

BEFORE THE MUNICIPAL BOARD
OF THE STATE OF MINNESOTA

Thomas J. Simmons	Chairman
Robert W. Johnson	Vice Chairman
Gerald J. Isaacs	Member
Roland Boegeman	Ex-Officio Member
Marvin Oldenburg	Ex-Officio Member

IN THE MATTER OF THE PETITION FOR)
ANNEXATION OF CERTAIN LAND TO THE)
CITY OF JORDAN)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

The above-entitled matter came on for hearing before the Minnesota Municipal Board pursuant to Minnesota Statutes 414, as amended, on June 28, 1976 at Jordan, Minnesota and was continued from time to time. The hearing was conducted by Chairman Thomas Simmons. Also in attendance were County Commissioners Roland Boegeman and Marvin Oldenburg, ex-officio members of the Board. The City of Jordan appeared by and through Lee Labore and the Township of Sand Creek appeared by and through Lou Moriarity. Testimony was heard and records and exhibits were received.

After due and careful consideration of all evidence, together with all records, files and proceedings, the Minnesota Municipal Board hereby makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. On January 5, 1973, a copy of a petition for annexation by the sole property owner (Noyes) was filed with the Minnesota Municipal Board. Further procedural discussion is contained within the accompanying memorandum which is hereby incorporated by reference. The petition contained all the information required by statute including a description of the territory subject to annexation which is as follows:

A tract of land in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, Section 18, Township 114, Range 23 described as follows: Commencing at the South-west corner of the said NE $\frac{1}{4}$ of SE $\frac{1}{4}$; thence North along the West line of said NE $\frac{1}{4}$ of SE $\frac{1}{4}$ 250 feet to a point; thence North 82 degrees 30 minutes East 255 feet to a point; thence North 61 degrees 12 minutes East 1,247 feet to a point on the East line of said NE $\frac{1}{4}$ of SE $\frac{1}{4}$, said point being 705

feet North of the Southeast corner of said NE $\frac{1}{4}$ of SE $\frac{1}{4}$; thence South along said East line of said NE $\frac{1}{4}$ of SE $\frac{1}{4}$ to a point on said East line where the North right-of-way line of the Minneapolis and the St. Louis Railway right-of-way line intersects said East line; thence Southwesterly along the North right-of-way line of said railroad to a point where said right-of-way line intersects the South line of said NE $\frac{1}{4}$ of SE $\frac{1}{4}$; thence West along the South line of said NE $\frac{1}{4}$ of SE $\frac{1}{4}$ to the place of beginning. All being in Scott County, State of Minnesota.

An objection to the proposed annexation was received by the Minnesota Municipal Board from Sand Creek Township on March 30, 1976. The Municipal Board upon receipt of this objection conducted further proceedings in accordance with M.S. 414.031, as required by M.S. 414.033, Subd. 5.

2. Due, timely and adequate legal notice of the hearing was published, served and filed.

3. Geographic Features

- a. The area subject to annexation is unincorporated and abuts the City of Jordan.
- b. The total area of the City of Jordan is 1,260 acres. The total area of the territory subject to annexation is 11 acres.
- c. The degree of contiguity of the boundaries between the annexing municipality and the proposed annexed property is as follows: over 50%.
- d. The natural terrain of the area, including general topography, major watersheds, soil conditions, rivers, lakes and major bluffs is as follows: Flat land

4. Population Data

- a. In the City of Jordan
 - 1) Past population growth: Slow growth through 1960 (1,479 pop.)
 - 2) Present population: In 1970, 1,836 persons
 - 3) Projected population: By 1980, 2,500 persons
- b. The area subject to annexation: None

5. Development Issues

- a. What, if any, are the comprehensive plans for the development of the property proposed for annexation and/or the annexing municipality, including development projected by the Metropolitan Council. Annexation conforms to Scott County's plan of development near urban centers. City plans include either commercial or industrial for this

area. The City is considering a comprehensive plan and expects this area to be industrial or commercial.

