

BEFORE THE MUNICIPAL BOARD  
OF THE STATE OF MINNESOTA

Robert J. Ferderer	Chairman
Kenneth F. Sette	Vice Chairman
Richard A. Sand	Commissioner
Myron Johnson	Ex-Officio Member
Frank Madsen	Ex-Officio Member

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IN THE MATTER OF THE NOTICE OF INTENT )	<u>FINDINGS OF FACT</u>
FOR THE ANNEXATION OF CERTAIN LAND )	<u>CONCLUSIONS OF LAW</u>
TO THE CITY OF ST. CLOUD PURSUANT TO )	<u>AND ORDER</u>
MINNESOTA STATUTES 414 )	

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The above-entitled matter came on for hearing before the Minnesota Municipal Board pursuant to Minnesota Statutes 414, as amended, on August 22, 1984 and October 10, 1984 at the Haven Town Hall, immediately outside of St. Cloud, Minnesota. The hearing was conducted by Terrence A. Merritt, Executive Director, pursuant to Minnesota Statutes 414.01, Subdivision 12. Also in attendance were Kenneth F. Sette, Vice Chairman of the Municipal Board and County Commissioners Frank Madsen and Myron Johnson, Ex-Officio Members of the Board. The City of St. Cloud made no formal appearance, the Town of Haven appeared by and through Richard J. Horgan, the petitioners appeared by and through Timothy Clements, and Apperts Company, Inc. appeared by and through Tom Murphy and Mike Murphy. 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 June 4, 1984, a copy of a petition for the annexation, stating that it was by all of the property owners, was filed with the Municipal Board. The petition contained information required by statute including a description of the territory subject to annexation, which is as follows:

A tract of land lying in and being a part of the Northwest Quarter (NW 1/4) of Section Six (6), Township Thirty-five (35) North, Range Thirty (30) West, Sherburne County, as follows, to-wit:

Beginning at a point of intersection of the North line of said Section 6-35-30 with the Easterly right of way line of U.S. Highway Numbered Ten (10) as now constructed and travelled, said point being Three Hundred Seventy-one and five-tenths (371.5) feet East of the Northwest corner of said Sec. 6-35-30; thence continuing East along said North line of said Sec. 6-35-30 Seven Hundred Thirty-eight and seventy-eight hundredths (738.78) feet; thence deflect 90 degrees to the right and South for a distance of One Hundred Eighty-three and seven tenths (183.7) feet; thence deflect to the right 90 degrees, West and parallel with the said North line of said Sec. 6-35-30 for a distance of Five Hundred Sixty-seven and five tenths (567.5) feet to an intersection with the said Easterly line of said U.S. Highway No. 10 thence Northwesterly and in a straight line along said Easterly line of said Highway 10 for a distance of Two Hundred Fifty (250.0) feet to the point of beginning and there terminating, said tract containing 2.75 acres, more or less. Subject to easements of way upon the Westerly 33 feet thereof.

LESS:

That part of the Northwest Quarter of the Northwest Quarter, Section 6, Township 35 North, Range 30 West, Sherburne County, Minnesota, described as follows: Beginning at the intersection of a line 33.00 feet northeasterly of, measured at a right angle to and parallel with the northeasterly right of way of State Trunk Highway Number 10 with a line 183.70 feet southerly of, measured at a right angle to and parallel with the north line of said Section; assuming the north line of said Section bears West; thence East 246.32 feet; thence North 43 degrees, 03 minutes, 00 seconds West, parallel with said right of way 251.38 feet to the North line of said Section; thence West along said north line 2.58 feet; thence South 46 degrees, 57 minutes, 00 seconds West, 178.11 feet to said parallel line which is 33.00 feet northeasterly of said northeasterly right of way; thence South 43 degrees, 03 minutes, 00 seconds East, along last mentioned parallel line 85.00 feet to the point of beginning, and there terminating.

An objection to the proposed annexation was received by the Minnesota Municipal Board from Haven Township on June 10, 1984. The Municipal Board,

upon receipt of the objection, conducted further proceedings in accordance with M.S. 414.031, as required by M.S. 414.033, Subdivision 5.

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

3. The area subject to annexation is unincorporated, approximately 2 acres in size, and abuts the City of St. Cloud by approximately 36.8% of its perimeter. There are no waterways in or adjacent to the area proposed for annexation.

