

BEFORE THE MUNICIPAL BOARD
OF THE STATE OF MINNESOTA

| | |
|--------------------|-------------------|
| Paul B. Double | Chair |
| Andrew D. Hultgren | Vice Chair |
| David Engstrom | Ex-Officio Member |
| Dennis Hegberg | Ex-Officio Member |

| | | |
|------------------------------------|---|-------------------------------|
| IN THE MATTER OF THE PETITION FOR |) | <u>FINDINGS OF FACT</u> |
| THE ANNEXATION OF CERTAIN LAND |) | <u>CONCLUSIONS OF LAW</u> |
| TO THE CITY OF OAK PARK HEIGHTS |) | <u>AND ORDER</u> |
| PURSUANT 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 September 17, 1997 at Oak Park Heights, Minnesota and was continued from time to time. The hearing was conducted by Lea De Souza Speeter, then Vice Chair, pursuant to Minnesota Statutes 414.01, Subdivision 12. Also in attendance were Paul B. Double, Chair, Andrew D. Hultgren, Vice Chair, and County Commissioners Dennis Hegberg and David Engstrom, Ex-Officio Members of the Board. Hearings in this matter were held at the Municipal Building, in the City of Oak Park Heights, County of Washington.

The petitioners appeared by and through John Scott McDonald, Attorney at Law; the City of Oak Park Heights appeared by and through Mark Vierling, Attorney at Law; the Town of Baytown appeared by and through David Magnuson, Attorney at Law; the City of Lake Elmo appeared by and through Gerald Filla, Attorney at Law; and the

Metropolitan Council appeared by and through Jeanne Matross, Associate General Counsel. 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 July 29, 1997 a petition by property owners, pursuant to Minnesota Statutes Sec.414.031, Subd. 1(c), seeking annexation of approximately 240 acres was filed with the Minnesota Municipal Board. The petition was supported by resolution of the City of Oak Park Heights, hereinafter referred to as "Oak Park Heights," pursuant to Minnesota Statutes Sec. 414.031, Subd. 1. The petition and the resolution contained all the information required by statute, including a description of the area subject to annexation, hereinafter referred to as "the subject area," which is as follows:

All that part of Section 6, Township 29 North, Range 20 West lying westerly of the centerline of Stillwater Boulevard also known as State Highway 5, Washington County, Minnesota.

2. On August 6, 1997, an orderly annexation agreement was filed with the Municipal Board between Baytown Township, hereinafter referred to as "Baytown" and the City of Lake Elmo, hereinafter referred to as "Lake Elmo", requesting the immediate annexation of the same property described in Findings of Fact 1.

3. The Municipal Board tabled consideration of the joint agreement pending a decision in this matter.

4. Due, timely and adequate legal notice of the hearing was published,

served and filed.

5. The petition was amended to 310 acres on January 9, 1998 to more accurately reflect the acreage in the property description.

6. The subject area is located in Baytown and abuts Oak Park Heights by approximately 75% on its eastern border. It runs contiguous to Oak Park Heights' western border for approximately 3,890 feet. The subject area is also bordered by the City of Stillwater and State Trunk Highway 36 on its north, and Lake Elmo on the western and southern borders. The subject area is contiguous with the northeastern border of Lake Elmo for approximately 6,500 feet.

7. Oak Park Heights is approximately 1,679 acres in size; Baytown is approximately 5,825 acres in size; and Lake Elmo is approximately 16,000 acres in size.

8. Oak Park Heights had approximate populations of 2,591 in 1980; 3,486 in 1990; 3,776 in 1995; 3,873 in 1996; and has a projected current population of approximately 4,001. The Metropolitan Council projected a population of 3,900 for Oak Park Heights for the year 2000; 5,150 in the year 2010 and 6,500 in the year 2020.

Oak Park Heights had approximately 1,322 households in 1990; 1,458 households in 1995 and 1,496 households in 1996. The projected number of households in the year 2000 for Oak Park Heights is 1,650.

Baytown had approximate populations of 851 in 1980; 939 in 1990; 1,209 in 1995; and 1,287 in 1996. The Metropolitan Council projected a population of 1,400 in the year 2000; 2,600 in 2010; and 5,000 in the year 2020 for Baytown.