- b. What land use controls are presently being employed.
 - 1) In the City of Jordan
 - a) Zoning - Yes, portions of the city nearest this parcel is zoned industrial and a trailer park is also nearby.
 - b) Subdivision Regulations - Yes
 - c) Housing and Building Codes - State Building Code
 - d) Other - Building Inspector, State Plumbing Code
 - 2) In the area to be annexed:
 - a) Zoning - Sand Creek has zoning
 - b) Subdivision Regulations - Yes
 - c) Other - Sand Creek has a Planning Commission
- c. Does the city require future growth space? Yes. If so, will the area subject to annexation provide the City of Jordan with necessary growth space? Yes.
- d. The present pattern of physical development is:
 - 1) In the City of Jordan:
 - a) Residential - Yes
 - b) Industrial - Yes
 - c) Commercial - Yes
 - d) Institutional - Yes
 - 2) In the area subject to annexation: One parcel has crops, remainder is undeveloped.
- e. What will be the effect, if any, of the annexation on adjacent communities? None

6. Governmental Services

- a. Presently, the Township of Sand Creek provides the area subject to annexation with the following services:
 - 1) Water - No
 - 2) Sewer - No
 - 3) Fire Protection - No, contracts with Jordan
 - 4) Police Protection - A constable
 - 5) Street Improvements - Unknown
 - 6) Street Maintenance - Yes
 - 7) Recreational - Unknown
- b. Presently, the City of Jordan provides its citizens with the following services:
 - 1) Water - Yes
 - 2) Sewer - Yes

- 3) Fire Protection - 27 persons volunteer force, three pumpers, other vehicles, including new rescue unit.
 - 4) Police Protection - 4 full-time officers, 24 hour service, 2 cars.
 - 5) Street Improvements - No
 - 6) Street Maintenance - No
 - 7) Recreational - Year around recreational program, 2 parks, another being developed.
- c. Presently, the City of Jordan provides the area subject to annexation with the following services:
- 1) Water - No
 - 2) Sewer - No
 - 3) Fire Protection - Yes, by contract with Sand Creek, including entire township for over 20 years.
 - 4) Police Protection - Informal assistance
 - 5) Street Improvements - No
 - 6) Street Maintenance - No
 - 7) Recreational - All programs and facilities available.
- d. Plans to extend municipal services to the area subject to annexation include the following: Property can be serviced for sewer by lateral extensions from present system. System designed to service 8,000 people. Jordan's water supply is also sufficient to service this area and existing lines are nearby. Street Department can service area.
- e. There are existing or potential pollution problems which are: It is likely that the area has a sandy gravel, soil condition, increasing the likelihood that a private system will pollute. The following additional services will help resolve this situation: City sewer; Jordan's treatment pond has not functioned properly, but the capacity is sufficient and a study is underway to investigate the flaw.

7. Fiscal Data

- a. In the City of Jordan, the assessed valuation trend is rising, the mill rate garnered \$2.89 per \$100 valuation and the bonded indebtedness as of December 31, 1975 was \$1,173,000, \$715,000 being retired for special assessments.
- b. In the area subject to annexation, the assessed valuation of all five (5) parcels is \$90,000 (over 3 million in the entire township) and the area in question is \$1,730.

- c. The mill rate trends in the following units of government area
 - 1) County - In 1974, \$3.43 per \$100 valuation
 - 2) School Districts - In 1974, \$4.90 per \$100 valuation
 - 3) Sand Creek Township - In 1976, 2.73 mills
 - d. Will the annexation have any effect upon area school districts? No.
8. Is annexation to the City of Jordan the best alternative.
- a. Could governmental services be better provided for by incorporation of the area subject to annexation? No.
 - b. Could governmental services be better provided for by consolidation or annexation of the area with an adjacent municipality other than Jordan? No.
 - c. Could Sand Creek Township provide the services required? No.
 - d. Can Sand Creek Township continue to function without the area subject to annexation? Yes, the area has small assessed value.
9. A majority of property owners in the area to be annexed have petitioned the Minnesota Municipal Board requesting annexation.

CONCLUSIONS OF LAW

1. The Minnesota Municipal Board duly acquired and now has jurisdiction of the within proceeding.
2. The area subject to annexation is now or is about to become urban or suburban in character.
3. Municipal government is required to protect the public health, safety, and welfare in the area subject to annexation.
4. The best interest of the City of Jordan and the area subject to annexation will be furthered by annexation.
5. The remainder of the Township of Sand Creek can carry on the functions of government without undue hardship.
6. There is a reasonable relationship between the increase in revenue for the City of Jordan and the value of benefits conferred upon the area subject to annexation.
7. Annexation of all or a part of the property to an adjacent

municipality would not better serve the interests of the residents who reside in the area subject to annexation.

8. This annexation proceeding has been initiated by a petition of a majority of property owners and, therefore, this Minnesota Municipal Board order is not subject to an annexation election.

