

BEFORE THE MUNICIPAL BOARD
OF THE STATE OF MINNESOTA

Andrew D. Hultgren	Chair
Paul B. Double	Vice Chair
Charles W. DeVore	Vice Chair
William Kron	Ex-Officio Member
Dennis Fink	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 EVELETH 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 February 26, 1998, and was continued to August 20, 1998 and August 21, 1998 at the Holiday Inn, Eveleth, Minnesota. The hearing was conducted by Andrew D. Hultgren, Chair, pursuant to Minnesota Statutes 414.01, Subdivision 12. Also in attendance were Paul B. Double, Vice Chair; Charles W. DeVore, Vice Chair; and County Commissioners Dennis Fink and William Kron, Ex-Officio Members of the Board.

The City of Eveleth appeared by and through Larry Minton, Attorney at Law. The Town of Fayal appeared by and through Paul Cerkenik and Scott Neff, Attorneys 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 December 29, 1997, a Resolution of the City of Eveleth, hereinafter referred to as "Eveleth," for the annexation of the entire Town of Fayal, hereinafter referred to as "Fayal," was filed with the Minnesota Municipal Board pursuant to Minnesota Statutes 414.031(a). The resolution contained all of the information required by statute, including a description of the territory subject to annexation, which is as follows:

The Entire Town of Fayal

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

3. On June 17, 1998, an orderly annexation agreement was filed with the Municipal Board between Fayal and the City of Gilbert, hereinafter referred to as "Gilbert," designating for orderly annexation, but not annexing until twenty-some years in the future, the same property described in Finding of Fact No. 1.

4. The Municipal Board tabled consideration of the joint agreement pending the outcome of this matter.

5. The subject area is the entire Town of Fayal which abuts the City of Eveleth on the City's southeast boundary. Fayal is approximately 15% bordered by Eveleth and is located in the center of St. Louis County on the edge of the Mesabi Iron Range. Northwestern portions of the Town are part of the Giants Ridge upland formations, where iron ore mining continues to occur. The Town consists of approximately 22,720 acres of land.

The subject area is bordered on its northeast by Gilbert; Clinton Township to its west and unorganized territory to its east and south.

6. Fayal is located just south of the Laurentian Divide. Its topography is generally flat, characterized by numerous lakes and wetlands and it is part of the St. Louis River watershed.

7. Eveleth is one of four cities located in the central hub of the Mesabi Iron Ore Range commonly referred to as the "Quad Cities". Eveleth, approximately 4,560 acres in size, is located to the northwest of Fayal, lying directly on the Mesabi Iron Range.

8. The border shared by Eveleth and Fayal is the southern edge of iron ore deposits and consists of a mining buffer approximately a mile in width. This physical barrier divides the two communities. There are no neighborhoods that abut from Eveleth to Fayal along this border.

9. Eveleth had approximate populations of 5,042 in 1980; 4,064 in 1990; 4,003 in 1996; and 3,983 in 1997. Eveleth had approximately 1,782 households in 1990 and 1,775 households in 1996.

10. Fayal had approximate populations of 2,175 in 1980; 2,001 in 1990; 2,021 in 1996; and 2,039 in 1997. Fayal had approximately 744 households in 1990 and 760 households in 1996.

The subject area has a current population of approximately 2,001.

11. The State Demographer projects an 11.4% decrease in population for St. Louis County from 1990 to 2020. If the projected population decline for St. Louis County is applied to Eveleth and Fayal, Eveleth will have a population of 3,600 in the year 2020

and Fayal will have a population of 1,773 in the year 2020.

If the current trends of population in the two communities are projected to the year 2020, Eveleth will have a population of 3,759 and Fayal will have a population of 2,101.

12. The present pattern of physical development and land use in the subject area consists of several lake areas which account for the majority of the residential development. There is very limited commercial development none of which is contiguous to any city business districts.

