reaction of some courts to annexation of irregularly shaped parcels lies in the fact that the inclusion of long, narrow strips of land results in territorial shapes which deviate considerably from the model rectangles or squares.” (citing *Clark v. Holt*, 237 S.W.2d 483 (Ark. 1951); *In re Buffalo Grove*, 261 N.E.2d 746 (Ill. App. Ct. 1970))).

33. *Political Subdivisions*, *supra* note 11, § 53.

conflict between municipalities and the owners of the land proposed for annexation.<sup>34</sup>

In Oklahoma, however, courts have consistently upheld annexations resembling the strip method as reasonable under the annexation statutes. In *Sharp v. Oklahoma City*,<sup>35</sup> the Oklahoma Supreme Court upheld the annexation of territory that was connected to the city solely by a narrow strip of land 177.5 feet wide and 1662 feet long, finding that the annexation statute did not limit the extent, form, or shape of the land proposed to be annexed.<sup>36</sup> In that case, the city obtained the written consent of the owners of a majority of the whole number of acres to be added.<sup>37</sup> Because the city obtained this consent, the exception discussed in *City of Ada*, which did not require consent where three sides of the annexed property was adjacent to property already within city limits, did not apply in *Sharp*.<sup>38</sup>

Likewise, in *Botsford v. City of Norman*,<sup>39</sup> the U.S. Court of Appeals for the Tenth Circuit, applying Oklahoma law, upheld the annexation of 112,000 acres through the prior annexation of a sixty-seven-foot-wide strip of land extending nineteen miles away from the edge of Norman city limits.<sup>40</sup> The territory proposed for addition to the City of Norman could only be annexed in this case by the consent of the owners of a majority of the acres of the property unless three sides of the property were bounded by property within the city limits.<sup>41</sup> Because the targeted property was only bounded on its west side by Norman city limits, the city would have had to obtain the consent of the owners to have a valid annexation under the statute.<sup>42</sup> Unable to secure the consent of the owners, the City of Norman opted to annex a strip of land that comprised the southern and eastern boundaries of the targeted land to satisfy the statutory

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34. Ronald E. Gother, *A Study of Recent Amendments to California Annexation Laws*, 11 UCLA L. REV. 41, 52 (1963-64) ("Probably no other procedure has caused more difficulty and concern, nor produced a greater measure of hardship . . . and confused and overlapping territorial boundaries than strip annexations.").

35. 1937 OK 685, 74 P.2d 383.

36. *Id.* ¶ 20, 74 P.2d at 385. The court in *Sharp* distinguished contrary cases in other jurisdictions, such as California, on the basis that the foreign statute differed by requiring "the tracts to be contiguous and 'inhabited' or an affirmative majority vote of each separate noncontiguous tract," while the Oklahoma statute at issue only required the written consent of the resident owners of a majority of acres to be annexed. *Id.* ¶ 17, 74 P.2d at 385; *see also* *Town of Luther v. State ex rel. Harrod*, 1967 OK 59, 425 P.2d 986.

37. *Sharp*, ¶ 6, 74 P.2d at 384.

38. *Id.* ¶ 26, 74 P.2d at 386.

39. 354 F.2d 491 (10th Cir. 1965).

40. *Id.* at 492, 494.

41. *Id.* at 494.

42. *Id.* at 493.

requirement that three sides be bounded by property within the city limits.<sup>43</sup> The city obtained consent from owners of the property in the strip, and therefore, the annexation of the strip itself was valid under the statute.<sup>44</sup> Upon annexation of the strip parcel, the city proceeded in annexing the targeted property.<sup>45</sup>

Clearly, the only purpose behind the annexation of the sixty-seven-foot-wide strip of land was to connect the desired outlying property to Norman. Relying on *Sharp*, the Tenth Circuit found that although the strip was only connected to Norman at the southeastern edge of the old city limits and extended east away from the city for fourteen miles and then north for five miles, that point of connection was sufficient to satisfy the adjacency requirement under the statute.<sup>46</sup> Therefore, the court upheld the annexation of a strip parcel as proper for the purpose of annexing property that did not itself satisfy the adjacency standard under the Oklahoma statute.<sup>47</sup>

*B. Annexation as a "Political Decision" and the Standard of Judicial Review*

The scope and extent of a municipality's expansion is considered a political or solely legislative question, and thus, courts are limited in the extent to which they can review annexation decisions.<sup>48</sup> Courts in some states, including Oklahoma, have stated that a municipality's decision to annex property is a purely legislative determination that will not be subjected to judicial review other than to determine whether an annexation facially meets the statutory requirements.<sup>49</sup>

In *Sharp*, the Oklahoma Supreme Court held that "the extent and shape which the annexed territory shall take is a political and not a judicial question."<sup>50</sup> In finding that the court would not interfere with the municipality's decision to annex a particular territory, the *Sharp* court reasoned that courts cannot require cities to annex territory that is in a

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43. *Id.* at 492. The sixty-seven-foot-wide strip extended fourteen miles east and then five miles north from the Norman city limits. *Id.*

44. *Id.* at 494.

45. *Id.* at 493.

46. *Id.* at 494.

47. *Id.*

48. *Id.*

49. *Id.*; see also *Taylor v. City of Chandler*, 498 P.2d 158, 159 (Ariz. Ct. App. 1972); *City of Burlingame v. San Mateo County*, 203 P.2d 807, 810 (Cal. Ct. App. 1949); *Banzer v. City of Wichita*, 703 P.2d 812, 815 (Kan. 1985); *City of Claremore v. Town of Verdigris*, 2001 OK 91, ¶ 17, 50 P.3d 208, 213.

