

BEFORE THE MUNICIPAL BOARD

OF THE STATE OF MINNESOTA

Kenneth F. Sette	Chair
Robert J. Ferderer	Vice Chair
John W. Carey	Commissioner
Patrick Sawatzke	Ex-Officio Member
Wes Wittkowski	Ex-Officio Member

IN THE MATTER OF THE PETITION FOR )	<u>FINDINGS OF FACT</u>
THE ANNEXATION OF CERTAIN LAND TO )	<u>CONCLUSIONS OF LAW</u>
THE CITY OF HOWARD LAKE PURSUANT )	<u>AND ORDER</u>
TO MINNESOTA STATUTES 414 )	<u>AND MEMORANDUM OPINION</u>

The above-entitled matter came on for hearing before the Minnesota Municipal Board pursuant to Minnesota Statutes 414, as amended, on October 5, 1992, and continued from time to time. 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, Robert J. Ferderer, Vice Chair, John W. Carey, Commissioner, and County Commissioners Patrick Sawatzke and Wes Wittkowski, Ex-Officio Members of the Board. The petitioners and the City of Howard Lake appeared by and through Curtis Jacobsen, City Administrator, and the Town of Middleville appeared by and through Michael T. Jaszewski, Attorney at Law. 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 May 28, 1992, a copy of a petition for annexation by a majority 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, hereinafter referred to as "subject area," which is as follows:

That part of Government Lot 2, Government Lot 3, Government Lot 4 and the Northeast Quarter of the Northeast Quarter, all in Section 34, Township 119, Range 27, Wright County Minnesota, Described as follows: Commencing at the southeast corner of said Government Lot 2; thence northerly, along the east line of said Government Lot 2, Government Lot 3, and the Northeast Quarter of the Northeast Quarter, to the northeast corner of said Section 34; thence westerly, along the north line of said Section 34, to the intersection with the centerline of Ingram Ave. (T-402) as described in Document No. 409445; thence southerly and southwesterly, along said centerline to the intersection with the northeasterly right of way line of Imhoff Ave. (T-817) as described in Document No. 409445; thence northwesterly, along said northeasterly right of way line, to the intersection with the northerly extension of the east line of BRIARWOOD, according to the recorded plat thereof; thence southerly along the east line of said BRIARWOOD and it's northerly extension, to the waters edge of Howard Lake; thence southeasterly, southerly and southwesterly, along said waters edge, to the intersection with the south line of Government Lot 2; thence easterly, along said south line to the point of beginning.

An objection to the proposed annexation was received by the Minnesota Municipal Board from Middleville Township, hereinafter referred to as "Town," on July 6, 1992. 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 subject area is unincorporated, approximately 151 acres in size, and abuts the City of Howard Lake, hereinafter referred to as

"City," by approximately 7% of its perimeter. The City is approximately 631 acres in size, and the Town is approximately 23,040 acres in size.

4. The City had a population of approximately 1,162 in 1970, a population of approximately 1,240 in 1980, and has a current population of approximately 1,354. It is projected by the City that it will have a population of approximately 1,805 in five years.

The Town had a population of approximately 1,016 in 1970, a population of approximately 1,093 in 1980, and has a current population of approximately 1,017. It is projected by the Town that it will have a population of approximately 1,078 in five years.

The subject area has a current population of approximately 92. It is projected by the Town that the subject area will have a population of approximately 102 in five years.

5. The subject area is adjacent to Howard Lake, and there is at least one ditch that flows into Howard Lake from the subject area.

6. The subject area has soils of glenco clay loam and lester clay loam. The soils in the subject area are generally very impervious. The water table varies from approximately two and a half feet to four feet in portions of the subject area. There is some wetland in or adjacent to the subject area.

7. The City has approximately 65% of its acreage in residential use, approximately 10% of its acreage in institutional use, approximately 10% of its acreage in commercial use, approximately 10% of its acreage in industrial use, approximately 3% of its acreage in agricultural use, and approximately 2% of vacant land.

The Town has approximately 11.55% of its land in residential

use, approximately .002% of its land in institutional use, approximately 190 acres in industrial use, and approximately 18,920 acres in agricultural use.

The subject area has land in residential and agricultural use.

8. The proposed development of the subject area will include additional residential development, along with a possible golf course.

9. The City has approximately 10 miles of highways, streets, and roads.

The Town has approximately 58 miles of highways, streets, and roads.

The subject area has approximately 2 miles of highways, streets, and roads. There is approximately a mile of tarred road in the subject area.

10. There are no anticipated transportation changes in the subject area or in the City if the subject area is annexed.

11. The City has no comprehensive plan; All of the land within the City is presently built on or zoned.

The County of Wright, hereinafter referred to as "County," has a comprehensive plan adopted in May of 1988.

12. The Township is opposed to the proposed annexation, and the City Planning and Zoning Commission favors the annexation of the subject area.

13. The City has a zoning ordinance, subdivision regulations, an official map, shoreland ordinance, and a sanitation ordinance.

The Town has a zoning ordinance, official map, shoreland

ordinance, and a sanitation ordinance.