A rural residential development pattern is scattered throughout the subject area with typical lakeshore residential development concentrations. The majority of rural residential lakeshore development has occurred around Lake Ely, the largest lake in the subject area. The minimum lot size in this area is one-half acre. Other lakeshore residential development have lot sizes ranging from one to four and one-half acres.

13. Eveleth has residential, institutional, commercial and industrial development as well as some vacant land.

14. The City intends that the existing patterns of development and land use in the subject area would remain essentially unchanged.

15. The subject area is currently served by State Highway 53, a four lane divided expressway which runs north and south through Fayal and provides easy access to all the Quad Cities. North and south access through the subject area is also provided by County State Aid highways 132 and 96; as well as County Roads 536, 629, and 396.

East and west access through the subject area is provided by State Highway

37 and County State Aid highways 95 and several township roads.

16. No changes in the existing transportation system are warranted or intended as a result of the proposed action.

17. Eveleth maintains approximately 40 miles of roads.

The township maintains approximately 30 miles of roads in the subject area.

18. The City of Eveleth administers its own planning, zoning and building permit regulations and systems. The current City Zoning Ordinance and the City's Guide Plan were adopted in 1982. The Guide Plan for Eveleth did not include or plan for the annexation of the subject area.

Fayal adopted a Comprehensive Town Plan in 1979. In 1985, St. Louis County adopted a Comprehensive Plan which included a zoning component for Fayal Township. The county plan provided that rural residential development, consistent with current levels, would continue to be the predominant land use policy for Fayal. In 1996, St. Louis County assumed planning, zoning and building permit administration for Fayal Township. Fayal adopted urban town powers in 1984.

19. Eveleth provides a full range of municipal services to its residents including fire protection, police protection, ambulance services, sewer and water services, street improvements and maintenance, administrative services and a full range of recreational facilities.

20. Eveleth's water treatment plant is located in Fayal township on St. Mary's Lake, which is the source of its municipal water supply. Municipal water is supplied to all of Eveleth's residents. Eveleth added two water lines in the 1940's to service city-owned

property located in the township, such as the Eveleth/Virginia Airport; the golf course; a boy scout camp, and the water plant .

21. From time to time, individual residents of Fayal contracted with Eveleth to tap into these lines for domestic use.

22. Periodically, between 1988 and 1992, Fayal constructed new water lines using either its own funds or grant funding from the Iron Range Resources and Rehabilitation Board (IRRRB), partly because of a heightened concern for more adequate fire protection within the township and requests for domestic tap-ins.

23. As part of a long-standing water distribution agreement between Eveleth and Fayal, Fayal gave some of its water lines to Eveleth to maintain and to provide fire hydrants and water to Fayal residents. Future requests for private connections to these lines would be between Eveleth and the requesting party.

24. Fayal has disputed Eveleth's water rates, hydrant rental fees and the adequacy of water service and waterline maintenance since 1991. The parties have engaged in protracted negotiations to try to resolve these issues.

25. In 1996, after an impasse in negotiations, Fayal terminated all of Eveleth's water contracts and stopped paying hydrant rental fees to Eveleth.

26. Fayal negotiated a bulk water purchase arrangement with the City of Gilbert in 1997 and constructed two water lines linking Gilbert's water supply to Fayal lines. After the first line was constructed, Fayal offered to buy Eveleth's lines already in that area but Eveleth refused to sell. Fayal then duplicated water lines in that area by constructing its own.

27. Fayal owns five lines built between 1991 and 1997, and Eveleth owns four lines, two built around 1940 and two built in the 1980's.

28. Fayal now receives bulk water from the City of Gilbert at the rate of \$1.95 per thousand gallons. Previously, Eveleth had proposed a bulk water rate to Fayal of \$5.40 per thousand gallons, a rate that was higher than the retail rate Fayal residents were paying at the time. Eveleth testified that it could not meet Gilbert's water price.

29. Fayal owns and operates approximately two thirds of the municipal water system in Fayal. The Town currently serves 180 of 250 residential water customers in the Township through the purchase of bulk water from Gilbert under a five year contract.