50. *Sharp v. Oklahoma City*, 1937 OK 685, ¶ 19, 74 P.2d 383, 385 (quoting *People ex rel. Peck v. City of Los Angeles*, 97 P. 311, 313 (Cal. 1908)).

particular shape or in a “compact form” because the direction in which a city will expand or the shape such expansion will take cannot be predicted.<sup>51</sup>

In *In re De-Annexation of Certain Real Property*,<sup>52</sup> the Oklahoma Supreme Court reviewed a district court order of detachment of certain property from the Town of Talihina, pursuant to a request by the interested property owners.<sup>53</sup> The Town of Talihina appealed the order of detachment, arguing that annexation decisions are purely legislative, and therefore, the statute at issue unconstitutionally granted the judiciary the authority to decide whether it should grant a petition for annexation or detachment.<sup>54</sup> The Oklahoma Supreme Court agreed, holding that the determination of whether a petition for annexation can be granted without injustice to the residents or interested persons is purely legislative.<sup>55</sup>

Courts are otherwise limited to reviewing annexation decisions for reasonableness,<sup>56</sup> or to determining whether the annexation falls within the statutory authority of the municipality.<sup>57</sup> In *Botsford v. City of Norman*, the U.S. Court of Appeals for the Tenth Circuit stated that the primary judicial role in reviewing annexations is to determine whether the municipality took reasonable action within the scope of its legislative authority.<sup>58</sup> The court further stated that in making such determinations “[d]iscretionary matters involving economic or political considerations are outside judicial cognizance.”<sup>59</sup>

Against this backdrop of statutory interpretation and precedent, the Oklahoma Supreme Court considered *In re De-Annexation of Certain Real Property from the City of Seminole* to determine whether the use of a narrow

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51. *Id.* ¶ 16, 74 P.2d at 385.

52. 1983 OK 44, 662 P.2d 1375.

53. *Id.* ¶ 1, 662 P.2d at 1376.

54. *Id.* ¶ 3, 662 P.2d at 1376 (“If the district court finds that the request of the petitioners should be granted and can be granted without injustice to the inhabitants or persons interested, the court shall issue an order declaring annexation of the territory to the municipality. If the court finds against the petitioners, the petition shall be dismissed at the cost of the petitioners.” (quoting 11 OKLA. STAT. § 21-107 (1981))).

55. *Id.* ¶ 11, 662 P.2d at 1377.

56. *Political Subdivisions*, *supra* note 11, § 344 (“[T]he reasonableness or not of a proposed annexation is a judicial question, and its decision is a judicial function.” (citing *Extension of Boundaries of Biloxi v. City of Biloxi*, 361 So. 2d 1372 (Miss. 1978))).

57. Robert W. Parnacott, *Annexation in Kansas*, 70 J. KAN. B. ASS’N 28, 38 (2001). “[L]egislature[s] may not delegate [power] to the courts . . . to determine the conditions on which certain territory shall be [annexed or detached from municipalities]; but the courts may be authorized to determine questions of fact, such as the question whether the law has been complied with.” 16 C.J.S. *Constitutional Law* § 155 (1984).

58. 354 F.2d 491, 494 (10th Cir. 1965).

59. *Id.*

strip of land connecting the City of Seminole to noncontiguous outlying land satisfied the statutory contiguity standard.

*III. Statement of the Case: In re De-Annexation of Certain Real Property from the City of Seminole*

In December 1999, the City of Seminole enacted Ordinance Number 917, which annexed several pieces of property in Seminole County.<sup>60</sup> The owners of six parcels of land opposed the annexation of their property, all of which is located in the southeast quadrant of the intersection of I-40 and Highway 99 in Seminole County.<sup>61</sup> This land was home to several businesses, including a Love's Country Store, restaurants, grocery stores, and gas stations.<sup>62</sup> This property was located ten miles from the city limits, while a narrow strip of land connecting the city and the targeted property was annexed in order to provide the contiguity required under the statute.<sup>63</sup> The relevant property owners opposed the annexation, however, the city was able to obtain the consent of a majority of the owners of the acreage annexed.<sup>64</sup> Although the consenting landowners did in fact own a majority of the acres of the land to be annexed, the nonconsenting landowners claimed that this land was overwhelmingly undeveloped, whereas the property owned by the nonconsenting landowners was commercially developed.<sup>65</sup>

The nonconsenting landowners contested Ordinance Number 917 by petitioning the City of Seminole for deannexation of their property.<sup>66</sup> After Seminole denied their request, the landowners sued Seminole in the District Court of Seminole County, seeking a declaration of the invalidity of the ordinance and a restraining order to enjoin Seminole from proceeding with the annexation.<sup>67</sup>

Along with their claim that the ordinance was invalid because it did not meet the statutory standard of contiguity, the landowners argued that Seminole enacted the ordinance at a meeting held December 6, 1999 in violation of the Open Meeting Act.<sup>68</sup> The district court agreed with the landowners that

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60. Seminole, Okla., Ordinance 917 (Dec. 6, 1999).

61. Petition at 12-13, *In re: De-annexation of Certain Real Prop. from the City of Seminole*, No. 98,038 (Seminole County, Okla. Dist. Ct. Seminole County, Okla. Mar. 28, 2000) (unpublished) [hereinafter *Petition for De-Annexation*].

62. *Id.*

63. *Seminole*, *supra* note 8, ¶ 2, 102 P.3d at 123.

64. *Id.* ¶ 6, 102 P.3d at 124.

65. *Petition for De-Annexation*, *supra* note 61, at 12-13.

66. *Seminole*, ¶ 2, 102 P.3d at 123.

67. *Id.*

68. *Id.*; 25 OKLA. STAT. §§ 301-314 (2001).

Seminole violated the Open Meeting Act because the city did not adequately publish notice of the meeting and its subject matter.<sup>69</sup> The presiding judge scheduled a hearing to determine whether Seminole willfully violated the Open Meeting Act, a finding that would render the annexation invalid.<sup>70</sup> Before the hearing, however, Seminole enacted Ordinance Number 941,<sup>71</sup> which purportedly vacated Ordinance Number 917. Subsequently, Seminole reannexed the property of the protesting landowners as well as that of the consenting landowners under Ordinance Number 941.<sup>72</sup> Ordinance Number 941 was essentially identical to Ordinance Number 917, which certainly made it appear that Seminole enacted Ordinance Number 941 to replace Ordinance Number 917 solely because it violated the Open Meeting Act.

Seminole filed a motion for summary judgment on the basis that the statutory requirements of both contiguity and consent of the owners of a majority of acreage were satisfied and, therefore, the courts should not inquire into the annexation beyond such facial validity under the statute. The district court granted Seminole's motion for summary judgment on the claims related to Ordinance Number 941,<sup>73</sup> and the landowners appealed to the Oklahoma Court of Civil Appeals.<sup>74</sup>

The Oklahoma Court of Civil Appeals affirmed the district court's grant of summary judgment to Seminole, stating that "[a] municipality may act in its legislative capacity whenever and wherever its interest is properly concerned, and its legislative judgment of the necessity of action is final and conclusive, subject only to the reasonableness of its ordinances and the enforcement of them."<sup>75</sup> The court also stated that the rights of the individual must generally yield to the rights of the public, and the courts should not interfere with a municipality's lawful use of its legislative power merely because it burdens an

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69. *Seminole*, ¶ 2, 102 P.3d at 123.

