

BEFORE THE OFFICE OF STRATEGIC  
AND LONG RANGE PLANNING  
OF THE STATE OF MINNESOTA

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

ORDER

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WHEREAS, a resolution requesting the annexation of certain property to the City of Baxter was filed with the Municipal Boundary Adjustments section of the Office of Strategic and Long-Range Planning, (hereinafter referred to as "Minnesota Planning,") pursuant to Minnesota Statutes 414.031, Subd. 1(a) on April 17, 2000 (MBA Docket A-6279); and

WHEREAS, on May 4, 2000, a resolution requesting the annexation of certain property to the City of Brainerd, which included the entire area proposed for annexation by the City of Baxter, was filed with Municipal Boundary Adjustments pursuant to Minnesota Statutes 414.031, Subd. 1(a) (MBA Docket A-6285); and

WHEREAS, on May 12, 2000, the Director of Minnesota Planning combined the two files for purposes of hearing pursuant to Minnesota Statutes 414.01, Subd. 5; and pursuant to Minnesota Statutes 414.01, Subd. 16, directed the City of Baxter and the City of Brainerd to meet up to three times over a period of sixty days to address resolution of contested issues; and

WHEREAS, after due and appropriate legal notice, a statutory hearing was convened on the petitions on June 12, 2000 and was continued to an indefinite date to allow the parties time to complete the directed meetings; and

WHEREAS, on July 14, 2000, the Director of Minnesota Planning granted the parties' request for additional time to finalize a settlement agreement; and

WHEREAS, Municipal Boundary Adjustments received the Annexation

Agreement between the City of Baxter and the City of Brainerd representing settlement of the underlying dispute; and

WHEREAS, on July 17, 2000, Municipal Boundary Adjustments received a request from petitioner City of Baxter to withdraw its petition pursuant to the terms of the Annexation Agreement executed as between the parties (MBA Docket A-6279 Baxter); and

WHEREAS, the City of Brainerd requested that its petition be amended to reduce the proposed annexation area from 1,825 acres to 1,415 acres; and

WHEREAS, on July 28, 2000, the Director of Minnesota Planning granted petitioner City of Baxter's request to withdraw its petition and canceled the continued hearing (MBA A-6279 Baxter); and granted the City of Brainerd's request to amend its petition to a reduced area (MBA A-6285 Brainerd);

IT IS HEREBY ORDERED: That the petition for annexation of certain property to the City of Baxter (MBA Docket A-6279) is withdrawn, the continued hearing is canceled, and the file is closed without prejudice.

IT IS FURTHER ORDERED: That the petition for annexation of certain property to the City of Brainerd (MBA Docket A-6285) is hereby reduced from 1,835 acres to 1,415 acres. The description of the reduced area is as follows:

The South  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of Section 28, Township 134, Range 28, Crow Wing County, Minnesota.

ALSO

The Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 28, Township 134, Range 28, Crow Wing County, Minnesota.

ALSO

The South  $\frac{1}{2}$  of the SE $\frac{1}{4}$  and the South  $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 29, Township 134, Range 28, Crow Wing County, Minnesota.

ALSO

The Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 30, Township 134, Range 28, Crow Wing County, Minnesota.

ALSO

The Northeast  $\frac{1}{4}$  of Section 31, Township 134, Range 28, Crow Wing County, Minnesota except that part within the Corporate Limits of Baxter.

ALSO

The Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 31, Township 134, Range 28, Crow Wing County, Minnesota lying northeast of the centerline of State Highway 371.

ALSO

The North  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 31, Township 134, Range 28, Crow Wing County, Minnesota except that part within the Corporate Limits of Baxter.

ALSO

The SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 31, Township 134, Range 28, Crow Wing County, Minnesota lying northeast of the centerline of State Highway 371.

ALSO

All of Section 32, Township 134, Range 28, Crow Wing County, Minnesota except that part within the Corporate Limits of Baxter.

ALSO

The West  $\frac{3}{4}$  of Section 33, Township 134, Range 28, Crow Wing County, Minnesota except that part within the Corporate Limits of Brainerd.

ALSO

The Northwest  $\frac{1}{4}$  of Section 4, Township 133, Range 28, Crow Wing County, Minnesota except that part within the Corporate Limits of Brainerd.

ALSO

That part of the Northeast  $\frac{1}{4}$  of Section 4, Township 133, Range 28, Crow Wing County, Minnesota lying west of the centerline of Beaver Dam Road and northwest of the centerline of Riverside Drive (C.S.A.H. 20).

