

**BEFORE THE MUNICIPAL BOARD
OF THE STATE OF MINNESOTA**

Kenneth F. Sette	Chair
Shirley J. Mihelich	Vice Chair
John W. Carey	Member
Henry J. Dickhaus	Ex-Officio Member
Meinrad Torborg	Ex-Officio Member

IN THE MATTER OF THE RESOLUTION)
FOR THE ANNEXATION OF CERTAIN)
LAND TO THE CITY OF ST. CLOUD)
PURSUANT TO MINNESOTA)
STATUTES 414)

INTERIM FINDINGS AND CONCLUSIONS
DIRECTED TO THE FEASIBILITY OF THE
INCORPORATION PURSUANT TO ORDER OF
THE BOARD CONCERNING THE
PRESENTATION OF EVIDENCE UPON
PROPOSED SETTLEMENT

The above-entitled matter came on for hearing before the Minnesota Municipal Board pursuant to Minnesota Statutes 414, as amended, on August 27, 1986, at St. Cloud, Minnesota.

FINDINGS OF FACT

1. On December 3, 1985, a resolution of the annexing municipality was received by the Municipal Board, and amended resolutions were received on January 7, 1986, and January 30, 1986, requesting the board to order annexation. The resolutions contained all of the information required by statute including a description of the property subject to annexation.
2. Due, timely, and adequate legal notice of the hearing was published, served, and filed.
3. The Town of St. Cloud and the City of St. Cloud submitted to the Municipal Board at its April 23, 1986, hearing a Joint Resolution

and Agreement for Orderly Annexation and Incorporation, which was amended by the parties on July 21, 1986.

4. The joint resolution proposed, among other things, a three-phase joint orderly annexation of specified portions of the Town of St. Cloud to the City of St. Cloud on January 1, 1989, January 1, 1992, and January 1, 1995. Further, the settlement agreement contemplates that on January 1, 1995, the portions of the town not annexed to the city shall be incorporated into a new city.

5. It was anticipated that prior to that time, any annexation from the area proposed for incorporation would be ineffective since the board's order would be issued on or about January 1, 1987, with the effective date for the incorporation January 1, 1995.

6. Material presented at the hearings indicated, at most, that incorporation of some or all the proposed area may be feasible and appropriate on or before January 1, 1995.

7. Given the period of time involved, however, substantial uncertainty remains concerning whether or not other boundary adjustments within the area proposed for future incorporation or the leaving of some of the area unincorporated, will, between now and January 1, 1995, prove better to serve the needs of the town, the adjacent municipalities, and the property within the subject area.

CONCLUSIONS OF LAW

1. The Minnesota Municipal Board, pursuant to M.S. 414.031, subd. 4 (m), has jurisdiction to consider the feasibility of incorporation of areas within a township pursuant to a hearing on an annexation request.

2. Ordering the incorporation of an area presently, while maintaining it as a township for approximately eight years, was not supported by the evidence presented.

Dated this 23rd day of December, 1986.

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

A handwritten signature in cursive script that reads "Terrence A. Merritt". The signature is written in dark ink and is positioned above the printed name and title.

Terrence A. Merritt
Executive Director

M E M O R A N D U M

The board notes that under M.S. 414.02 and M.S. 414.031, both allow the Minnesota Municipal Board to fix the effective date of the proposed incorporation at such later date as is fixed in its order.

The board finds that when faced with ordering an incorporation effective January 1, 1995, of the very specified area of land before it, under these circumstances, such a lengthy delay of the commencement of the new form of government is inappropriate. Boundary adjustments are generally sought by governmental entities or individuals because of a present or imminent need. The strength of such a need diminishes as the proposed effective date is stretched into the future.

As stated in Minn. Stat. § 414.01:

It is the purpose of this chapter to empower the Minnesota municipal board to promote and regulate development of municipalities to provide for the extension of municipal government to areas which are developed or are in the process of being developed for intensive use for residential, commercial, industrial, institutional, and governmental purposes or are needed for such purposes; and to protect the stability of unincorporated areas which are used or developed for agricultural, open space, and rural residential purposes and are not presently needed for more intensive uses; 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.

Thus, if the conditions supporting municipal creation or boundary adjustment exist presently, such actions should be encouraged and supported presently or in the near future. If such conditions do not

exist then any such action should be deferred. Absent a strong showing of unique circumstances, not demonstrated here, it would be a virtual contradiction in terms of its mission for the board to conclude, on the basis of contemporaneous circumstances, that an order for incorporation of an area is justified, and at the same time to conclude that no incorporation or other boundry adjustment is or will be justified over the course of the next eight years.

The board is impressed with the efforts of the city and town at meeting to try and work out an agreement of their differences. It is hoped that this cooperation will continue so that issues of mutual concern can be dealt with for the good of the whole community. However, the board, in pursuing its interest in the alleviation of present controversy among cities, towns, and landowners, will not lose sight of its long-term mission of promoting sound urban development and the preservation of unincorporated areas not presently needed for non-urban uses. TAM 12-23-86

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ORDER OF THE
BOARD CONCERNING
THE HEARING OF
EVIDENCE UPON
PROPOSED SETTLEMENT

The above-entitled matter came on for hearing on April 23, 1986. At that time the matter was continued to July 16, 1986 at the request of the city and town of St. Cloud for the purpose of permitting the city and town to present for Board consideration a proposed settlement agreement between the city and town.