70. *Id.*; see also 25 OKLA. STAT. § 313 ("Any action taken in willful violation of [the Open Meeting] act shall be invalid." (footnote omitted)).

71. *Seminole*, Okla., Ordinance 941 (Aug. 7, 2001).

72. *Seminole*, ¶ 2, 102 P.3d at 123. After the enactment of Ordinance Number 941, petitioners and respondents amended their pleadings and motions for summary judgment to reassert their arguments as they related to Ordinance Number 917. *Id.* ¶ 3, 102 P.3d at 123.

73. *Id.* ¶ 4, 102 P.3d at 124. The issues related to Ordinance Number 917 and the Open Meeting Act violation were left unresolved and the district court's order relating to Ordinance Number 941 was certified for immediate appeal. *Id.* ¶ 4, 102 P.3d at 123-24.

74. *Id.* ¶ 4, 102 P.3d at 124.

75. *In re De-Annexation of Certain Real Prop. from the City of Seminole*, No. 98,038, ¶ 10 (Okla. Civ. App. June 20, 2003) (unpublished opinion) (citing *City of Bethany v. Dist. Court of Okla. County*, 1948 OK 38, ¶¶ 11-13, 191 P.2d 187, 189).

individual.<sup>76</sup> The landowners then appealed the grant of summary judgment to the Oklahoma Supreme Court.<sup>77</sup>

The Oklahoma Supreme Court granted certiorari to consider whether the City of Seminole's annexation of noncontiguous tracts of land by use of a strip of land three feet wide and seven to ten miles long that connected to the city limits at its northern boundary, reasonably satisfied the statutory standard of contiguity.<sup>78</sup> Even though the annexation in *Seminole* satisfied the written consent formalities prescribed in title 11, section 21-103 of the Oklahoma Statutes, the court analyzed the annexation for its reasonable application of the adjacency or contiguity standard.<sup>79</sup>

The court held that the type of strip annexation used by *Seminole* was not a reasonable exercise of the annexation authority granted to municipalities by the legislature, stating that "[a] corridor-style annexation by which remote territories are connected to the existing city limits by a narrow 3-foot wide strip of territory does not satisfy the legislatively crafted contiguity standard."<sup>80</sup> In a dissent, Justice Watt, joined by Justice Hodges, stated that the majority's opinion in this case could not be squared with prior Oklahoma cases, all of which authorized the use of the strip annexation method and held that such annexation decisions are political decisions with which the court shall not interfere.<sup>81</sup>

#### *IV. The Reasoning Behind the Seminole Decision*

##### *A. The Majority's Opinion*

###### *1. Adjacency or Contiguity Standard and the Strip Annexation Method*

Previous cases in Oklahoma have upheld the strip method as a valid exercise of the annexation authority of a municipality.<sup>82</sup> In *Seminole*, the landowners argued that the statutory contiguity requirement for annexation of noncontiguous commercial tracts along a ten-mile stretch of highway was not satisfied by using a three-foot-wide strip of land to connect the tracts to the City of Seminole.<sup>83</sup> The landowners also argued that *Seminole* included the

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76. *Id.* ¶ 12.

77. *Seminole*, ¶ 1, 102 P.3d at 123.

78. *Id.* ¶ 16, 102 P.3d at 128. The majority also noted that this was a case of first impression. *Id.*

79. *Id.* ¶¶ 6, 13, 102 P.3d at 124, 127.

80. *Id.* ¶ 28, 102 P.3d at 132.

81. *Id.* ¶¶ 1-2, 102 P.3d at 132-33 (Watt, J., dissenting).

82. *See, e.g.,* *Botsford v. City of Norman*, 354 F.2d 491, 495 (10th Cir. 1965); *Sharp v. Oklahoma City*, 1937 OK 685, ¶ 31, 74 P.2d 383, 386.

83. *Seminole*, ¶ 5, 102 P.3d at 124.

strip of land solely for the purpose of “technically” meeting the contiguity requirement, and therefore, Seminole’s actions were an unreasonable method of annexation under the statute.<sup>84</sup> Seminole argued, in contrast, that the annexation ordinance was passed according to the statutory requirements because it had obtained the written consent of the owners of a majority of the acres<sup>85</sup> and the annexed territory was contiguous.<sup>86</sup>

The Oklahoma Supreme Court distinguished *Sharp v. Oklahoma City* and its seemingly broad pronouncement that the shape of annexed property is a political decision with which the court would not interfere absent express statutory limitations.<sup>87</sup> Although courts and other authorities have frequently cited *Sharp* for the proposition that they should not consider the size and shape of annexed property,<sup>88</sup> the *Seminole* court declined to follow *Sharp* in that regard and instead analyzed how the size and shape of the strip annexation affected the reasonableness of Seminole’s use of its annexation authority.<sup>89</sup>

In analyzing whether the annexation complied with the statutory requirement of contiguity, the court cited *City of Ada v. Whitaker* in support of its determination that the terms “contiguity” and “adjacency” are to be “treated as synonymous and . . . used in their primary and obvious sense.”<sup>90</sup> The requirement that the land proposed for annexation be contiguous or adjacent to the annexing municipality is intended to maintain the unified nature of a city or town and avoid the creation of municipalities consisting of segregated sections of land.<sup>91</sup> Furthermore, the court reasoned that the policy behind requiring contiguity for the annexation of territory is related to the

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84. *Id.*

85. *Id.* ¶ 6, 102 P.3d at 124. The Supreme Court did not address the issue of notice under the Open Meeting Act in its opinion, but limited its decision to reviewing the grant of summary judgment in favor of the City of Seminole. *Id.* ¶ 6 n.7, 102 P.3d at 124 n.7.

86. *Id.* ¶ 6, 102 P.3d at 124-25.

87. *Id.* ¶ 17, 102 P.3d at 128.