30. Eveleth's sewage treatment plant is presently operating at full capacity and does not have capacity to treat additional sewage. Plans for the possible expansion of Eveleth's sewer system and treatment facility are speculative at best and have not been approved by the City Council.

The subject area is currently served by individual septic systems.

31. Fayal commissioned engineering studies for sewage treatment in 1994 and 1997 to protect the water quality of its lakes by correcting groundwater and lake pollution created by on-site sewage disposal systems from lake development. Fayal has received approval from the State Public Facility Authority to proceed with a community sewage collection system in Fayal with treatment of the raw sewage by Gilbert using the excess capacity of Gilbert's existing treatment plant. Funding for this project consists of a \$8,000,000 loan at 2.5% which includes a grant of between \$3.1 to \$3.5 million. The sewage treatment project will connect 675 of Fayal residences to this collector system.

32. If the proposed annexation were granted, Eveleth has indicated that it would assume Fayal's role in the community sewage collector system project as well as the water agreement with Gilbert.

33. Eveleth has a professional police department consisting of nine full-time officers and two licensed substitute officers and one full-time secretary. Eveleth's proposed plan for providing police protection services to Fayal was to add two additional officers to serve the subject area. However, the cost of such officers was not included in its fiscal analysis of the proposed annexation.

34. Police protection for Fayal is provided by the county sheriff's department on a 24 hour, 7 day a week basis. Fayal is served by a part-time licensed peace officer who works twenty hours a week on a random schedule. The county sheriffs office and the City of Eveleth provide backup support.

35. Eveleth has one paid Fire Captain and twenty-three paid-on-call firefighters. Paid-on-call Firefighters receive \$7.00 an hour for fires; \$5.00 an hour for training and meetings. The pension was raised to \$1200 per year of service two years ago, payable at age 50.

Fayal has twenty volunteer firefighters who receive \$3.00 an hour for fire, training and meetings. Fayal's fire pension was raised to \$1500 per year of service recently.

36. No analysis has been conducted as to the fiscal impacts of merging the pensions in the two departments.

37. Both Eveleth and Fayal have a class 6 fire rating. Both fire departments use

each other as primary backup.

38. Fayal has different fire protection needs than Eveleth, focusing on the ability to move or store water throughout the township. Fayal has drafting hydrants at its lakes and four underground reservoirs in remote areas of the township.

39. In addition to provision of municipal water for some of its residents and plans for a sewage collector system, Fayal also provides street maintenance services for the township through its public works department, which has two full-time employees; recreational programs with Eveleth and the Eveleth-Gilbert school district through a joint powers agreement; and some administrative services including a public utilities commission, which oversees the water and sewer, cable television expansion, natural gas lines extension and street lighting policies.

40. Eveleth has a net tax capacity of \$962,285. Eveleth's tax rate for the county is 46.024; the local tax rate is 59.879; the school district tax rate is 32.606; and the special tax district rate is 0.553. Eveleth's actual current levy is 578,000. (1997).

Fayal has a net tax capacity of \$819,642. Fayal's tax rate for the county is 68.794; the local tax rate is 29.449; the school district tax rate is 44.070; and the special district tax rate is 0.553. Fayal's current levy is 241,383. (1997).

41. Eveleth's general fund balance at the end of 1997 was \$1,606,122.

Fayal's general fund balance at the end of 1997 was \$452,339 with no debt. Fayal's annual budget is approximately \$350,000.

42. The Eveleth/Gilbert School District which serves the subject area would not be affected by the proposed annexation. Its service boundaries and operations would not

be affected.

43. Fayal currently provides adequate fire protection, police protection, administrative services, building and zoning services, municipal water and is in the process of developing a municipal sewer system for its residents.

44. The proposed annexation would double Eveleth's tax base, increase its population making it eligible to regain state road aid, plus result in a transfer of Fayal's cash balances.