The County has a zoning ordinance, subdivision regulations, an official map, capital improvements program and budget, a shoreland ordinance, a floodplain ordinance, wild and scenic rivers ordinance, and a sanitation ordinance.

14. The subject area is currently zoned agricultural and residential.

The majority of the subject area is within the jurisdiction of the shoreland management ordinance. Under the existing zoning, new residential construction would require one residence per 40 acres. Some of the existing lots would not be useable under the present zoning. If central sewer and/or water is available, the lot size may be reduced.

15. Presently, approximately 101 acres of the subject area is within Green Acres. The majority of the agricultural land is planned for development as a golf course and residential use.

If the subject area is annexed to the City, the anticipated zoning would be R-1, one and two family residential development; this zoning would also allow for the development of a golf course as a conditional use.

16. The City presently provides its residents with water, sanitary sewer and waste-water treatment, storm sewer, solid waste collection and disposal, fire protection, police protection, street improvements and maintenance, administrative services, recreational facilities, and recycling.

The City presently provides recreational facilities to the subject area.

The Town presently provides its residents with fire protection through a contract with the City, street improvements and maintenance, administrative services, and recycling. Police protection to the subject area is provided by the County.

The City is willing to and capable of providing all of the services it presently provides its residents to the subject area.

17. Approximately twelve of the septic systems within the subject area discharge directly onto the agricultural property located across the road from the lots adjacent to the lake. There could be three additional septic systems discharging into the ditch, which flows through the subject area into Howard Lake.

The Environmental Health Division of the County Planning Office has issued eight abatement notices for on-site septic system violation to property owners adjacent to Howard Lake. The notices of abatement issued by The Office of Environmental Health Division of the County Planning Office were sent to those property owners that were in apparent violation of the County's requirements. The division was unable to test each of the septic systems adjacent to the lake.

In the subject area there are approximately forty two homes. Over the course of twenty years there have been only eight permits issued by The Office of Environmental Health dealing with on-site septic systems, several of which were for systems built across the road from the lake.

The County's septic system ordinance has been in effect for roughly the past twenty years. The majority of the septic systems in the subject area were installed prior to any permitting or inspection

requirements. Based on the lack of permits and the age of the systems, the majority of the systems in the subject area are not in compliance with the requirements of the County.

18. Minnesota shoreland management rules state that when there is land in need of waste water treatment service the municipal waste water treatment facilities should be used. When the City's waste water treatment facility was constructed, its service area included the subject area.

The City has the sewer capacity to serve the subject area, it is willing to serve the subject area, and the City planned to serve the subject area.

19. The Town has proposed the construction of a mound system to service the subject area. It presented a grant request to the Minnesota Pollution Control Agency, hereinafter referred to as "MPCA." The Town has not received funding for the proposal.

The testing required to determine whether a mound system would properly serve the subject area has not been completed.

20. A mound system removes at most, roughly 40-60% of the nitrates it receives. Nitrates have a propensity to water and can heavily laden a domestic water supply. Nitrate-laden water used to bottle feed infants under six months can result in methemoglobinemia, a sometimes fatal blood disorder.

21. The property owners of the subject area who are experiencing receipt of raw sewage from adjacent properties wish to have the practice ended.

22. The City has a 1991 market valuation, payable 1992 of

\$26,601,300.

The City's tax rate is 31.689; its tax rate for the County is 30.373; its tax rate for the School District as of December 31, 1991 is 57.832. The City had a 1991 total bonded indebtedness of \$2,095,329.

23. The Town has a 1991 market valuation, payable 1992 of \$35,073,700. The Town's tax rate is 15.526; its tax rate for the County is 30.373; its tax rate for the School District is 57.832. The Town has no bonded indebtedness.

24. The subject area has a 1991 market valuation, payable 1992, of \$3,354,200.

25. The fire insurance rating for the City is 7, and for the Town and subject area it is 10.

26. The City is the only City adjacent to the subject area.

27. The Town has no plans for the development of a central sanitary sewer or municipal water system.

28. The Stenburg property is located in the northwestern portion of the subject area and is presently not seeking additional development. The Stenburg property is outside the shoreland management ordinance area and there is no known pollution in the subject area. On December 7, 1992, the Minnesota Municipal Board reduced the subject area by approximately 1.9 acres of the Stenburg property.

The Stenburg property is described as follows:

Starting at the Northwest corner of the Northeast Quarter of the Northeast Quarter of Section Thirty-Four (34), Township 119, Range 27, thence South on 1/16 line a distance of 309.2 feet to the point of beginning, thence South on said 1/16 line which is the center of Township road a distance of 275 feet, thence deflect 90°00' left for a distance of 317 feet, thence deflect 90°00' left, for a distance of 275 feet, thence deflect 90°00' for a distance of 317 feet to the point of beginning. Excluding all roadways.