88. *See, e.g.,* *Claremore v. Town of Verdigris*, 2001 OK 91, ¶¶ 11-12, 50 P.3d 208, 211; *Town of Luther v. State ex rel. Harrod*, 1967 OK 59, ¶ 28, 425 P.2d 986, 991; *Botsford v. City of Norman*, 354 F.2d 491, 494 (10th Cir. 1965); 2002 OK AG 15, ¶ 7, 2 Okla. Op. Att’y Gen. 15; 1986 OK AG 16, ¶ 8, 18 Okla. Op. Att’y Gen. 13; 1981 OK AG 284, ¶ 2, 13 Okla. Op. Att’y Gen. 482.

89. *Seminole*, ¶¶ 13-16, 102 P.3d at 127-28.

90. *Id.* ¶ 20, 102 P.3d at 130 (citing *City of Ada v. Whitaker*, 1949 OK 266, ¶ 21, 212 P.2d 482, 484) (emphasis omitted). The terms are not defined in the statute itself. The *Seminole* court noted, however, that “contiguity generally requires some touching of the municipality and the territory to be annexed.” *Id.* ¶ 20, 102 P.3d at 129-30 (emphasis omitted).

91. 11 AM. JUR. PROOF OF FACTS 2D *Contiguity of Land Annexed by Municipality* § 1 (2000) (citing *Potvin v. Chubbuck*, 284 P.2d 414 (Idaho 1955); *Pyle v. Shreveport*, 40 So. 2d 235 (La. 1949)).

“concept of a city as it relates to its territorial expansion.”<sup>92</sup> Because the concept of a city is that of a community gathered in a single mass with well-defined external boundaries and not divided and severed areas, the court determined that cities must annex property in a way that enhances the idea of a city and not in a way that creates pockets of territories operated by the same entity but with no physical connection between them.<sup>93</sup>

The court further stated that in a strip annexation, such as the instant case, where a municipality uses “a narrow corridor . . . to gain access to discontinuous tracts of land,” cities like Seminole can only meet the standard of contiguity where the corridor or strip itself has “a tangible municipal value or purpose at the time of annexation.”<sup>94</sup> The court specifically stated that “[t]he contiguity requirement is not satisfied by means of a *territorial appendage* that connects several remote tracts of land to the annexing municipality, but has little relationship to a beneficial municipal purpose.”<sup>95</sup> This method of annexation, the court found, does not “coincide with legislative intent.”<sup>96</sup> The *Seminole* court found that the individual tracts alone clearly failed to satisfy the statutory definition of contiguity because they were located several miles from the city limits, and in some cases, the individual tracts were located several miles from each other.<sup>97</sup>

The *Seminole* court determined that where the contiguity requirement is not satisfied by the actual, physical contiguous border between the annexing municipality and the territory to be annexed, the courts will determine whether a beneficial municipal purpose justifies the annexation.<sup>98</sup> The burden of production, which normally rests on the shoulders of the party contesting the annexation, shifts to the municipality to prove that the narrow strip will “confer a beneficial use beyond its advantage to provide merely a connective territorial link to otherwise remote noncontiguous tracts.”<sup>99</sup>

In its opinion, the *Seminole* court summarized the testimony of three city council members and the assistant city manager who all indicated that Seminole always intended to use the strip solely as a way to connect the other tracts to the municipality.<sup>100</sup> City officials stated that they knew of no other use for the strip and that Seminole could “probably not” even lay a water line

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92. *Seminole*, ¶ 21, 102 P.3d at 130.

93. *Id.*

94. *Id.* ¶ 22, 102 P.3d at 130.

95. *Id.*

96. *Id.*

97. *Id.* ¶ 26, 102 P.3d at 132.

98. *Id.* ¶ 24, 102 P.3d at 131.

99. *Id.*

100. *Id.* ¶ 25, 102 P.3d at 131-32.

underneath the strip.<sup>101</sup> The court saw this testimony as a clear indication that the strip did not and was never intended to confer any beneficial use separate from its use as a connective strip.<sup>102</sup> Indeed, Seminole's argument was based solely on the claim that the corridor annexation was a reasonable method to accomplish its goal of expanding municipal boundaries.<sup>103</sup> The Oklahoma Supreme Court rejected this argument and found that the use of the corridor annexation was not reasonable.<sup>104</sup>

### *2. Annexation as a "Political Decision" and the Standard of Judicial Review*

In its opinion, the court in *Seminole* addressed the true meaning of the term "political decision" and its effect on the court's analysis of annexation decisions.<sup>105</sup> The City of Seminole relied on prior case law in this area to argue that the Oklahoma Supreme Court and the Tenth Circuit have "consistently held that the extent and shape of territory annexed to a city is a political and not a judicial question."<sup>106</sup>

The court rejected this argument, stating that the political extension of municipal boundaries by ordinance is a legislative act of the city's governing body, but that such a decision is subject to judicial review.<sup>107</sup> The court further noted that the primary judicial function in reviewing municipal annexations is to determine "whether the city has exercised its annexation power in a reasonable manner and in compliance with the standards of state law."<sup>108</sup> The court, having thus dismissed the argument that prior case law required deference to a municipality's annexation decision, reviewed Seminole's annexation for reasonable compliance with the Oklahoma annexation statutes.

#### *B. The Dissent's Opinion*

Justices Watt and Hodges dissented in the *Seminole* opinion on the same grounds as the City of Seminole's argument, namely that this decision was squarely at odds with decades of precedent.<sup>109</sup> Justice Watt argued that the

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101. *Id.*

102. *Id.*

103. *Id.* ¶ 6, 102 P.3d at 125-26.

104. *Id.* ¶ 29, 102 P.3d at 132.

105. *Id.* ¶¶ 13-15, 102 P.3d at 127-28.

106. Answer to Petition for Certiorari at 2, *Seminole*, 2004 OK 60, 102 P.3d 120 (No. 98,038).

107. *Seminole*, ¶¶ 13-15, 102 P.3d at 127-28.

108. *Id.* ¶ 13, 102 P.3d at 127 (emphasis omitted).