The settlement agreement as proposed by the city and town would provide for, among other things, a three-phase joint orderly annexation resolution for annexation of specified portions of the town to the city of St. Cloud on January 1, 1989, January 1, 1992, and January 1, 1995. This joint resolution, it is proposed, would be submitted by the parties pursuant to that part of Minn. Stat. § 414.0325, subd. 1, which provides:

If a joint resolution designated an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration by the board is necessary, the board may review and comment, but shall, within 30 days, order the annexation in accordance with terms of the resolution.

Under the proposed settlement the city and town further provide that on January 1, 1995, the portions of the town

not annexed to the city shall be incorporated into a new city.

The proposed settlement further provides that effectuation of its terms are to be contingent upon the Municipal Board approving the agreement and ordering the proposed 1995 incorporation as set forth in the agreement, and upon approval of the agreement at a referendum of the city and town voters to be held in November of 1986.

On June 9, 1986, a meeting of the Board was convened to discuss procedural and jurisdictional issues raised by the settlement proposal.

Subsequent to that meeting the city and town submitted a revised proposal which retains the substantive features of the original proposal but modifies slightly the order of procedures contemplated.

It is contemplated by the parties that the Board will conduct a hearing to consider evidence pertinent to the proposed incorporation. Following this hearing the city and town propose to hold a referendum concerning the terms of the proposed settlement. In the event the referendum is favorable to the proposal, the Board would be authorized to order the incorporation exactly as proposed in the petition or to deny such incorporation but would have no jurisdiction or authority to issue any other order whatever pertaining to incorporation of any portion of the town of St. Cloud.

After considerable effort, the Board is unable to determine that it has authority to conduct formal incorporation proceedings subject to the conditions proposed.

Minn. Stat. § 414.02, subd. 1, expressly provides, in part:

Subdivision 1. Initiating the incorporation proceedings. This section provides the exclusive method of incorporating a municipality in Minnesota.

Thus, there appears no authority for the Board to order an incorporation except pursuant to section 414.02. However, nothing in section 414.02 indicates that a formal incorporation proceeding commenced pursuant to that section is or may be bound absolutely by conditions or non-statutory factors or procedures sought to be imposed by the petitioners or by agreement between petitioners and other persons or entities.

Nonetheless the Board recognizes that the public interests embodied in Minn. Stat. ch. 414 are best served if municipal growth and incorporation can be achieved in a manner which meets the statutory procedural and substantive requirements and also satisfies the interests and concerns of the affected political subdivision.

For this reason the Board desires to give full consideration, within the scope of its statutory authority, to the proffered settlement into which the parties have put substantial good faith effort and to give interested parties an opportunity to present evidence thereon.

Minn. Stat. § 414.031 pursuant to which this matter is before the Board clearly contemplates that the appropriateness of incorporation of town territory not annexed is a proper matter for Board consideration in an annexation proceeding. Minn. Stat. § 414.031, subd. 4(m). The fact that potential incorporation is expressly made pertinent to an annexation proceeding strongly implies the authority of the Board to receive evidence and make findings upon a potential incorporation outside the context of a formal incorporation proceeding.

Accordingly, the Board hereby directs:

1. The town and city shall submit to the Board not later than August 15, 1986, all the information pertinent to the proposed incorporation which would be required by Minn. Stat. § 414.02 as part of a petition for incorporation.

2. On August 27, 1986, the Board will reconvene this proceeding to hear all evidence any party may wish to offer concerning the proposed incorporation (together with any evidence concerning other aspects of the proposed settlement which might be relevant thereto).

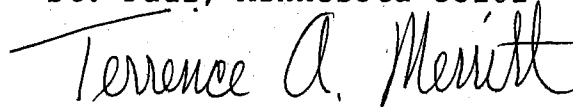
3. Thereafter the Board will issue interim findings and conclusions directed to the feasibility of the incorporation as proposed in light of the evidence adduced and the statutory criteria established in Minn. Stat. § 414.02, subd. 3(a)-(j).

4. Following the issuance of such findings and conclusions the town and city shall, within days, advise the Board whether or not they intend to proceed with the proposed settlement. If they do intend to proceed, the advisory shall be accompanied by a formal Petition for Incorporation pursuant to Minn. Stat. § 414.02, subd. 1, and any joint resolutions respecting orderly annexation pursuant to Minn. Stat. § 414.0325 which may be appropriate for Board consideration at that time.

5. If the city and town do not advise the Board that they intend to proceed with the settlement, the Board will, absent further motions by the city or town, reconvene at a time to be determined by the Board to receive further evidence upon the Petition for Annexation as originally submitted in this matter.

Dated this 4th day of August, 1986.

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



Terrence A. Merritt
Executive Director