ALSO

Part of the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 33, Township 134, Range 28, Crow

Wing County, Minnesota described as follows: Commencing at the southeast corner of said SE SE; then north 0 Degrees 18 Minutes west 396.5 feet along the east line of said SE SE to the north right of way line of County Highway, the point of beginning; then north 0 Degrees 18 Minutes west 217.75 feet; then south 66 Degrees 22 Minutes west 222.17 feet; then south 23 Degrees 38 Minutes east 200 feet to the north right of way line of the County Highway then north 66 Degrees 22 Minutes east 135.9 feet along the said right of way line to the place of beginning.

ALSO

The SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 33, Township 134, Range 28, Crow Wing County, Minnesota except the north 30 feet thereof and except the part thereof lying southerly of the following described line: Beginning at the point on the east line of said SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  which is 614.25 feet north 0 Degrees 18 Minutes west assumed bearing from the southeast corner of said Section 33; then south 66 Degrees 22 Minutes west 525.23 feet; then south 64 Degrees 38 Minutes west 109.07 feet; then south 61 Degrees 10 Minutes west 128.28 feet; then south 48 Degrees 27 Minutes west 123.21 feet; then south 46 Degrees 18 Minutes west 292.35 feet to the south line of said SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  and there ending.

LESS THE FOLLOWING 420 ACRES DESCRIBED AS FOLLOWS:

The Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , Section 30, Township 134, Range 28, Crow Wing County, Minnesota.

ALSO

The Northeast  $\frac{1}{4}$  of Section 31, Township 134, Range 28, Crow Wing County, Minnesota except that part within the Corporate Limits of Baxter.

ALSO

The Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 31, Township 134, Range 28, Crow Wing County, Minnesota lying northeast of the centerline of State Highway 371.

ALSO

The North  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 31, Township 134, Range 28, Crow Wing County, Minnesota except that part within the Corporate Limits of Baxter.

ALSO

The SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 31, Township 134, Range 28, Crow Wing

County, Minnesota lying northeast of the centerline of State Highway 371.

ALSO

The Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  and the Southwest  $\frac{1}{4}$  of Section 32,  
Township 134, Range 28, Crow Wing County, Minnesota.

IT IS FURTHER ORDERED: That Minnesota Planning hereby retains jurisdiction  
over the A-6285 Brainerd reduced area.

IT IS FURTHER ORDERED: That the effective date of this order is July 28,  
2000.

Dated this 16<sup>th</sup> day of August, 2000.

Office of Strategic and Long Range Planning  
658 Cedar Street - Room 300  
St. Paul, MN 55155-1603



Christine M. Scotillo  
Executive Director  
Municipal Boundary Adjustments

A-6285 Brainerd  
A-6354 Brainerd  
A-6355 Brainerd

BEFORE THE OFFICE OF STRATEGIC  
AND LONG RANGE PLANNING  
OF THE STATE OF MINNESOTA

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IN THE MATTER OF THE PETITIONS FOR )	
THE ANNEXATION OF CERTAIN LANDS )	
TO THE CITY OF BRAINERD PURSUANT )	<u>ORDER REDUCING</u>
TO MINNESOTA STATUTES 414 )	<u>A-6285 AND ALLOWING</u>
	<u>ANNEXATIONS BY ORDINANCE</u>

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WHEREAS, the City of Brainerd filed a resolution and two petitions for the annexation of certain lands in unorganized territory with the Office of Strategic and Long Range Planning (hereinafter referred to as "Minnesota Planning") on August 14, 2000; and

WHEREAS, an amended resolution of the City of Brainerd for annexation pursuant to Minnesota Statute Sec. 414.031 subd. 1(a), includes said property and is already pending before the Director of Minnesota Planning in Municipal Boundary Adjustment (hereinafter "MBA") Docket A-6285; and

WHEREAS, on July 31, 2000, the Director of Minnesota Planning granted the City of Brainerd's request to amend its original resolution and reduce MBA Docket A-6285 from 1,835 acres to 1,415 acres; and

WHEREAS, the City of Brainerd has now requested that the Director issue an order allowing the City of Brainerd to further reduce its amended resolution and allow annexation by ordinance of these two recent petitions pursuant to Minnesota Statutes Sec. 414.033; and

WHEREAS, the descriptions contained in these petitions are as follows:

Kenneth R. Lind, Richard F. Volkmuth, and David L. Mott Property:  
The Southwest Quarter of the Northeast Quarter, Section 33, Township 134, Range 28, Crow Wing County, Minnesota, also the south one half of the Northwest Quarter of the Northeast Quarter, Section 33, Township 134, Range 28, Crow Wing County, Minnesota, except that part platted as First Addition to Dal-Mar Estates and except that part lying west of First

Addition to Dal-Mar Estates.