109. *Id.* ¶ 1, 102 P.3d at 132 (Watt, J., dissenting).

prior cases of *Sharp*,<sup>110</sup> *City of Claremore v. Town of Verdigris*,<sup>111</sup> *Botsford v. City of Norman*,<sup>112</sup> and *Town of Luther v. State*<sup>113</sup> “make clear that the use by a municipality of the ‘strip’ method to annex additional territory is a political decision with which this Court will not interfere, *regardless of the shape of the annexed property.*”<sup>114</sup>

#### V. Analysis

In prior cases dealing with issues similar to those in *Seminole*, the Oklahoma courts have repeatedly held that a court will not review the size and shape of the proposed annexation territory.<sup>115</sup> The court in *Seminole* acknowledged this by stating that prior courts, most notably the court in *Sharp*, have pronounced the “shape and size of the annexed territory as a nonjusticiable political decision.”<sup>116</sup> Nevertheless, the court proceeded to rule differently. In doing so, the Oklahoma Supreme Court came to the correct conclusion in the *Seminole* case, despite decades of precedent to the contrary.

The court was also correct in construing the adjacency and contiguity requirement as prohibiting this back-door method of annexing outlying property. The court, however, did not go far enough in illuminating the standard for reasonableness, and accordingly, left municipalities without a clear guideline for future annexations. Additionally, the court erred in not expressly overruling prior case law that is in direct conflict with the *Seminole* decision.

#### A. The Proper Level of Judicial Review of Annexations

The *Seminole* decision extended the reach of the court into a municipality’s decision to annex a particular piece of property. As discussed above, precedent in this area has held that courts should not interfere with a “political decision,” such as the shape of the annexed property.<sup>117</sup> The *Seminole* court, however, rejected this view of annexation decisions and asserted that the prior courts erred in applying the term “political decision” to annexation decisions.<sup>118</sup> The court in *Seminole* defined “political decision” as government action that is conclusively resolved through nonjudicial means and reasoned

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110. 1937 OK 685, 74 P.2d 383.

111. 2001 OK 91, 50 P.3d 208.

112. 354 F.2d 491 (10th Cir. 1965).

113. 1967 OK 59, 425 P.2d 986.

114. *Seminole*, ¶ 2, 102 P.3d at 132 (Watt, J., dissenting).

115. *See, e.g., Botsford*, 354 F.2d at 494; *Sharp*, ¶¶ 16-20, 74 P.2d at 385.

116. *Seminole*, ¶ 17, 102 P.3d at 128.

117. *See supra* note 115 and accompanying text.

118. *Seminole*, ¶ 14, 102 P.3d at 127-28.

that because annexation decisions have been subject to judicial review, such decisions cannot be political decisions.<sup>119</sup>

Rather than overrule *Sharp* and its statement that the shape of annexed property is a political decision with which the court should not interfere, the *Seminole* court attempted to narrowly distinguish *Sharp* on the basis that it did not address whether the annexation at issue reasonably complied with the statutory requirement of adjacency.<sup>120</sup> This failure to overrule *Sharp* confuses the situation for future annexations because the *Seminole* decision failed to clarify whether the holding in *Sharp* — the *size and shape* of the annexed property was a nonjusticiable political decision — remains the law or whether a court may take the size and shape of the property into consideration when reviewing the reasonableness of an annexation.

Although a primary interest of municipalities in most annexations is to increase their tax base by acquiring areas to contribute to ad valorem taxes, utility taxes and fees, and sales taxes,<sup>121</sup> those municipalities generally offer benefits to the owners of the annexed property in the form of the availability of public works projects and other city services.<sup>122</sup> The facts in *Seminole* presented a compelling opportunity for the court to narrow the broad deference previously given to municipalities in annexation decisions. In this case, the City of Seminole blatantly used the three foot wide strip of land solely as a means to accomplish the seizure of the outlying commercial property and accompanying sales tax revenue.<sup>123</sup> While the additional tax revenue brought in from the new property would flow to the City of Seminole's coffers, city officials admitted they did not intend to use the strip of annexed territory for any public purpose except connecting the desired outlying property to the city limits.<sup>124</sup> Taking such objectives and interests of both the property owners and the municipality into consideration regarding the reasonable compliance of the annexation with the applicable statutes, the *Seminole* court went further than previous Oklahoma courts in reviewing the annexation decision of a municipality.

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119. *Id.* ¶ 14, 102 P.3d at 127-28 (explaining that “for governmental action to be political there must be (a) an issue of ‘governing’ coupled with (b) a mandatory and final resolution by nonjudicial means” (emphasis omitted)).

120. *Id.* ¶ 17, 102 P.3d at 128.

121. *See generally* Yurko, *supra* note 1, at 707.

122. Laurie Reynolds, *Rethinking Municipal Annexation Powers*, 24 URB. LAW. 247, 256-57 (1992).

123. The City of Seminole stated that its goals were: “(a) to establish control over the Highway 99 corridor extending to the I-40 intersection, (b) to increase its tax base through generation of sales tax revenue from the business district located along Highway 99 and (c) to encourage the City’s growth towards the I-40 intersection.” *Seminole*, ¶ 6, 102 P.3d at 124-25.

124. *Id.* ¶ 25, 102 P.3d at 132.

*B. Shifting the Burden and the Requirement of a Beneficial Use*

The court in *Seminole* used a burden-shifting approach to determine the reasonableness of Ordinance 941 under the annexation statutes.<sup>125</sup> The court stated that a municipal annexation ordinance enjoys a presumption of validity, and that under normal circumstances the party challenging the validity of the ordinance bears the burden of proving that the ordinance does not comply with the annexation statutes.<sup>126</sup>

The *Seminole* court, however, held that where a city uses a strip of land *as narrow as three feet in width* to connect the city limits to the targeted property, the burden of production shifts to the municipality to show that the strip confers a beneficial use in the form of a “tangible municipal value or purpose” other than to merely act as a conduit from the city to the annexed property.<sup>127</sup> Other courts have imposed this requirement when dealing with strip annexations, and the *Seminole* court appears to have modeled its inclusion of this requirement on several Kentucky decisions in which the courts invalidated strip annexations on the grounds that the city merely used the strip as a connecting corridor while showing no other municipal use for the strip.<sup>128</sup> For example, in *Ridings v. City of Owensboro*,<sup>129</sup> the Kentucky Supreme Court held that “the proper contiguity should not be found to exist in such situations unless the corridor or finger itself has a municipal value, i.e., unless it alone serves some municipal purpose. Otherwise, the use of the corridor or finger must be considered a mere subterfuge.”<sup>130</sup>

In *Seminole*, the court found that the testimony provided by city officials confirmed the apparent lack of beneficial value or purpose for the three-foot strip of land.<sup>131</sup> In that testimony, *Seminole* council members admitted that “they knew of no other use for the strip” and one official described the strip as

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125. *Id.* ¶¶ 23-24, 102 P.3d at 131.