CONCLUSIONS OF LAW

1. The Municipal Board has duly acquired and now has jurisdiction of the subject proceeding.

2. The subject area as described in Finding of Fact No. 1, is generally not now nor is it about to become urban and suburban in character, nor is it in need of municipal services.

3. Municipal government is not presently required to protect the public health, safety and welfare in the subject area.

4. The existing form of government is adequate to protect the public, health, safety and welfare within the subject area.

5. The increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area.

6. Annexation would not be in the best interest of the subject area.

7. The Town can carry on the functions of government without undue hardship.

8. An order should be issued by the Municipal Board denying the request for

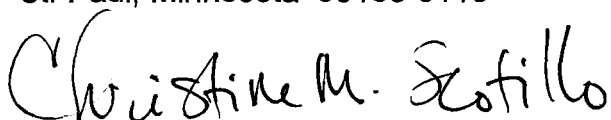
annexation described herein.

ORDER

1. IT IS HEREBY ORDERED: That the request for the annexation of the property described in Finding of Fact No. 1 is hereby denied.
2. IT IS FURTHER ORDERED: That the effective date of this order is February 5, 1999.

Dated this 5th day of February, 1999.

MINNESOTA MUNICIPAL BOARD
Suite 225, Bandana Square
1021 Bandana Boulevard East
St. Paul, Minnesota 55108-5113


Christine M. Scotillo
Executive Director

MEMORANDUM

As an urban town, Fayal has done an impressive job of providing necessary and desired services to its residents in a cost-effective manner. The drawback in doing so under Minnesota Statute Chapter 414 is that an urban town begins to look and act in fact, more urban and more city-like. The overriding policy of the statute is that urban development and municipal services be extended from cities into unincorporated areas.

However, Eveleth has not met its burden with respect to the statutory criteria to justify annexation in this case. And while Eveleth has shown that it would be capable of providing at least a comparable level of services to Fayal, all services necessary to protect the public health, safety and welfare are being provided already, by the Town. Further, Eveleth has not shown a need to move beyond its existing corporate boundaries at this time.

In 1977 the Municipal Board denied the petition of the Town of Fayal for incorporation. The Municipal Board found, among other things, that the population of the Town in 1970 was 2,025 and was expected to increase to 4,000 by the year 1985. The Municipal Board also noted in 1977 that while parts of the area then proposed for incorporation were developing, the Town as a whole did not have the requisite population or diversity of development to be a viable free-standing city. In particular, the Town had no utilities such as water and sewer and no immediate plans for such. And finally, the Municipal Board, in denying Fayal's petition for incorporation thought that either the City of Eveleth or the City of Gilbert could better service portions of the area proposed for incorporation.

Today, the current population of Fayal is listed at about 2,000. Although the Town of Fayal never reached a population of 4,000, it has provided municipal water, through supporting infrastructure from the City of Eveleth as well as constructed its own pipelines. Plans are in process now for a community sewage collector system to correct failing on-site septic systems and to protect the water quality of Township lakes.

Yet, despite the presence of municipal water and plans for municipal sewer, the Township still looks much the same as it did twenty-two years ago. There was no swell in population for either Eveleth or Fayal. There was no pressure for additional residential or commercial/ industrial development in either Eveleth or Fayal. There is, however, the threat of pollution from failing septic systems built around the township lakes which the Town has adequately addressed.

Eveleth has not presented convincing evidence that there is a need for additional land to support existing or planned growth in Eveleth. Nor has Eveleth persuaded the Municipal Board that municipal government is necessary to protect the public health, safety or welfare of the Township.

By contrast, in this case, the Township government has demonstrated that it is not in need of any additional services that Eveleth may be able to provide.

The health and viability of the entire Iron Range area will require all its units of government to succeed and work cooperatively together. The Municipal Board hopes that the communities of Eveleth and Fayal can put their water history behind them and move forward in a spirit of trust and respect.

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