AND

Kenneth R. Lind, Dale William, and Marion Carter Property:  
The Southeast Quarter of the Northwest Quarter, Section 33, Township  
134, Range 28, Crow Wing County, Minnesota.

AND

The south one half of the Northwest Quarter of the Northwest Quarter,  
Section 33, Township 134, Range 28, Crow Wing County, Minnesota.

WHEREAS, the Director of Minnesota Planning has on August 30, 2000, granted  
the request of the City of Brainerd pursuant to Minnesota Statutes Sec. 414.033,  
subd.6.

IT IS HEREBY ORDERED: That the petition for annexation of certain property to  
the City of Brainerd (MBA Docket A-6285) is hereby reduced by the above-described  
property.

IT IS FURTHER ORDERED: That the City of Brainerd is hereby allowed to  
annex by ordinance the above-described properties.

IT IS FURTHER ORDERED: That Minnesota Planning hereby retains jurisdiction  
over the A-6285 Brainerd reduced area.

IT IS FURTHER ORDERED: That the effective date of this order is August 30,  
2000.

Dated this 1<sup>st</sup> day of September, 2000.

Office of Strategic and Long Range Planning  
658 Cedar Street - Room 300  
St. Paul, MN 55155-1603



Christine M. Scotillo  
Executive Director  
Municipal Boundary Adjustments

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE OFFICE OF STRATEGIC AND LONG RANGE PLANNING

In re the Resolution for Municipal  
Boundary Adjustments:  
Brainerd/Unorganized Territory (A-6285)

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

The above-entitled matter came on for hearing before Administrative Law Judge Beverly Jones Heydinger at 1:30 p.m. on November 14, 2000, at Brainerd City Hall, 501 Laurel Street, Brainerd, Minnesota. The record remained open for the submission of public comments until November 21, 2000. The City of Brainerd submitted a post-hearing memorandum that was received on January 2, 2001, and the record closed on that date.

Karen Cole, Attorney at Law, Kennedy & Graven, 470 Pillsbury Center, 200 South Sixth Street, Minneapolis, Minnesota 55402, appeared on behalf of the City of Brainerd.

**NOTICE**

This order is the final administrative decision in this case under Minn. Stat. §§ 414.031, 414.11, and 414.12 (2000). Any person aggrieved by this Order may appeal to Crow Wing County District Court by filing an Application for Review with the Court Administrator within 30 days of the date of this Order.<sup>1</sup>

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within seven days from the date of the mailing of this Order<sup>2</sup>. No request for an amendment, however, shall extend the time of appeal from this Order.

**STATEMENT OF ISSUES**

Should the property included in Municipal Boundary Adjustment A-6285, currently part of the Unorganized Territory of Crow Wing County, or any portion of it, be annexed to the City of Brainerd?

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<sup>1</sup> Minn. Stat. § 414.07, subd. 2 (2000).

<sup>2</sup> Minn. Rule pt. 6000.3100 (1999).



## FINDINGS OF FACT

### Procedural History

1. On May 5, 2000, the City of Brainerd ("Petitioner") filed a Resolution for Annexation Planning of unincorporated property in Crow Wing County with the Office of Strategic and Long Range Planning pursuant to Minn. Stat. § 414.031.

2. On June 12, 2000, the Office of Strategic and Long Range Planning held a hearing on file A-6285 Brainerd, and a related matter, A-6279 Baxter. The hearing was conducted by Christine Scotillo, Executive Director of Municipal Boundary Adjustments. The two matters were consolidated for purposes of the hearing and the parties were directed to meet three times to attempt to resolve contested issues. The hearing was opened and immediately continued indefinitely.

3. On July 28, 2000, the Director of the Office of Strategic and Long Range Planning granted the City of Baxter's request for withdrawal of its annexation resolution, and granted the City of Brainerd's request to amend A-6285, reducing the area proposed for annexation.