126. *Id.* ¶ 23, 102 P.3d at 131.

127. *Id.* ¶¶ 22-25, 102 P.3d at 130-32.

128. *See, e.g.*, *Griffin v. City of Robards*, 990 S.W.2d 634, 640 (Ky. 1999) (stating that “mere speculation that such services might be provided is not a sufficient basis for a finding of contiguity in an incorporation or annexation case” (citing *Merritt v. City of Campbellsville*, 678 S.W.2d 788, 791 (Ky. Ct. App. 1984))); *Ridings v. City of Owensboro*, 383 S.W.2d 510, 512 (Ky. 1964) (holding that “the propriety of a corridor annexation depends upon whether the corridor itself has some municipal value or serves some municipal purpose”); *Merritt*, 678 S.W.2d at 791 (holding an annexation valid where strip “serves as a corridor for ‘water mains’”).

129. 383 S.W.2d 510 (Ky. 1964).

130. *Id.* at 512.

131. *Seminole*, ¶ 29, 102 P.3d at 132.

an “umbilical cord to tie [the tracts along the highway corridor] together.”<sup>132</sup> In a case where the purpose of the strip of land may be less clear, however, it is considerably more difficult to apply this imprecise standard.

First, the *Seminole* court does not make clear under what circumstances the burden shifts to the city. The narrow holding in *Seminole* specifies that where the strip is three feet wide or less, the burden will shift. The court did not, however, contemplate a result when the strip is seven or ten feet wide and still has no independent municipal use.<sup>133</sup>

Second, once the burden is found to shift to the municipality for a showing of beneficial use, the *Seminole* court failed to indicate what types of beneficial uses would satisfy the requirement. The decision provides no reference regarding what size strip is acceptable and no guidance for determining the requisite showing of beneficial use that is sufficient to overcome the burden placed on the municipality. In addition, the court does not make clear whether the type and extent of beneficial use required depends on the size of the annexed strip — in other words, whether the wider the annexed strip is, the lesser a showing of beneficial use is required. The court merely states that there is no beneficial use present in the *Seminole* case.<sup>134</sup> As a result, municipalities looking to annex property in the future will generally be unsure of what “tangible municipal value” means and what evidence they need to offer to satisfy this new standard set forth by the court.

One possible way to determine the types of beneficial use the *Seminole* court had in mind and the extent to which they should be implemented is to look at what other jurisdictions have approved and required in connection with strip annexations. For example, in *Merritt v. City of Campbellsville*,<sup>135</sup> the Kentucky Court of Appeals held that the use of a corridor as a channel for a water main serves a legitimate public purpose and satisfies the requirement that a corridor annexation provide a beneficial use other than to accomplish contiguity for outlying territory.<sup>136</sup> In the instant case, if the City of Seminole had been able to show that it intended on placing a water main underneath the annexed strip, the strip annexation may well have been upheld as valid.<sup>137</sup>

Third, the *Seminole* court failed to state whether a city must show a tangible benefit to the property owners, such as providing fire and police protection or extending utilities to the annexed property. The court in *Seminole* provides no

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132. *Id.* ¶ 25, 102 P.3d at 132 (emphasis omitted).

133. *Id.* ¶ 28, 102 P.3d at 132.

134. *Id.* ¶ 29, 102 P.3d at 132.

135. 678 S.W.2d 788 (Ky. Ct. App. 1984).

136. *Id.* at 791.

137. *Seminole*, ¶ 25, 102 P.3d at 132 (stating “[w]hen asked whether a water line could be laid under the strip, another City official answered ‘probably not.’”).

guidance on these issues. Annexation procedures and requirements should protect interests of the owners of the targeted property and not just the interests of the municipality. *Seminole* took an important step in this direction by requiring more from the municipality in terms of showing some type of beneficial use.<sup>138</sup> There should, however, also be a requirement that the city include a plan to extend services to the residents and businesses of the property proposed for annexation. In cases where, unlike the *Seminole* case, the municipality did not obtain written consent and is proceeding with the annexation by use of the statutory exceptions to consent,<sup>139</sup> the statute requires the municipality to publish a plan to provide services.<sup>140</sup> This, however, does not have an effect on a case, such as *Seminole*, where majority consent was obtained. The injustice here lies in the fact that in cases such as *Seminole*, the parties who most need and want services provided by the annexing municipality — the nonconsenting landowners who own developed property — are left without the protection of such a requirement because the majority owners — whose land is almost entirely undeveloped and therefore have no use for services — consented to the annexation.

*C. The Seminole Court Should Have Overruled Sharp v. Oklahoma City and Its Progeny*

As pointed out by Chief Justice Watt in his dissent, the majority opinion in *Seminole* cannot be squared with the court's precedent.<sup>141</sup> Despite the majority's attempt to distinguish *Sharp* and its progeny, the decision in *Seminole* clearly contradicts prior case law.<sup>142</sup> Prior to *Seminole*, *Sharp* and the decisions following it were frequently cited for the propositions that (1) the Oklahoma Supreme Court had approved the strip method of annexation, and (2) the annexed territory is not required to be in compact form or in any particular shape.<sup>143</sup> To alleviate this contradiction, the *Seminole* court should have explicitly overruled *Sharp*. By overruling *Sharp*, the court would have clarified to municipalities that they must consider whether the size and shape of a proposed annexation is reasonable under the adjacency and contiguity standard.

Instead, the state of the law after *Seminole* is confusing and lacking in guidance on the width and length of the strip required for a court to uphold a

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138. *Id.* ¶ 24, 102 P.3d at 131.

139. 11 OKLA. STAT. § 21-103(A) (2001).

140. *Id.* § 21-103(D).

141. *Seminole*, ¶ 1, 102 P.3d at 132 (Watt, J., dissenting).

