

BEFORE THE MUNICIPAL BOARD
OF THE STATE OF MINNESOTA

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| Kenneth F. Sette | Chair |
| Shirley J. Mihelich | Vice Chair |
| Carol J. Kamper | Ex-Officio Member |
| William J. Pudwell | Ex-Officio Member |

IN THE MATTER OF THE PETITION FOR)
 THE ANNEXATION OF CERTAIN LAND TO)
 THE CITY OF ROCHESTER PURSUANT TO)
 MINNESOTA STATUTES 414)

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 April 30, 1986 at Rochester, 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, Chair, Shirley J. Mihelich, Vice Chair, and County Commissioners Carol J. Kamper and William J. Pudwell, Ex-Officio Members of the Board. The City of Rochester appeared by and through Frederick Suhler, Jr., City Attorney, and the Town of Marion appeared by and through William P. Volkmar. 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 October 30, 1985, a copy of a petition for annexation by all of the property owners was filed with the Minnesota Municipal Board. The petition contained all of the information required by statute, including a

description of the territory subject to annexation, which is as follows:

Lots 4, 5, 6, 7, 8, 9 Block 9, Lot 1 Block 9, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 Block 7, Lots 1, 2, 3, 4, 5, 6, 7 Block 1, Lots 2, 3, 6, 7, 8, 9, 10, 11 Block 6, Lots 8, 9 Block 1 all in Rose Harbor Subdivision.

Block 2 Lot 1, Block 2 Lot 2, Block 2 Lot 4, Block 2 Lot 5, Block 2 Lot 6, Block 3 Lot 1, Block 3 Lot 2, Block 6 Lots 4 & 5, Block 4 Lots 1, 2 & 3 all in Rose Harbor Fourth Subdivision.

Also: Parcel 6537 Marion Township

That part of the South Half (S-1/2) of the Northeast Quarter (NE-1/4) of Section Seven (7), Township One Hundred Six (106) North Range Thirteen (13) West, Olmsted County, Minnesota, described as follows:

Beginning at the southeast corner of said Northeast Quarter; thence westerly on a Minnesota State Plane Grid Azimuth from north of 269 degrees 00 minutes 38 seconds along the south line of said Northeast Quarter 1642.01 feet to the intersection of a line 990.00 feet east of and parallel with the west line of said Northeast Quarter; thence northerly 358 degrees 45 minutes 31 seconds azimuth along said parallel line 88.62 feet to the south line of Rose Harbor First Subdivision according to the plat thereof on file in the County Recorder's Office, Olmsted County, Minnesota; thence easterly 89 degrees 05 minutes 05 seconds azimuth along the south line of Rose Harbor First and Rose Harbor Fourth Subdivisions 1642.27 feet to the east line of said Northeast Quarter; thence southerly 178 degrees 55 minutes 31 seconds azimuth along said east line 86.50 feet to the point of beginning. Said tract contains 3.30 acres more or less; and

That part of the North Half (N-1/2) of the Southeast Quarter (SE-1/4) of Section Seven (7), Township One Hundred Six (106) North Range Thirteen (13) West, Olmsted County, Minnesota, described as follows:

Beginning at the northeast corner of said Southeast Quarter; thence southerly on a Minnesota State Plane Grid Azimuth from north of 178 degrees 31 minutes 05 seconds along the east line of said Southeast Quarter 339.44 feet to the northeast corner of Marvale No. Six Subdivision, according to the plat thereof on file in the County Recorder's Office, Olmsted County, Minnesota; thence westerly 269 degrees 05 minutes 19 seconds azimuth along the north line of Marvale No. Five and Marvale No. Six Subdivisions 1719.28 feet; thence northerly 358 degrees 18 minutes 45 seconds azimuth 184.84 feet; thence westerly 268 degrees 45 minutes 31 seconds azimuth 19.89 feet; thence northerly 358 degrees 30 minutes 39 seconds azimuth 152.35 feet to the north line of said southeast Quarter; thence easterly 89 degrees 00 minutes 38 seconds azimuth along said north line 1739.83 feet to the point of beginning. Said tract contains 13.42 acres more or less.

Subject to covenants, easements and restrictions of record.

An objection to the proposed annexation was received by the Minnesota

Municipal Board from Marion Township on January 20, 1986. 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, 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 41.04 in size, and abuts the City of Rochester by approximately 6% of its perimeter. The City of Rochester is approximately 23.17 square miles in size.