4. On September 5, 2000, the Director of the Office of Strategic and Long Range Planning delegated to the Office of Administrative Hearings the "authority and responsibility to conduct hearings and issue orders under Minnesota Statutes Sec. 414.01 to 414.09, with respect to [A-6285]."

5. The only party to this proceeding is the Petitioner, City of Brainerd.

6. A Notice of Hearing was signed on October 16, 2000, describing the property as follows:

The SW ¼-SW ¼, Section 28, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SE ¼-SW ¼ Section 28, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SW ¼-SE ¼ Section 28, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SW ¼-SW ¼ Section 29, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SE ¼-SW ¼ Section 29, Township 134 North, Range 28 West, Crow Wing County, Minnesota

The SW ¼-SE ¼ Section 29, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SE ¼-SE ¼ Section 29, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The NE  $\frac{1}{4}$  Section 32, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The NW  $\frac{1}{4}$ -NW  $\frac{1}{4}$  Section 32, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The NE  $\frac{1}{4}$ -NW  $\frac{1}{4}$  Section 32, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SE  $\frac{1}{4}$ -NW  $\frac{1}{4}$  Section 32, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SE  $\frac{1}{4}$  Section 32, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The North  $\frac{1}{2}$  of NW  $\frac{1}{4}$ -NW  $\frac{1}{4}$  Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota except part platted as Dal-Mar Estates

The NE  $\frac{1}{4}$ -NW  $\frac{1}{4}$  Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota except part platted as Dal-Mar Estates and First Addition to Dal-Mar Estates

The SW  $\frac{1}{4}$ -NW  $\frac{1}{4}$  Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The North  $\frac{1}{2}$  of NW  $\frac{1}{4}$ -NE  $\frac{1}{4}$  Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota except part platted as Dal-Mar Estates and First Addition to Dal-Mar Estates

Dal-Mar Estates and First Addition to Dal-Mar Estates, Crow Wing County, Minnesota

The NE  $\frac{1}{4}$ -SW  $\frac{1}{4}$  Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The NW  $\frac{1}{4}$ -SW  $\frac{1}{4}$  Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SE  $\frac{1}{4}$ -SW  $\frac{1}{4}$  Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota except part located in the City of Brainerd

The North 30 feet of the SW  $\frac{1}{4}$ -SE  $\frac{1}{4}$  Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The NW  $\frac{1}{4}$ -NW  $\frac{1}{4}$  Section 4, Township 133 N., Range 28 W., Crow Wing County, Minnesota

The SW  $\frac{1}{4}$ -SW  $\frac{1}{4}$  Section 4, Township 133 N., Range 28 W., Crow Wing County, Minnesota except the west 250 feet of the south 650 feet thereof

The SE ¼-NW ¼ Section 4, Township 133 N., Range 28 W., Crow Wing County, Minnesota

That part of River Heights Addition lying west of the centerline of Beaver Dam Road, Crow Wing County, Minnesota except part located in the City of Brainerd

7. Due, timely and adequate legal notice of the hearing was published in *The Brainerd Daily Dispatch* on October 31 and November 7, 2000.<sup>3</sup>

8. On November 14, 2000 a hearing was held at Brainerd City Hall on the resolution for annexation. A viewing of the property was held on November 15, 2000.

9. The City of Brainerd called the following witnesses in support of annexation: Alan Cottingham, Brainerd City Planner; Jeff Hulsether, Brainerd City Engineer; Nicholas Dragisich, Vice President, Springsted, Inc., Gary Scheeler, member of the Brainerd City Council and Planning Commission; Dan Vogt, Brainerd City Administrator.

10. Eight members of the public testified at the hearing: Greg Jedlenski, Ron Huber, Peter Trask, Mark Ryan, Genevieve Holden, William Blum, Ty Olson, and Tim Davis.

11. Public comments on the petitions were received through November 21, 2000.<sup>4</sup>

12. The City of Brainerd submitted a post-hearing memorandum on January 2, 2001. The record closed on that date.

13. On February 5, 2001, Brainerd notified the administrative law judge of two errors in the legal description of the property included in the Notice of Hearing. The legal description referred to the SW ¼-SW ¼ of Section 4, Township 133 N., Range 28 W. The correct description of this parcel is the SW ¼-NW ¼ of Section 4, Township 133 N., Range 28 W. Also, the legal description omitted the SW ¼-SW ¼ of Section 33, Township 134 N., Range 28 W. The proper parties received notice of the hearing and were aware that the proceedings could affect their property.<sup>5</sup>

14. Land included in the Notice of Hearing will be referred to as the "subject property" or "proposed annexation area".

15. The following findings are made pursuant to the requirements of Minn. Stat. §§ 414.02 and 414.031.

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<sup>3</sup> Minn. Stat. § 414.09, subd. 1.