9. An order should be issued by the Minnesota Municipal Board annexing the area described herein.

O R D E R

IT IS HEREBY ORDERED: That the property described herein situated in the County of Scott, State of Minnesota, be and the same is hereby annexed to the City of Jordan, Minnesota, the same as if it had been originally made a part thereof:

A tract of land in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, Section 18, Township 114, Range 23, described as follows: Commencing at the Southwest corner of the said NE $\frac{1}{4}$ of SE $\frac{1}{4}$; thence North along the West line of said NE $\frac{1}{4}$ of SE $\frac{1}{4}$ 250 feet to a point; thence North 82 degrees 30 minutes East 255 feet to a point; thence North 61 degrees 12 minutes East 1,247 feet to a point on the East line of said NE $\frac{1}{4}$ of SE $\frac{1}{4}$, said point being 705 feet North of the Southeast corner of said NE $\frac{1}{4}$ of SE $\frac{1}{4}$; thence South along said East line of said NE $\frac{1}{4}$ of SE $\frac{1}{4}$ to a point on said East line where the North right-of-way line of the Minneapolis and St. Louis Railway right-of-way intersects said East line; thence Southwesterly along the North right-of-way line of said railroad to a point where said right-of-way line intersects the South line of said NE $\frac{1}{4}$ of SE $\frac{1}{4}$; thence West along the South line of said NE $\frac{1}{4}$ of SE $\frac{1}{4}$ to the place of beginning. All being in Scott County, State of Minnesota.

IT IS FURTHER ORDERED: That the effective date of this order is January 13, 1977.

Dated this 20th day of January, 1977

MINNESOTA MUNICIPAL BOARD
165 Metro Square Building
Saint Paul, Minnesota 55101

William A. Neiman
William A. Neiman
Executive Secretary

M E M O R A N D U M

Sand Creek Township has moved that the Municipal Board dismiss four proceedings initiated under Minnesota Statute 414.033, Subdivision 5. The Board took this matter under advisement. The township alleges that, in each instance, its right to proper notice under the statute was denied. This motion, without precedent, has required that the Municipal Board closely examine both the law and the underlying policies of this chapter and section.

Chapter 414 was enacted nearly 20 years ago to reform the haphazard adjustment or creation of urban boundaries. The basic law, improved by the Legislature from time to time, has functioned well and has remained largely intact. There are a variety of proceedings available for the expansion of a municipality into a township including annexation, consolidation, orderly annexation, and annexation by ordinance. It is the latter section which is the concern of this memorandum.

Annexation by ordinance, Minnesota Statutes 414.033, was created in order that relatively simple procedures would be available to various parties when a small-scale annexation appeared in order. Subdivision 5 permits annexation by ordinance to be initiated by a petitioning landowner, and it is this subdivision which is the focus of this memorandum.

Minnesota Statute 414.033, Subdivision 5, can only be utilized when certain conditions are met. These include: a petition by the landowner or a majority of landowners; platted land or unplatted land having an area of less than 200 acres; an abutting municipality; and, certain notice and hearing requirements. It is only the "notice" factor which concerns the township. The other conditions, the township concedes have been met.

The relevant facts are not contested. Four property owners submitted separate petitions to the City of Jordan. The significant dates for each petition are as follows:

I. A-2331 (Joachim Property)

1. A petition is signed and dated September 28, 1972.
2. Municipal Board receives a copy of this petition January 8, 1973.
3. On July 14, 1976, a new petition requesting annexation is filed by the same property owner for the identical area.

II. A-2950 (O'Day Property)

1. A petition is signed and dated June 19, 1974.
2. Municipal Board receives a copy of this petition May 3, 1976.
3. On July 14, 1976, a new petition is filed requesting annexation by the same property owner for the identical area.

III. A-2949 (Fuhrman Property)

1. A petition is signed and dated September 5, 1975.
2. Municipal Board receives a copy of this petition May 3, 1976.
3. On July 21, 1976, the Municipal Board with the consent of all parties, annexes this parcel.

IV. A-2329 (Noyes Property)

1. A petition is signed and dated on December 20, 1972.
2. Municipal Board receives a copy of this petition January 5, 1973.
3. On July 26, 1976, a new petition is filed requesting annexation by the new property owner (Blomquist) for the identical area.