Baytown had approximately 302 households in 1990; 403 households in 1995; and 429 in 1996. The projected number of households for Baytown by the year 2000 is 500.

Lake Elmo had approximate populations of 5,296 in 1980; 5,903 in 1990; 6,148 in 1995; and 6,192 in 1996.

Lake Elmo had approximately 1,972 households in 1990; 2,123 households in 1995 and 2,138 households in 1996. The projected number of households for Lake Elmo for the year 2000 is 2,300.

The subject area has a current population of approximately 21.

9. The northwestern portion of the subject area contains rolling terrain and trees with small wetlands which inhibits most commercial or high density residential development. The eastern area adjacent to Trunk Highway 5 is flat and open with few trees. The southwest portion of the area is slightly rolling and contains a portion of a large wetland complex. The subject area contains primarily two types of soils: antigocomstock and hayden-hessel- Dundas.

10. The present pattern of physical development and land use in the subject area consists of a partially completed commercial and light industrial development in the northeastern portion, known as the Kern Center; sparse development of single family residences influenced by areas of significant topography and wetlands in the northwestern portion; St. John's Lutheran Church and Cemetery located along Trunk Highway 5 in the southeastern quadrant; and, a single family residence in the far southeastern corner of the property. The balance of the property is undeveloped and

currently being used for tillable acreage.

11. The intended land use for the subject area as proposed by Oak Park Heights is to continue the commercial/light industrial development within the area platted as the Kern Center. The northwest quarter of the subject site would be planned for single family homes on large estate-type lots. Seventeen acres of mid-density (6 units per acre) is planned in the area immediately south of the Kern Center along 55th Street North. The remaining acreage located to the south of 55th Street is planned for approximately 60 acres of single family residential developments of between 2 and 2½ units per acre.

12. Areas adjacent to the subject area, located in Oak Park Heights north of 58th Street, are planned for high density, commercial development. A shopping center development has been approved and is in the process of construction for a portion of this area. South of 58th Street and adjacent to the subject area is the Stillwater Area High School which caters to approximately 2,000 students complete with a high school campus, accessory structures, related playing and recreational fields.

The western border of Baytown Township consists of residential housing developments with one home per 2.5 acre lots.

To the south of the subject area within Lake Elmo, an open space development has been approved and partially developed on 126 acres. Forty-six residential units have been approved for this site along with a natural farm preserve to buffer the land from adjacent State Trunk Highway 5. To the west is farmland and another rural residential development consisting of nineteen units, preserving half the

site in natural open space. These developments, referred to as "cluster developments," implement housing patterns with a density of approximately one home per 2.5 acres.

There is no other residential area adjacent to the subject area in any community that is developed at densities of approximately 2 and 2.5 units per acre.

13. The subject area is currently served by State Trunk Highway 5 and Manning Avenue North, both of which have direct access to State Trunk Highway 36 along its northern border. A local street network has been developed within Kern Center consisting of Memorial Avenue North and 58th Street North. Additionally, 55th Street North connects Manning Avenue with State Trunk Highway 5.

14. Oak Park Heights has approximately 11.64 miles of highways, streets and roads. The subject area has 1.5 miles and Baytown has 12 miles.

15. Land use in the Kern Center portions of the subject area is currently shown as commercial/light industrial on both Baytown and Oak Park Heights' comprehensive plans. Under either development scenario, a similar volume of transportation/car trips per day are anticipated as a result of continued commercial development in this portion of the subject area.

If the entire subject area were developed as proposed by Oak Park Heights, a total of 1,175 more daily car trips would be generated as a result of residential development south of 55th Street North. Any additional residential development will generate the need for construction of collector and local street systems within the subject area.

16. The subject area contains property that is located in the Valley Branch Watershed District. However, by agreement with the Brown's Creek Water Management Organization, substantially all of the area located north of 55th Street North drains into the Brown's Creek Watershed. The balance of the property located south of 55th Street drains to the Valley Branch Watershed District. Approximately 63 acres of the subject property located along State Trunk Highway 5 drains to the southeast towards Cloverdale Lake (which is located in Baytown) and the remaining 53 acres drains to the west towards Goechel Ponds (which is located in Lake Elmo), both of which are located in and controlled by the Valley Branch Watershed District.