<sup>4</sup> Comments were received from: Jane E. Van Hunnik, Mississippi Headwaters Board; Jack Jarvala; Wanda J. Huber; Ron Huber; and Genevieve M. Holden. In addition 21 people signed a statement that they are current residents of Dal-Mar Estates and did not want that property annexed to the City of Brainerd.

<sup>5</sup> Letter from Al Cottingham, City Planner, February 5, 2001.

### Population

16. In 1999, the population of the proposed annexation area was 65, with 24 households. It was estimated to be the same in 2000, and increase to 300 in 2010, with 115 households.<sup>6</sup>

17. Brainerd's population in 1999 was 13,122 (5,594 households); it was projected to be 13,300 in 2000 (5,650 households), and 14,500 in 2010, (6,170 households).<sup>7</sup>

18. The neighboring city of Baxter is also projected to grow in the next ten years. Its population was 6,100 in 1999 (2,040 households), and is projected to be 12,700 in 2010 (4,240 households).<sup>8</sup>

19. The projected increase in population is based in part on the number of people moving into the area, the shortened commuting times to the metropolitan part of the State, and improved technology that has facilitated job creation in the area. Also, a number of seasonal homes have been converted for year-around living.<sup>9</sup>

### Quantity of land, terrain, soil conditions

20. Exhibit 2 shows the subject property, all in Crow Wing County. There are 27,520 acres in the Unorganized Territory in Crow Wing County. Approximately 1000 acres are included in Petition A-6285. None of the subject property is presently part of an organized township or city.

21. A significant portion of the subject property consists of wetlands.<sup>10</sup> The area is relatively flat, with some higher areas in the northern and eastern portion, where building would be possible.<sup>11</sup> Apart from the wetlands, the subject property is pastureland and some wooded areas.<sup>12</sup>

22. Gilbert Lake is near the northeast corner of the subject property. The southeastern corner of the subject property includes a large wetland that is near the Mississippi River.<sup>13</sup> Land within 1000 feet of the Mississippi River is subject to the jurisdiction of the Mississippi Headwaters Board.<sup>14</sup> In general, no platting, building permits, zoning regulations, construction or other changes may be made to land within the jurisdiction of the Board until ordinances have been enacted by the local jurisdiction

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<sup>6</sup> Ex. 4, referencing the State Demographer, and the Crow Wing County and City of Brainerd Comprehensive Plans.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Cottingham at 18; Vogt at 176-177.

<sup>10</sup> Ex. 5.

<sup>11</sup> Ex. 4, p. 2.

<sup>12</sup> Cottingham at 21.

<sup>13</sup> Id.

<sup>14</sup> Cottingham at 34.

to comply with the Board's plan.<sup>15</sup> Much of the subject property within 1000 feet of the Mississippi River is wetland and is not likely to be developed.<sup>16</sup>

23. The water table is high throughout the subject property.<sup>17</sup>

24. Dal-Mar Estates is a small, developed area of residential property in the northeast corner of the proposed annexation area. The homes in this area are located between two large wetlands.<sup>18</sup> Each residence in this area has a private well to provide water and its own septic system.<sup>19</sup>

25. There is a nature preserve, Paul Bunyan/Northland Arboretum, marked with green hash marks on Exhibit 2. A portion of the Arboretum is within the City of Baxter; the northern portion is within the proposed annexation area.<sup>20</sup> Also, the Paul Bunyan Trail, which is a multi-use recreational trail, crosses the northwest corner of the subject property.<sup>21</sup>

26. The soil within the proposed annexation area is sandy loam, with some pockets of clay and peat near the wetlands. Soil conditions of this kind are also found within the current city limits.<sup>22</sup>

27. About 40 acres of the subject property is owned by Allen and Joyce Braak. It is located on the western edge of the subject property, outlined in pink on Exhibit 2. If the annexation is approved, these 40 acres would be annexed to Brainerd. The adjoining 30 to 35 acres of the Braaks' property, however, would remain in the Unorganized Territory that is within the area that Brainerd and Baxter have agreed could be annexed by Baxter.<sup>23</sup> The Braaks object to annexation that could divide their property between two municipalities.<sup>24</sup>