4. The area proposed for annexation has level to gently sloping terrain with the predominant soils being Hubbard sandy loam and Zimmerman loamy fine sand. Both have only slight limitations for urban development. There is no prime agricultural land in the area proposed for annexation.

5. The area proposed for annexation presently has no buildings on it.

6. In 1970, the City of St. Cloud had a population of 42,223, its population in 1980 was 42,566, and it is projected that in five years it will have a population of 45,240.

7. The Town of Haven had a population of 1,049 in 1970, 1,603 in 1980, and its current population is 1,831.

8. The area proposed for annexation has no present resident population and there are no projections as to its future population.

9. The City of St. Cloud has approximately 2,370 acres in residential use, approximately 4,132 acres in institutional use, approximately 363 acres in commercial use, approximately 800 acres in industrial use, and approximately 1,596 acres in agricultural use and vacant land.

The City of St. Cloud has the following remaining undeveloped land zoned for the following uses: approximately 863 residential acres, approximately 453 institutional acres, approximately 80 commercial acres,

approximately 200 industrial acres, approximately 1,596 vacant acres; residential development is zoned as a permitted use in one of the agricultural districts.

10. The Town of Haven has approximately 1,060 acres in residential use, approximately 120 acres in commercial use, approximately 10 acres in industrial use, and approximately 20,500 acres in agricultural use and vacant land.

The Town of Haven has the following remaining undeveloped land zoned for the following uses: approximately 200 commercial acres, approximately 600 industrial acres, approximately 19,510 agricultural acres and vacant land; some residential development is zoned as a permitted use in one of the agricultural districts.

11. The two acres proposed for annexation are presently 100% vacant.

The area is proposed, if annexed, to be zoned for multiple residential use, R-5, which would allow 21.7 apartment units per acre.

12. Presently there are approximately 200 acres within the City of St. Cloud available for development of the type proposed for the annexation area.

13. In the last five years, the City of St. Cloud has issued 371 one- and two-family residential building permits, 1,360 multi-family residential building permits, and approximately 70 commercial permits.

14. The present zoning in the area proposed for annexation is B-2, which is a general business district.

15. The proposed zoning for the area proposed for annexation is a combination of C-5, Highway-Commercial, and primarily R-5, Multiple Residential use.

16. Under the existing City of St. Cloud comprehensive plan, the zoning for the area proposed for annexation would be C-5 for all but 30% of the

northeastern-most parcel of the area proposed for annexation.

17. In considering the rezoning of the entire parcel, the City Planning Commission focused on the compatibility of use and zoning of the area proposed for annexation with the zoning of the land within the same development plan and immediately adjacent within the City of St. Cloud.

18. The City of St. Cloud has multiple family residential zoning immediately adjacent to a commercial zone, C-5, as well as industrial-type development. The City of St. Cloud requires the commercially or industrially developed area to fence, or in some other fashion, protect and screen itself from the multiple-family residential area.

Under the proposed changes in zoning, if the annexation area were annexed to the City of St. Cloud, multiple-family residential development would be immediately adjacent to a high commercial or industrial type of development.

19. The northeastern portion of the area proposed for annexation is adjacent to land within the City of St. Cloud proposed for multiple-family residential development.

20. Presently the Apperts Company, Inc. plant, immediately south of the area proposed for annexation, processes approximately three over-the-road semi-trailer trucks of food per day. The plant receives Thermo-King refrigeration-unit trucks on a 24-hour basis. These trucks wait to be loaded or unloaded and generally remain running. Almost all of the trucks used for delivery and shipment of the product are diesel trucks, which produce more noise than non-diesel vehicles.

The property owner has plans to expand or alter his operation. He may build a new warehouse of approximately 100 feet by 160 feet in size facing either east or southeast of the existing plant.

The trucks presently exit the plant either northwesterly onto Highway 10 or south of the plant onto Highway 10.

21. The area proposed for annexation is located within Sherburne County. It is the only area north of Highway 10 in the immediate area that would be within the City of St. Cloud and the County of Sherburne.

22. The parcel of land between the two portions of the area proposed for annexation will remain in the Town of Haven, governed by the town and the County of Sherburne.

23. The area immediately south of the annexation area, which is the location of the Apperts Company, Inc., will remain within the Town of Haven and the County of Sherburne.