17. Most of the Kern Center drainage is diverted to Browns Creek. There will be no impact on the Valley Branch Watershed District resulting from annexation of the commercial area to Oak Park Heights.

The portion of the subject area proposed by Oak Park Heights for single family residential development, medium density residential development and the church property is currently undeveloped and drains to Cloverdale Lake.

The southwesterly portion of the subject area, which drains to Goetschel Pond is proposed for single family residential development. The impact on the Valley Branch Watershed District will be dependent upon the density of development.

18. Cloverdale and McDonald Lakes, located in Baytown to the southeast of the subject area, and the Goetschel Ponds, located in Lake Elmo to the west of the subject area, currently exist as no outlet receptacles for storm water flowage within Valley Branch Watershed District.

19. The impact of storm water run-off from the portion of the subject area intended for residential development as proposed by Oak Park Heights, indicates the water level in Cloverdale Lake will be more variable but will not be worse than currently exists.

The impact on McDonald Lake will be much less and will only be affected when Cloverdale Lake exceeds its outlet elevation.

The portion of the subject area which drains to Goetschel Pond will see less of an impact from annexation as proposed by Oak Park Heights. However, since there is no outlet from Goetschel Pond, any additional run-off may increase the flooding risk to the surrounding area.

20. There is approximately a tenfold difference between low density residential land use and medium density land use in annual phosphorous loading from a watershed. Annexation and development of the subject area as proposed by Oak Park Heights may decrease the water quality of Cloverdale and McDonald Lakes.

21. The Valley Branch Watershed District classifies both Cloverdale Lake and Goetschel Pond as category three water bodies. The District Water Management Plan requires that dead storage volume be developed greater or equal to the run-off generated from a 1.5 inch twenty-four hour storm over the entire drainage area contributing to run-off within the watershed area.

Lake Elmo regulations require 0.35 acre feet of dead storage for each acre of impervious surface to allow for cleansing storm water and additional volume reduction through infiltration which is more than a twofold increase in what is otherwise

required to control storm water run-off.

22. Oak Park Heights comprehensive plan was developed and adopted in January of 1979. Subsequent amendments were implemented in December of 1979, December of 1988, and September of 1991. The City of Oak Park Heights is presently in the process of a complete update of the comprehensive plan.

23. Oak Park Heights currently has zoning ordinances, subdivision regulations, capital improvement programs, budgets, fire code, shoreland management ordinances, flood plain ordinances, sanitation ordinances, and a comprehensive city code. Baytown currently is regulated by the Washington County zoning ordinance, subdivision regulation, shoreland/bluffland management ordinance, floodplain ordinances, and sanitation ordinances.

24. The subject area is under the zoning authority of Washington County which adopted its current 2015 Comprehensive Plan on April 22, 1997. The County Comprehensive Plan for the subject area indicates rural residential development with an average zoned density of eight lots per forty acres, or, one unit per five acres.

25. Central water and sanitary sewer service is not available in Baytown. All areas of the township are reliant upon on-site septic systems and wells, including the subject area.

26. Baytown's comprehensive plan, which was updated in 1995, for the subject area shows the Kern Center as a commercial land use and the remaining area as rural residential with one residential unit per 5 acres with some possible cluster development.

27. The Metropolitan Council has identified the majority of the subject property within its regional blueprint as being in urban reserve which is intended to be used as a post-2020 holding zone for future urban service and development. About one-fifth of the southern-most part of the subject area has been identified as permanent rural by the Metropolitan Council.

28. Pursuant to Metropolitan Council growth strategy policy, areas designated as urban reserve represent the long-term service area for regional services between now and 2040. The Metropolitan Council based the urban reserve boundary lines on existing watersheds.

Urban reserve areas are expected to develop at overall urban densities of 2 units per acre.

29. Areas designated as permanent rural are expected to develop at a density of not more than one unit per ten acres. This is consistent with maintaining a rural lifestyle and character and consistent with planned transportation system capacities of the region.