On February 2, 1976, Jordan annexed by ordinance the parcels in question. On February 23, 1976, the Scott County Sheriff, at Jordan's request, served copies of the original petitions on the Township of Sand Creek which submitted objections to the Municipal Board on March 30, 1976.

Further, on February 2, 1976, Jordan, exercising its rights under Minnesota Statute 414.033, Subdivision 3, passed resolutions of intent to annex two parcels: one of these is wholly distinct from the petitioners' four parcels, while the other includes the Fuhrman parcel and a larger area to the south. These were served on Sand Creek Township on February 23, 1976, and the township submitted

objections to the Municipal Board on March 30, 1976.

The Board, in its discretion, consolidated the six proceedings for hearing purposes only. The first hearing was held June 28, 1976 and was continued from time to time. During the hearing process, the township and the city negotiated two consensual annexations. These included the Fuhrman property and a parcel immediately to the south which will be utilized by a church.

Sand Creek Township has strenuously objected to all the proposed annexations, except for the negotiated annexations, on the grounds that the parcels do not meet the substantive criteria required for annexation. These issues are addressed in the various orders. Further, the township has moved that the four proceedings initiated by petition be dismissed by the Board because of failure by the municipality to serve proper notice on the township. More specifically, in its initial objections, argument by counsel during the proceeding, and in a final, responsive memorandum, Sand Creek Township made a series of arguments regarding notice. These may be summarized as follows:

1. The annexation ordinances, which were adopted prior to the expiration of the 60-day objection period, are a nullity.
2. The municipality has the legal duty to supply a copy of the petition to the affected township.
3. The copies of the petition had to be delivered to the township within 60 days after the original petition had been filed with the municipality.
4. The time period between the execution of the petitions and the filing of the copies with the town board is so substantial that equitable relief, such as laches, ought to apply.

The Board denies the motion to dismiss:

1. The township has moved that the annexations effectuated by Jordan on February 2, 1976, be declared by the Municipal Board to be a nullity because of failure to deliver copies of the petition prior to adoption of the necessary ordinances. The Municipal Board agrees and, therefore, did not originally

approve these annexations. The Board simply treated the serving of copies of the petitions on the township as the proper initiation of the proceeding, and the resulting notices and hearings, culminating in the hearings begun June 28, 1976, were the result of Jordan's previously adopted ordinances being, in fact, a nullity.

2. Minnesota Statute 414.033, Subdivision 5, does require that the township receive notice but does not specify the party who is responsible for carrying out this function. Still, the plain language would indicate that it is the petitioner, not the city, who bears this responsibility. The subsection requires that:

"the property owner . . . may petition the municipal council to have such land included within the abutting municipality and shall file copies of the petition with . . . the town board."

Despite the law, the typical practice has been for municipalities to deliver the copies. This is, eventually, the action that the City of Jordan took. Since the copies of the petition were ultimately presented to Sand Creek Township, the question of who should be responsible for delivery of the copies is moot.

3. The most troublesome issue raised by the township involves the question of the delivery period of the copies of the petition. The language is ambiguous. It states:

"If the land is platted, or, if unplatted, does not exceed 200 acres, the property owner . . . may petition the municipal council . . . and shall file copies of the petition with the commission, the town board . . . Within 60 days thereafter, the town board . . . may submit written objections . . ."

Sand Creek Township has argued that this subdivision requires that the township receive copies of the petition within 60 days after the municipality has received the original petition or, in the alternative, that the period between the presentation to Jordan and the delivery of the copies to the township was simply too long, an argument akin to laches.

Although the language is somewhat ambiguous, the section as a whole strongly suggests that the 60-day period does not run until copies have been served on the town board; this

is almost certainly the event to which the word "thereafter" refers. Clearly, the Legislature must have intended this result since a contrary reading would have a town board dependent wholly upon petitioner's whim or caprice. A responsible petitioner would likely leave such a town board with 50+ days to object, while a tardy or conniving petitioner might leave a town board but one day to make a decision simply by withholding delivery of copies. Further, no harm was done to the township as a result of the delivery, for after finally receiving the copies, the township did object within the 60-day period, and necessary hearings have been conducted.

4. The "laches argument" is without foundation. No harm has been suffered by the township as a result of the delay. Further, the "right" to presently petition for annexation by the landowners is identical to that which existed in September, 1972 and thereafter. Indeed, each of the property owners, during the course of the hearings, submitted new petitions seeking annexation. Although the Board does not believe that the law required this resubmission, it removes any doubts concerning the property owners present intent to be annexed.