142. *Id.*

143. *See, e.g.*, 2002 OK AG 15, ¶ 7, 2 Okla. Op. Att'y Gen. 15; 1986 OK AG 16, ¶ 8, 18 Okla. Op. Att'y Gen. 13; 1981 OK AG 284, ¶ 2, 13 Okla. Op. Att'y Gen. 482.

strip annexation as valid. The only standard that can be culled from *Seminole* is the statement that “[f]or statutory contiguity to be met where a narrow corridor is used to gain access to discontinuous tracts of land, *the corridor itself must have a tangible municipal value or purpose at the time of annexation.*”<sup>144</sup> *Seminole* left unclear whether *any* size and shape strip will satisfy the contiguity requirement as long the city can show some beneficial use.

To alleviate such confusion in a similar matter, the Alabama Supreme Court took the approach of overruling its prior approval of strip annexations in *City of Fultondale v. City of Birmingham*.<sup>145</sup> In that case, the Alabama Supreme Court reexamined its decision in *City of Tuskegee v. Lacey*<sup>146</sup> in which it upheld the use of fourteen miles of public road rights-of-way used solely to create contiguity with outlying land and avoid the requirement of adjacency between the annexed land and the annexing municipality.<sup>147</sup> The *City of Fultondale* court expressly overruled *City of Tuskegee* and held that “the use of public road rights-of-way to create contiguity is unreasonable and invalid *as a matter of law.*”<sup>148</sup> Similarly, if the Oklahoma Supreme Court had overruled *Sharp*, municipalities would have proper notice that future strip annexations will be subjected to sharper review.

Another approach to ensure clarity and avoid confusion by municipalities in pursuing annexations and courts in reviewing them would be for the legislature to adopt a bright-line rule for annexations that would set out the parameters for a valid annexation. In Colorado, for example, the statute regarding eligibility for annexation states that contiguity may not be accomplished where the city uses the boundary of a previously annexed area that is more than three miles from the annexing municipality’s boundaries to connect to the desired land.<sup>149</sup> Additionally, contiguity may not be established by the use of the boundary of a territory that is then directly annexed to such an area or indirectly annexed through multiple subsequent annexations.<sup>150</sup> This statute has the effect of prohibiting strip annexations such as the one used in *Seminole*, where the strip itself was ten miles long and was used by the city to connect its boundary to the boundary of the targeted area.

Similarly, the Arizona annexation statutes limit the annexation of contiguous land to territory that is at least 200 feet wide and adjoins the

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144. *Seminole*, ¶ 22, 102 P.3d at 130 (emphasis added) (footnote omitted).

145. 507 So. 2d 489 (Ala. 1987) (per curiam).

146. 486 So. 2d 393 (Ala. 1985) (per curiam).

147. *City of Fultondale*, 507 So. 2d at 491.

148. *Id.* (emphasis added).

149. COLO. REV. STAT. ANN. § 31-12-104(2)(a) (2005).

150. *Id.*

boundary of the annexing municipality for at least 300 feet.<sup>151</sup> Essentially, this provision prohibits the type of narrow strip annexation at issue in *Seminole* by requiring that such annexed land be at least 200 feet wide and that the annexed land be connected to the annexing city by land that shares a common border for 300 feet.<sup>152</sup> In June 2004, the Oklahoma Senate amended title 11, section 21-103 of the Oklahoma Statutes, effective November 1, 2004.<sup>153</sup> The relevant amendment applies to a municipality that does not obtain written consent for the annexation and uses the exception whereby three sides of the territory to be annexed are adjacent or contiguous to the municipal limits.<sup>154</sup> The amended statute requires that in such an annexation, the municipality must show one of three things to accomplish a valid annexation: (1) “the adjacent property on each side [is] greater than 300 . . . feet at its narrowest point;” (2) “the municipal governing body makes findings that the annexation furthers municipal purposes relating to airports, spaceports, and military installations;” or (3) the municipality has directed that notice be published in accordance with [the annexation statutes].”<sup>155</sup> These new requirements, which passed both the Oklahoma Senate and House prior to the publication of the *Seminole* decision and went into effect on November 1, 2004,<sup>156</sup> do not affect the outcome in a case such as *Seminole*. In *Seminole*, these additional steps would not be required of the municipality because the written consent of the owners of a majority of the annexed acreage was obtained.<sup>157</sup> In a case such as *Seminole*, it appears that the only protection for the nonconsenting landowners, who in fact own the developed land in the annexed territory, is the *Seminole* court’s requirement that where the annexation is accomplished by a strip of land, a tangible municipal purpose must be shown. This, however, is not adequate protection because the interests of the property owners do not necessarily coincide with a “tangible municipal benefit.”<sup>158</sup>

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151. ARIZ. REV. STAT. ANN. § 9-471(H)(1)-(2) (West 1996 & Supp. 2005). These restrictions do not apply where the territory to be annexed is surrounded by or bounded on three sides by the annexing municipality. *Id.* § 9-471(K).

152. *Id.* § 9-471(H)(1)-(2).

153. S.B. 905, 49th Leg., 2d Sess. § 1 (Okla. 2004).

154. 11 OKLA. STAT. § 21-103(A)(2) (2005).

155. *Id.*

156. Senate Bill 905 was passed by the Oklahoma Senate and the Oklahoma House on May 27, 2004 and the *Seminole* decision was published on July 6, 2004. S.B. 905, 49th Leg., 2d Sess. § 1 (Okla. 2004).

157. *Seminole*, *supra* note 8, ¶ 6, 102 P.3d at 124.

158. *See supra* Part V.B.

*D. Future of Annexations in Oklahoma*

The *Seminole* decision makes two significant changes to the law of municipal annexations. First, this decision rejects the generally deferential approach of Oklahoma courts in the past and makes a strong statement of the judicial authority to review the actions of municipalities in the exercise of their annexation authority.<sup>159</sup> The implications this decision has for future annexations include the possibility that property owners who oppose the annexation of their land but do not constitute the majority of owners of property in the targeted annexation area may be more likely to contest the annexation on the basis of unreasonableness and noncompliance with the adjacency requirements, rather than that of noncompliance with statutory formalities such as written consent or notice.