24. If the annexation area were annexed, policing of the area south of the annexation area would be by the county.

25. The use of the Apperts land is presently within the uses allowed by the County Zoning Plan.

26. The petitioner did not indicate any specific plans for the development of the annexation area.

27. The petitioner presented no documentary evidence as to proposed plats.

28. The petitioner presented no testimony as to the feasibility or need for the construction of the proposed development in the annexation area.

29. The petition for the annexation was originally by an individual property owner.

The property owner had transferred his interest to the partnership. No deed or other document was presented at the hearing indicating such a transfer.

Mr. Schrammel moved that the petition be amended to reflect the partnership as petitioner rather than he. No partnership document was

presented to show that the partnership was in fact pursuing the annexation, nor that Mr. Schrammel did or did not have the authority to initiate the petition for the partnership.

30. There was no showing that the land within the City of St. Cloud immediately adjacent to the annexation area was about to develop, and that there was a need for the area proposed for annexation for continued development.

31. Without annexation, the property owner can plat the entire property.

32. The City of St. Cloud has a zoning ordinance, subdivision regulation, capital improvements program and budget, a fire code, Minnesota Building Code, Minnesota Plumbing Code, shoreland ordinance, floodplain ordinance, wild and scenic rivers ordinance, sanitation ordinance, human services program, and an urban renewal program.

33. The Town of Haven does not have either a zoning ordinance or subdivision regulations.

34. The County of Sherburne has a zoning ordinance and subdivision regulations.

35. There would be a requirement of a plat review by the Minnesota Department of Transportation for any property abutting a highway.

36. Both the city and town belong to the area planning organization.

37. The City of St. Cloud provides its residents with water, sanitary sewer, storm sewer, solid waste collection and disposal, fire protection, police protection, street improvements and maintenance, administrative services, recreational opportunities, health inspection, and library services.

38. The City of St. Cloud presently provides the annexation area with library services.

39. The City of St. Cloud is willing to provide the annexation area with

water, sanitary sewer, storm sewer, fire protection, police protection, street improvements and maintenance, administrative services, recreational opportunities, and health inspection. The City of St. Cloud provides solid waste collection service to residential customers of three units or less per building. The proposed development in the annexation area would be greater than that.

40. The Town of Haven presently provides the annexation area with fire protection.

41. The City of St. Cloud is willing to extend sewer and water to the annexation area if it is annexed. Presently, sewer and water are located at the northwest corner of the petitioner's parcel within the City of St. Cloud. Extension of these services to the annexation area would be through a presently undeveloped area.

42. The assessed value of the City of St. Cloud is \$200,725,206.00.

43. The mill rate for the County of Stearns is 22.182, for Benton County it's 27.188, and for Sherburne County it's 20.531. The mill levy for the City of St. Cloud is 34.621.

44. The mill levy for the school district is 57.294. The special taxing district has a mill levy of 2.477.

45. The gross bonded indebtedness for the City of St. Cloud in 1983 is \$39,980,000.00.

46. The City of St. Cloud has a Class 4 fire rating.

47. Other than a desire of one member of the partnership, there was no testimony that the annexation area is about to develop.

#### CONCLUSIONS OF LAW

1. The Minnesota Municipal Board duly acquired and now has jurisdiction of the within proceeding, assuming that the partnership agreement does not



limit the authority of one partner to act for the partnership.

2. The area subject to annexation is neither now nor is it about to become urban or suburban in nature.

3. Municipal government is not now required to protect the public health, safety, and welfare of the area subject to annexation.

4. An order should be issued by the Minnesota Municipal Board denying the petitioned annexation described herein.

O R D E R

1. IT IS HEREBY ORDERED: That the petition for the annexation of the property described in Findings of Fact 1 is hereby denied.

2. IT IS FURTHER ORDERED: That the effective date of this order is June 24, 1985.

Dated this 24th day of June, 1985.

MINNESOTA MUNICIPAL BOARD  
165 Metro Square Building  
St. Paul, Minnesota 55101

  
Terrence A. Merritt  
Executive Director

M E M O R A N D U M

The board must review any annexation proceeding in light of the statutory criterion set forth in Chapter 414. Further, the board must review only that evidence presented to it at the proceeding and is not able to take into account matters that may exist, but are outside of the official record.