4. The Town of Marion has a total area of approximately 34.66 square miles.

5. The area proposed for annexation contains no public waters, no prime crop land, no commercial forest, or floodplain. The 15.91 acres of unplatted land in the southern portion of the subject area is heavily wooded on approximately the western one-third of the parcel with the remainder of the land covered with scattered trees; it has an elevation ranging from 1,044 along the western boundary ring to a high point of 1,096 feet at the southeast corner. The 25.13 acres of platted land has scattered trees across the area. The platted lots reach an elevation of 1,110 feet at the northwesterly corner and also along the east side of Sunset Avenue. The lots located south of 15th Street, Southeast are relatively level. The slope, depth to bedrock, and depth to water table indicate septic drainfield limitations.

6. In 1970 the City of Rochester had a population of 53,766, its population in 1980 was 57,890, and in 1984 its population was 60,256.

7. The Town of Marion had a population of 5,998 in 1970, a population of 5,299 in 1980, and a population of 6,169 in 1984.

8. The area proposed for annexation is vacant.

9. The City of Rochester has approximately 6,400 acres in residential

use, approximately 2,112 acres in institutional and park use, approximately 712 acres in commercial use, approximately 1,206 acres in industrial use, and approximately 1,247 acres in agricultural use and vacant land.

In the City of Rochester, there remains land planned for approximately 700 acres of residential use, approximately 258 acres for commercial use, and approximately 250 acres for industrial use.

10. In Marion Township, land is zoned as follows: approximately 2,796.3 acres for residential use, approximately 231 acres for commercial use, approximately 118 acres for industrial use, and approximately 18,173 acres for agricultural use.

11. The area proposed for annexation is presently vacant with 25.13 acres of platted land within Rose Harbor Fourth Subdivision containing 48 platted lots. The remaining 15.9 acres is a single piece of unplatted land located immediately south of the platted land.

If the area proposed for annexation were to be annexed, it is proposed that the area would be low-density residential, predominantly single family development, which requires 60 feet of frontage and 6,000 square feet of lot area, thereby allowing some of the existing lots to be re-subdivided to create smaller lots.

12. The City of Rochester has issued 990 building permits in 1981, 1,191 in 1982, 1,707 in 1983, 1,672 in 1984, and 1,750 in 1985.

13. The Town of Marion has issued 76 building permits in 1981, 94 in 1982, 102 in 1983, 86 in 1984, and 92 in 1985.

14. The City of Rochester has a zoning ordinance, subdivision regulations, shoreland and floodplain regulations, an official mapping program, the Uniform Building Code, the Minnesota Plumbing Code, the NFPA Fire Code, and capital improvement and budget program.

15. Olmsted County has a zoning regulation, subdivision, shoreland and floodplain regulations, a building code, the Minnesota Plumbing Code, an official mapping program, sanitation ordinances, Human Services Programs, and the capital improvement and budget program.

16. Marion Township has no independent land use planning document.

17. The City of Rochester and Olmsted County adopted a revised Future Land Use Map based on the General Land Use Plan for the Olmsted County area. This area has been designated as low-density residential development. The area proposed for annexation is presently zoned R-1 (Low-Density Residential). If annexed to the city, the area proposed for annexation will be zoned R-1, Single Family Residential, under the City of Rochester's Zoning Code.

18. The Rochester Planning and Zoning Commission did approve the proposed annexation.

The City of Rochester Common Council voted to support the proposed annexation.

19. The City of Rochester provides its residents with water, sanitary sewer, waste water treatment, storm shelter, fire protection, police protection, street improvements and maintenance, administrative services, recreational opportunities, and library services.

20. The City of Rochester purchased the People's Co-op power system water system in serving the Rose Harbor Addition on or about December 31, 1985. Effective early February, 1985, the city opened its interconnect valves between that system and the city system so that with several up-coming modifications, the majority of the previously owned systems by the co-op will be serviced by city water.

The city directed the acquisition of the water system since half of

its service area was located within the City of Rochester.

21. With the inter-connection to the city water system, the water system in the area can now service further development.

22. The city anticipates approximately 82% of the costs related to the extension of sewer and water mains to service the annexation area is immediately assessable. Generally, under such circumstances, the city proceeds with the extension of municipal service lines.

23. Marion Township provides the area proposed for annexation with fire protection and street improvements and maintenance.