30. The Metropolitan Council growth strategy policy areas represent the Council's first attempts at drawing a line on a metropolitan map to distinguish boundary areas for purposes of directed growth. During the comprehensive plan update process, which will be completed in 1998, the Council expects individual communities to define exactly where the line should be relative to what actually is physically present in a community versus a growth strategy area as designated by the Metropolitan Council.

31. Oak Park Heights provides its residents with municipal water, sanitary

sewer and waste water treatment, storm sewer, fire protection, police protection, street improvements and maintenance, administrative services and recreational opportunities.

32. Previous Oak Park Heights comprehensive planning anticipates the eventual annexation of the property to the west of State Trunk Highway 5, which includes the subject area. Sewer facilities and municipal water facilities constructed within Oak Park Heights have been designed to accommodate service to the subject area and have the present capacity to do so.

33. Oak Park Heights currently provides police protection through its own police department which is headquartered in City Hall approximately 1.5 miles from the subject area. Additionally, the City has police officers stationed at the Stillwater Area High School immediately adjacent to the subject property. The department has four patrol cars and a staff of ten which includes a police chief, a sergeant, and an investigator. Approximate response time to the subject area from the City Hall is three minutes and from the high school less than one minute. Oak Park Heights police department has three police officers on duty at all times.

34. Baytown provides police protection by contract with the Washington County Sheriff. The Washington County Sheriff's Department is headquartered in the Washington County Government Center located in Stillwater. Travel distance from the Government Center to the subject site is approximately 2.5 miles.

Lake Elmo contracts for police service with the Washington County Sheriff's Department and has four police officers with one officer on duty on a 24 hour basis within its community.

35. Due to the concentrated service area, the Oak Park Heights Police Department with its staff and equipment provide a faster response time to the commercial portion of the subject area than does Baytown or potentially Lake Elmo.

36. Oak Park Heights and Baytown currently provide fire protection through contract with the City of Bayport. The Bayport Fire Department consists of 24 volunteers. Approximate travel time from the Bayport station to the subject site is 7 minutes. Travel distance is approximately 3.5 miles.

37. The provision of municipal water services and domestic water for purposes of fire protection will be a major benefit to the commercial interests developing within the subject area for automated fire suppression systems (sprinkling), which is not otherwise readily available or economically feasible absent a municipal water source.

38. The adjacent community of Lake Elmo provides its own volunteer fire department with two fire stations and thirty volunteers. All members of the Lake Elmo Volunteer Fire department respond to all fire, rescue and medical calls within its service areas.

Lake Elmo does not have the ability to provide the subject area with municipal water or fire protection systems based on municipal water supplies.

39. Oak Park Heights maintains its own public works department consisting of three full time employees; however, most road maintenance and snow plowing services are provided by private contractor. Baytown currently provides its entire road maintenance services to its residents by private contract.

40. Lake Elmo has its own public works department consisting of a

maintenance supervisor and two maintenance workers.

41. Baytown does not provide significant park facilities to its residents. Oak Park Heights has an extensive park and trail system providing for both active and passive recreational facilities. Oak Park Heights is currently planning a 25 acre park to be located in the immediate vicinity east of the subject area that would provide recreational fields, play structures, and trails around existing wetland complexes.

Lake Elmo has eight parks within the city. All new parks within the City and all new development are guided by the city's comprehensive park plan.

42. Baytown has a part-time clerk who conducts township business from her home.

Oak Park Heights has a full-time administrator with two office staff, a full-time building official, a public works department, and full time police department. City offices are located at Oak Park Heights City Hall.

Lake Elmo has full-time administrator and assistant, full-time planner, full-time finance director and full-time building official, a full-time deputy clerk and two full-time administrative support persons.

43. Oak Park Heights does not have a planning commission. The planning functions are performed by the City Council itself, with assistance of a consultant professional planner.

Lake Elmo has an eleven member Planning and Zoning Commission.

44. Lake Elmo's Building Official is qualified to design and inspect both new and upgraded septic systems. Oak Park Heights contracts for that service from

Washington County.