CONCLUSIONS OF LAW

1. The Minnesota Municipal Board duly acquired and now has jurisdiction of the within proceeding.
2. The subject area, less the area excluded in Findings of Fact 28, is now or is about to become urban or suburban in character, in need of or will be in need of municipal services, and the annexing city is capable of providing the services required by the subject area within a reasonable time.
3. Municipal government is presently required to protect the public health, safety, and welfare of the subject area.
4. The existing township form of government is not adequate to protect the public health, safety, and welfare of the subject area.
5. The annexation of the reduced area will be in the best interests of that property.
6. The Town can carry on the functions of government without undue hardship.
7. This Minnesota Municipal Board proceeding is not subject to an annexation election, since the petition was initiated by a majority of the property owners.
8. An order should be issued by the Minnesota Municipal Board annexing the area petitioned for annexation less the excluded area described herein.

ORDER

1. IT IS HEREBY ORDERED: That the property described as follows, be and the same hereby is annexed to the City of Howard Lake, Minnesota, the same as if it had originally been made a part thereof:

That part of Government Lot 2, Government Lot 3, Government Lot 4 and the Northeast Quarter of the Northeast Quarter, all in Section 34, Township 119, Range 27, Wright County Minnesota, Described as follows: Commencing at the southeast corner of said Government

Lot 2; thence northerly, along the east line of said Government Lot 2, Government Lot 3, and the Northeast Quarter of the Northeast Quarter, to the northeast corner of said Section 34; thence westerly, along the north line of said Section 34, to the intersection with the centerline of Ingram Ave. (T-402) as described in Document No. 409445; thence southerly and southwesterly, along said centerline to the intersection with the northeasterly right of way line of Imhoff Ave. (T-817) as described in Document No. 409445; thence northwesterly, along said northeasterly right of way line, to the intersection with the northerly extension of the east line of BRIARWOOD, according to the recorded plat thereof; thence southerly along the east line of said BRIARWOOD and it's northerly extension, to the waters edge of Howard Lake; thence southeasterly, southerly and southwesterly, along said waters edge, to the intersection with the south line of Government Lot 2; thence easterly, along said south line to the point of beginning, except the following described property:

Starting at the Northwest corner of the Northeast Quarter of the Northeast Quarter of Section Thirty-Four (34), Township 119, Range 27, thence South on 1/16 line a distance of 309.2 feet to the point of beginning, thence South on said 1/16 line which is the center of Township road a distance of 275 feet, thence deflect 90°00' left for a distance of 317 feet, thence deflect 90°00' left, for a distance of 275 feet, thence deflect 90°00' for a distance of 317 feet to the point of beginning. Excluding all roadways.


2. IT IS FURTHER ORDERED: That the population of the City of Howard Lake is hereby increased by 92 persons.

3. IT IS FURTHER ORDERED: That the population of the Town of Middleville is hereby decreased by 92 persons.

4. IT IS FURTHER ORDERED: That the effective date of this order is December 31, 1992.

Dated this 4th day of January, 1993.

MINNESOTA MUNICIPAL BOARD  
Suite 475, McColl Building  
St. Paul, Minnesota 55101

  
Terrence A. Merritt  
Executive Director

M E M O R A N D U M

In approving the reduced area for annexation, the Municipal Board takes this opportunity to highlight some concerns from the hearing:

1. There was little expert testimony as to the health of the lake; some contend its one of the best fishing lakes in the state, while others contend it is a dying lake.

2. Is the mound system simply a stopgap measure when dealing with land adjacent to lakes? If the mound system is in fact a stop gap procedure, such information would have not only been appropriate to bring before the Municipal Board, but also appropriate for consideration by the governmental entities and property owners, so that time, energy and emotion would not have been wasted considering a mound system, but rather directed toward the extension of municipal sewer and water to protect the area.

3. There was little testimony as to the cost of extending services to the subject area. If, in fact, they are either cost prohibitive or of such magnitude that the assessments will not absorb the cost, is the City willing to absorb that cost to insure that the health of the lake is protected?

One of the Board Members noted this step is an incremental start to address the protection of the lake. Had that Board Member's wishes prevailed, the subject matter before the Board would have been

expanded to include the entire lake, and if the proposal had been supported by the weight of the testimony at a subsequent hearing, the City of Howard Lake would have been entrusted with the entire lake. While that did not occur, the Board is confident that the City and the Town will work together to preserve this natural resource.

The community as a whole, including both the City and the Town, must come to grips with the reality that the area has potential to become a bedroom community for the metropolitan area. A lake, such as Howard Lake, within such proximity to the metro area will draw residents. As the lake develops, it is necessary to ensure that the lake is protected. The health of each lake is of vital importance to each resident of the State of Minnesota.

The Board is confident that the City will use its good judgement in addressing the extension of municipal services so as not to overprice the cost to larger lots in the subject area. The City will face the delicate balance of protecting the environment while not destroying the economic viability of the residences in the area to be served.

The Municipal Board urges the Town of Middleville and the City of Howard Lake to put this annexation hearing behind them and to proceed to work together to address the protection of not only Howard Lake but the surrounding area so that as the community grows, it will do so in a planned fashion that protects the environment and preserves the aesthetics that draw people to the area.

JAM 1-4-93