24. The City of Rochester has 238.54 miles of improved roads as follows: 15.27 miles of Trunk Highway, 8.98 miles of County State Aid Highway, 2.02 miles of County Municipal State Aid, 34.21 miles of Municipal State Aid, 0.68 mile of Country Roads, and 177.38 miles of local streets.

25. Marion Township has 96.47 miles of improved roads as follows: 14.97 miles of Trunk Highway, 12.93 miles of County State Aid Highway, 19.81 miles of County Roads, and 48.76 miles of Town Roads.

26. In the area proposed for annexation, 0.35 miles of existing township roads lie within or adjacent to the annexation area. These streets are known as 15th Street, Southeast, Sunrise Avenue, and Sunset Avenue. Other streets that would service the area are paper streets being officially dedicated as public right-of-way but presently undeveloped. Of the 48 lots in the petition, only 18 abut existing streets. The paper streets would need to be built to provide access to the other 30 lots.

27. In 1985 the assessed valuation of the City of Rochester is \$415,556,234.00.

28. In 1985 the assessed valuation of the Town of Marion is \$21,542,677.00.

29. The assessed valuation of the area proposed for annexation in 1985 is \$20,733.00.

30. The mill rate for Olmsted County in 1986 is 32.060 for the City of Rochester and 34.176 for the Town of Marion.

31. School District #535 has a 1986 mill levy of 55.758.

32. Marion Township mill levy in 1986 is 5.435. Marion Township has a bonded indebtedness of \$0.

33. The City of Rochester mill levy in 1986 is 27.002. The bonded indebtedness for the City of Rochester is \$52,215,000.00.

34. The fire insurance rating for the City of Rochester is 3. The fire insurance rating for the Town of Marion is 8.

35. If the area proposed for annexation is annexed, there will be no impact on School District #535, as all of the City of Rochester and the annexation area are within the same school district.

36. The town does not have the ability to provide public sewer and water to the area proposed for annexation.

37. The City of Rochester is the only municipality adjacent to the area proposed for 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 presently required to protect the public health, safety, and welfare in the area subject to annexation.

4. The best interests of the area proposed for annexation will be furthered by annexation.

5. Marion Township can carry on the functions of government without undue hardship.

6. An order should be issued by the Minnesota Municipal Board approving the petition for annexation described herein in Findings of Fact 1.


O R D E R

1. IT IS HEREBY ORDERED: That the petition for annexation of property described in Findings of Fact 1 herein, be and the same is hereby annexed to the City of Rochester, Minnesota, the same as if it had been originally a part thereof.

2. IT IS FURTHER ORDERED: That the effective date of this order is September 5, 1986.

Dated this 5th day of September, 1986.

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, both at its hearing on the above-referenced matter and at its meeting concerning review of the testimony adduced the above-referenced matter, was appalled at the apparent lack of protection for the environment in the area adjacent to the area proposed for annexation. The board does not take lightly arguments that since no specific tests have found pollution problems, there cannot be pollution problems in septic systems built on less than a foot to a foot and a half of dirt on rock outcroppings. To advance such arguments to the board, offends both its sense of propriety as well as general common sense. Further, it is unique that no one takes responsibility for a well drain located within the bottom of a manhole in a road ditch that drains both surface water and sewage.

The board does not take lightly the threat to subsurface water, recharge areas, or the threat of contamination of the deep water supplying areas for the region. The board has no tolerance for those who seem not to care. The board expects that the town and the city, with assistance from the county if necessary, will work together to insure that these threats are dealt with and any potential pollution sources generated by on-site septic systems are prevented.

The board anticipates that the city and the town will enter into serious discussions about orderly annexation for the entire area. The board is mindful that constituents of the town may not wish to seek annexation at this time. However, the board is also confident that the town board members will be good stewards of the natural resources located within their township and

look to the best interests of the community as a whole, as well as being sympathetic to individual needs and concerns. The board does not anticipate that the orderly annexation agreement developed by the city and the town will be one wherein a lot or two at a time comes in. Rather, the board anticipates that the entire area of concern will be addressed. Further, additional staging may be developed for those other areas which will need sanitary sewer to prevent ground water pollution.

The board does not look with compassion on those people who aid and abet through inaction pollution of one of the state's most precious resources; its water supply. The board is confident that the professional attitudes and cooperative spirit that permeates other areas of concern within the Rochester community will also take the lead in insuring that this significant issue is dealt with. JAM 9-5-86