45. Ambulance service for Oak Park Heights, Baytown, and Lake Elmo is provided through Lakeview Hospital located in Stillwater. The distance to the subject area is approximately 2 miles. Lakeview Hospital ambulance service is supported by the Lake Elmo Fire Department.

46. The Minnesota Pollution Control Agency has found contamination at sites distant from the subject area. Those sites located within Baytown do not pose an immediate threat of contamination to the subject area. The subject area is within the wellhead protection sphere of influence within Oak Park Heights' existing municipal wells and potential septic systems contamination could be a concern to existing municipal wells located to the east of the subject property. Service of the subject area, in particular, the commercial area by municipal water and sanitary service systems would mitigate any environmental and safety concerns.

47.

**FISCAL DATA
VALUES AND TAX RATES FOR TAXES PAYABLE IN 1997**

| | <u>Baytown</u> | <u>Oak Park Heights</u> |
|----------------------------------|----------------|-------------------------|
| Total Estimated Market Valuation | 104,358,600 | 223,205,500 |
| Net Tax Capacity | 1,925,858 | 6,728,690 |
| Total Bonded Indebtedness | 0 | 2,215,000 |
| Tax Rates: | | |
| County | 27.87 | 27.87 |
| Local Units of Government: | | |
| District 1 | 5.60 | 22.27 |
| District 2 | 5.60 | 22.27 |
| District 3 | 5.60 | 22.90 |
| School District | 61.76 | 61.76 |

**FISCAL DATA (cont'd)
VALUES AND TAX RATES FOR TAXES PAYABLE IN 1997**

| | <u>Baytown</u> | <u>Oak Park Heights</u> |
|-----------------------------------|----------------|-------------------------|
| Special School District Watershed | .30 | .30 |
| District 1 | 0 | 0 |
| District 2 | 3.95 | 3.54 |
| District 3 | 3.54 | 9 |
| Other | 4.81 | 5.32 |
| | | |
| Total Tax Rate* | | |
| District 1 | 100.33 | 117.51 |
| District 2 | 104.28 | 121.06 |
| District 3 | 103.87 | 118.14 |

* Source: Washington County Auditor-Treasurer Taxation Division

The subject area has an estimated market value of \$5,892,200.00 with a net tax capacity of \$145,517.00.

Lake Elmo has total estimated market value of \$336,684.00 with a tax capacity of \$6,124,804.00 based on tax rates for taxes payable in 1998.

48. If the entire subject area is annexed to Oak Park Heights, the tax capacity change for Baytown would decrease 7.8 percent. Oak Park Heights' tax capacity would increase 2.4 percent. There would be no other tax impacts on other taxing districts such as Independent School District #834, Washington County, Valley Branch Watershed District, or Brown's Creek Water Management Organization.

49. Annexation of the subject area or a reduced area to Oak Park Heights would have no discernable effect on Independent School District #834, which serves Baytown, Oak Park Heights and most of Lake Elmo.

50. With the exception of the commercial area , annexation of the subject

area to Oak Park Heights would introduce development at urban density into an environmentally sensitive area surrounded by existing residential land use developed at lower density.

51. Baytown does not have the capacity to provide municipal water and sewer services to the subject area. Oak Park Heights can provide for the delivery of municipal services, including water and sewer, to the commercial area of the subject area.

52. Oak Park Heights is experiencing an increase in commercial development and is expected to see limited light industrial development as well. This trend is anticipated by City planning to continue for the remainder of the decade and into the next century. Annexation of a part of the subject property would provide an additional 68 acres to Oak Park Heights for potential commercial development.

53. Existing commercial development on the west side of Trunk Highway 5 within Baytown is complimentary to existing commercial development now in place within Oak Park Heights to the east of Trunk Highway 5 and also complimentary to the Stillwater Area High School located to the east of Trunk Highway 5 in Oak Park Heights.

54. State Highway 5 naturally separates the subject area from the community of Oak Park Heights to the east. The proposed development of the portion of the subject area south of 55th Street North at a density of 2.5 residential units per acre would be separated from other residential development with urban densities within the Oak Park Heights by one mile.

55. The increase in revenues for Oak Park Heights by annexation of the

subject area is negligible and provides the subject area with a monetary value and benefit that is in excess of the revenues that otherwise accrue to Oak Park Heights by virtue of the annexation.