The board in denying the proposed annexation does not set itself up as a zoning review board. Nevertheless, Chapter 414 in M.S. 414.01, Subdivision 1, which sets forth the duties of the board, states "...and to protect the integrity of land use planning in municipalities and unincorporated areas so that the public interest in efficient local government will be properly recognized and served." Further, M.S. 414.031, Subdivision 4 lists as one of the factors that the board shall consider "(e) Land use controls and planning presently being utilized in the annexing municipality and the property proposed for annexation, including comprehensive plans for development in the area and plans and policies of the metropolitan council. If there is an inconsistency between the proposed development and the land use planning ordinance in force, the reason for the inconsistency;".

The developer, in his presentation of evidence, indicated there existed: 1) preliminary plat drawings; 2) a general overall plan for the area; and 3) an overall comprehensive plan for the area, all of which he chose not to submit to the board for its consideration. Further, the inconsistency between the development of the annexation area as industrial/commercial per the comprehensive plan and its proposed development as residential was defined as necessary given the configuration of the property owned by the petitioner located within and outside the City of St. Cloud. This argument does not address the potential problems caused by the proposed development.

M.S. 414.031, Subdivision 4 indicates that the board may (emphasis added) order the annexation for the following reasons: "(a) if it finds that the property proposed for annexation is now, or is about to become, urban or suburban in character, or (b) if it finds that municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare, or (c) if it finds that annexation would be in the best interests of the property proposed for annexation." The statute does not require the board to order the annexation if it finds one or all of these, but leaves the discretion to the board.

The testimony before the board indicated that the land use for the area would be multiple residential, with little or no provision given to the industrial development immediately south of the annexation area. Testimony indicated that where such developments occur within the city, the demands upon the industrial development are such that the residential areas are protected. In this instance, the city does not have enforcement control over the industrial development. If, the area were not developed for residential use, there is no indication that it would be developed at all. If it is not developed, it is therefore not at this point urbanizing and therefore not in need of any city services.

There was no testimony that there is a present existing pollution problem in the annexation area, and there was no testimony indicating that absent the planned development this area is in need of municipal services. Thus, if residential development does not occur in the annexation area, there is no testimony that any development would occur. Further, if residential development does occur, it is doubtful that such development would occur without significant constraints given the competing and conflicting uses. Further, with the available 200 acres of land already within the City of

St. Cloud for the type of development proposed by the petitioner, there has been no specific showing that this area will in fact develop. The petitioner indicates that the annexation area must be zoned multi-family development so that it is compatible with the land which he or the partnership owns immediately adjacent thereto within the City of St. Cloud. There was no testimony that the area within the City of St. Cloud is already developed. It is presently vacant. There was no testimony that the annexation area was critical for the overall development of the multiple-family residential project. There was no testimony indicating why municipal services would be extended through undeveloped commercial and multiple-family residential areas to service land proposed for the same type of use. Such ambiguity as to plans, proposals, or any evidence that would indicate that development is imminent troubles the board.

The board is also troubled that the property owner petitioned for the annexation for the partnership at a time when he was the sole owner. He subsequently transferred the property to the partnership and moved to so amend his petition. The board is reluctant to be a party to proceedings that it cannot thoroughly judge who are and who are not the actual parties of interest. No partnership document was offered into evidence to support the claim of a partnership. Further, the board is well aware that partners pursuant to M.S. 323.08 are agents of the partnership. However, without the partnership document, the board is unaware whether there are any specific limitations to that agency. If limitations exist, the petition of the partnership by a single partner may in fact be invalid. If the petition is invalid, the board would then not have jurisdiction to hear the matter. The board must assume, based on testimony, that a partnership exists and that based on Mr. Schrammel's testimony without any supporting documentary evidence

there are no limitations on Mr. Schrammel's actions. If in fact no partnership agreement exists and Mr. Schrammel has transferred his interest in the property to an association of people, then a majority of the land owners have not in fact petitioned for the annexation request.

Although the area under consideration is small in size, the board is troubled by the unanswered questions. The stipulation was filled out as to both the city and the town, but little substance was added by testimony about the need for annexing this area now. The area may develop in the future, but the many unanswered questions about the area prevents the board from approving its annexation at this time.

JAM 6-24-85