Second, the *Seminole* decision calls into question the continuing validity of strip annexations as a method of extending the boundaries of a municipality.<sup>160</sup> Although the decision does not directly state that strip annexations are per se invalid in Oklahoma, their use may be significantly curtailed by future decisions applying the standard set forth in *Seminole*. Further, by requiring the annexing municipality to prove beneficial use for the annexed strip of property, municipalities are likely to be more reluctant to use strip annexations.

The Oklahoma Court of Civil Appeals encountered the first post-*Seminole* annexation case in *Williams v. Town of Salina*.<sup>161</sup> In *Williams*, the Town of Salina enacted an ordinance annexing property a mile away from the town and on the other side of Lake Hudson.<sup>162</sup> The town also annexed the surface area of the Highway 20 bridge spanning Lake Hudson and connecting Salina with the annexed property and a ten-foot wide “long, narrow strip of property along the Lake Hudson shoreline that had previously been annexed by the town of Pryor Creek.”<sup>163</sup> Property owners in the annexed area filed an action for declaratory judgment that the ordinance was void on the grounds that their property was not contiguous or adjacent to the Town of Salina and that the annexation of the narrow strip of land was improper.<sup>164</sup> The property owners

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159. *Seminole*, ¶ 15, 102 P.3d at 128.

160. *Id.* ¶ 22, 102 P.3d at 130-31.

161. 2005 OK CIV APP 34, 114 P.3d 482.

162. *Id.* ¶ 2, 114 P.3d at 484.

163. *Id.* ¶¶ 2-3, 114 P.3d at 484.

164. *Id.* ¶¶ 1, 3, 114 P.3d at 484. The property owners argued that title 11, section 21-114 of the Oklahoma Statutes only allows the *owners* of unincorporated property surrounded by one municipality to petition another municipality for annexation, and, since the property owners did not sign such a petition, Salina could not annex the property. *Id.* ¶ 6, 114 P.3d at 484. The

also asserted several other procedural defects in their declaratory judgment action.<sup>165</sup> The trial court found the ordinance to be facially valid and granted summary judgment in favor of the Town of Salina and the property owners appealed to the Court of Civil Appeals.<sup>166</sup>

The Court of Civil Appeals reversed the decision of the trial court, finding that there was a “genuine issue of fact regarding whether the annexed property was contiguous or adjacent to Salina.”<sup>167</sup> Addressing this issue of contiguity, the court acknowledged that the *Seminole* decision changed the landscape of annexation cases, stating, “Oklahoma courts have historically placed few limits on the shape or size of annexed territory . . . . However, in the recent Oklahoma Supreme Court decision, *City of Seminole*, . . . the Court departed from the reasoning in [previous] cases when it was confronted with a narrow corridor connecting otherwise noncontiguous tracts of land.”<sup>168</sup> The court went on to summarize the test in *Seminole* as: “[f]or statutory contiguity to be met where a *narrow corridor* is used to gain access to discontinuous tracts of land, *the corridor itself must have a tangible municipal value or purpose at the time of annexation.*”<sup>169</sup> The court found that the “‘narrow corridor’ rule as articulated in *City of Seminole*” applied to the Salina annexation because the town used the mile-long bridge across the lake to connect to otherwise noncontiguous property.<sup>170</sup> The court further stated that the town did not produce any evidence that the bridge provided or would provide a tangible municipal value to the municipality beyond serving as a connection point.<sup>171</sup> Therefore, the Court of Civil Appeals reversed the grant of summary judgment to the Town of Salina and remanded the case to “determine the validity of the annexation ordinance in light of *City of Seminole*.”<sup>172</sup> This recent case highlights the impact that the *Seminole* decision has had and will continue to

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Court of Civil Appeals, however, found that this provision did not limit the annexation power of municipalities to otherwise annex unincorporated property under title 11, section 21-101 of the Oklahoma Statutes. *Id.* ¶ 7, 114 P.3d at 485.

165. *Id.* ¶ 3, 114 P.3d at 484. The alleged procedural defects included:

(1) that notice was not properly given to [the town of] Pryor Creek[, which had previously annexed the strip of land]; (2) the legal description [of the annexed property] did not describe an enclosed [area]; (3) the [o]rdinance did not contain an enacting clause; and (4) the [s]ervice [p]lan did not contain reasonable dates for providing potable water and solid waste services [to the annexed property].

*Id.*

166. *Id.* ¶ 1, 114 P.3d at 484.

167. *Id.* ¶ 4, 114 P.3d at 484.

168. *Id.* ¶ 9, 114 P.3d at 485 (citation omitted).

169. *Id.* ¶ 10, 114 P.3d at 485.

170. *Id.* ¶ 12, 114 P.3d at 486.

171. *Id.*

172. *Id.* ¶ 15, 114 P.3d at 487 (citation omitted).

have on future annexations in Oklahoma. Before *Seminole*, it is likely that the strip annexation used by Salina would have had an almost automatic finding of validity and that the annexation would have avoided any intense scrutiny by the judiciary. After *Seminole*, however, municipalities are discovering that any strip annexation must be carefully supplemented with supporting evidence of reasonableness and municipal benefit in order to pass judicial muster.

#### *VI. Conclusion*

Although ultimately coming to the correct decision in *Seminole*, the Oklahoma Supreme Court failed to provide sufficient guidance for future annexations. The *Seminole* decision essentially imposed upon Oklahoma courts a case-by-case reasonableness determination where a clear bright-line rule would have better served the interests of both property owners and municipalities. The facts in *Seminole* clearly do not satisfy the adjacency requirements of the statute. The individual tracts alone do not satisfy the contiguity requirement and the use of the narrow strip is merely a means to an end of reaching territory several miles away from the city limits. The *Seminole* court, however, failed to explicitly state what *does* satisfy the statute. The court merely stated that where the strip used to connect the city to the targeted property is as narrow as three feet in width, then the burden of production shifts to the municipality.<sup>173</sup> As is seen in *Williams*,<sup>174</sup> it can be difficult for a municipality to predict whether their piece of connecting property satisfies the *Seminole* standard. *Seminole*'s narrow holding leaves future courts to determine the parameters of this new approach to annexations as it applies in each situation. Alternatively, the legislature can enact statutory language that conclusively establishes the acceptable limits of strip annexations in Oklahoma.

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173. *Seminole*, *supra* note 8, ¶ 24, 102 P.3d at 131.

174. *Williams v. Town of Salina*, 2005 OK CIV APP 34, 114 P.3d 482.