56. By Municipal Board action on April 17, 1998, the area proposed for annexation previously described in Finding of Fact No. 1 was reduced to include only that property described below:

All that part of Section 6, Township 29 North, Range 20 West, platted as KERN CENTER and KERN CENTER 2ND ADDITION, including adjacent right-of-ways. Also, including adjacent right-of-way of 55th Street North. 113.72 total acres.

57. Baytown has conceded, by virtue of the fact of its joint resolution with Lake Elmo for orderly annexation of the subject area, that any annexation of the subject area, or parts thereof, will not affect the remainder of the township to exist and operate as a viable township.

CONCLUSIONS OF LAW

1. That the Municipal Board has duly acquired and now has jurisdiction of the subject proceeding.
2. That the subject area as described in Finding of Fact 56, hereinafter referred to as "the reduced area", is now or is about to become urban or suburban in character and 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. That the Municipal Board should retain jurisdiction over the remaining area originally described in the petition.

4. That municipal government is presently required to protect the public health, safety and welfare in the reduced area.
5. That the existing township form of government is not adequate to protect the public health, safety, and welfare within the reduced area.
6. That the annexation would be in the best interests of the reduced area.
7. That the Town can carry on the functions of government without undue hardship.
8. That an order should be issued by the Municipal Board annexing the reduced area and ordering a six-year tax rate step up for the reduced area.

ORDER

1. IT IS HEREBY ORDERED: That the property described in Finding of Fact 1 herein, is reduced to include only that property described below. Such property is hereby annexed to the City of Oak Park Heights, Minnesota, the same as if it had originally been made a part thereof.

All that part of Section 6, Township 29 North, Range 20 West, platted as KERN CENTER and KERN CENTER 2ND ADDITION, including adjacent right-of-ways. Also, including adjacent right-of-way of 55th Street North. 113.72 total acres.

2. IT IS FURTHER ORDERED: That the tax rate of the City of Oak Park Heights on the reduced area annexed shall be increased in substantially equal proportions over a period of six years to equality with the tax rate of the property already within the City.

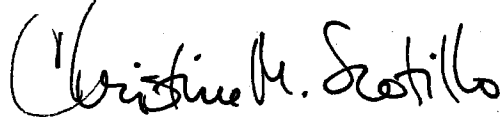
3. IT IS FURTHER ORDERED: That the Municipal Board retains jurisdiction

over the remainder of the area originally described in the petition.

4. IT IS FURTHER ORDERED: That the effective date of this order is April 17, 1998.

Dated this 22nd day of April, 1998.

MINNESOTA MUNICIPAL BOARD
Suite 225, Bandana Square
1021 Bandana Boulevard East
St. Paul, Minnesota 55108

A handwritten signature in black ink, reading "Christine M. Scotillo". The signature is written in a cursive style with a large initial "C".

Christine M. Scotillo
Executive Director

MEMORANDUM

After extensive deliberation, the Minnesota Municipal Board has ordered a reduced area to be annexed to the City of Oak Park Heights. The reduced area is that part of the proposed subject area dedicated to commercial and light industrial uses. The evidence indicated that because of the reduced subject area's location south of TH 36 and east of TH5, commercial uses would be the best and highest use of that portion of the property.

Additionally, the evidence strongly suggests that municipal services are necessary to protect the public health, safety and welfare particularly in the form of increased police protection and fire suppression from a pressurized municipal water system.

Because of the concern regarding assessments for those municipal services the Municipal Board has ordered the tax rate step up for the reduced area.

The remainder of the subject area will be annexed to Lake Elmo pursuant to an orderly annexation agreement between Lake Elmo and Baytown pending final approval by the Municipal Board of that agreement.

In reducing the area proposed for annexation to include only the commercial area, the Municipal Board is cognizant of the policies of the Metropolitan Council' growth strategy and is confident that Lake Elmo will, through the comprehensive plan revision process, reconcile its own development policies and philosophy with those of the Metropolitan Council. The Board's action here today acknowledges the evidence of existing land uses adjacent to the subject area.

CWS
4/17/98