#### Contiguity of boundaries

28. The western border of the proposed annexation area is quite near the City of Baxter, and the rapidly developing corridor along Minnesota Highway 371. There is a small strip of unorganized territory between the current Baxter city limits and the subject property on its southwest corner.<sup>25</sup>

29. The cities of Brainerd and Baxter have entered into an agreement dividing the unorganized territory that lies between their current corporate boundaries, and specifying which of the two will be able to annex the property without opposition of the

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<sup>15</sup> Minn. Stat. §§103F.371, 103F.373, 103F.375.

<sup>16</sup> Letter from Jane E. Van Hunnik, November 13, 2000; Cottingham at 34-36.

<sup>17</sup> Ex. 4, p.2.

<sup>18</sup> Ex. 5.

<sup>19</sup> Cottingham at 23.

<sup>20</sup> Ex. 2; Cottingham at 29.

<sup>21</sup> Ex. 2.

<sup>22</sup> Cottingham, 20.

<sup>23</sup> Cottingham at 45-47.

<sup>24</sup> Ex. 8.

<sup>25</sup> Ex. 5.

other. The subject property falls within the unorganized territory that Brainerd can annex without Baxter's opposition.<sup>26</sup>

30. The east portions of the subject property border Brainerd, including several pieces of property recently annexed to Brainerd by ordinance. The city boundary line for this portion of the city is irregular and follows no obvious physical landmarks.<sup>27</sup>

31. North of the subject property is unorganized territory in Crow Wing County.

32. South of the subject property is Brainerd and Baxter.

Present development pattern, planning, intended land uses

33. Crow Wing County has land use and zoning responsibilities for the subject property. Some of the subject property is zoned "agricultural", some as "green space" and some as "residential".<sup>28</sup> Some uses that are permissible in "agricultural" areas are not compatible with residential development.<sup>29</sup>

34. Crow Wing County has taken no formal position with respect to the annexation petition.

35. The subject property's predominant land uses are low-density residential and open space.<sup>30</sup>

36. The western edge of the proposed annexation area is close to heavily developed portions of Baxter, along Highway 371. A portion of the land along the western boundary within the proposed annexation area is part of the Arboretum, and Brainerd is purchasing approximately 111 additional acres for parkland.<sup>31</sup>

37. The southern border of the proposed annexation area abuts the arboretum on the western side. On the eastern end, the southern border abuts developed land within the present Brainerd city limits.<sup>32</sup>

38. The eastern edge of the proposed annexation area is quite irregular, reflecting the effect of recent annexations by ordinance. The area east of the subject property is not yet developed, but is anticipated to be developed as sewer and water are extended along Riverside Drive. The subject property has no retail, commercial or business development.

39. There is residential development to the east of the subject property. It has been developed at low density and relies on individual wells and private septic systems.

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<sup>26</sup> Exs. 2,3; Cottingham, 11-13.

<sup>27</sup> Ex. 5.

<sup>28</sup> Ex. 6.

<sup>29</sup> Cottingham at 26 (Transcript references refer to witness name and transcript page).

<sup>30</sup> Ex. 4, p.2.

<sup>31</sup> Ex. 2.

<sup>32</sup> Ex. 2.

Development around Gilbert Lake has been spreading southwest toward the subject property.<sup>33</sup>

40. Property to the north of the subject property is Unorganized Territory and undeveloped.

41. The City of Brainerd is about 95 percent developed and has been for many years. Recent annexations by ordinance has added some undeveloped property.<sup>34</sup>

#### Transportation network

42. State Trunk Highway 371 is a major 4-lane highway that runs about three-eighths to three-quarters of a mile west of the subject property. Development along this highway is pushing east toward the subject property.<sup>35</sup>

43. County State Aid Highway 49, also known as Wise Road, intersects with Highway 371 just west of the subject property, then runs east about one mile to Beaver Dam Road, then north and east to its intersection with Trunk Highway 25. County State Aid Highway 20, also known as Riverside Drive, runs along the southern and eastern sides of the subject property, north to its intersection with Trunk Highway 25.<sup>36</sup>

44. Beaver Dam Road bisects the proposed annexation area, running approximately north/south. Some upgrades to that road are projected in the next four to five years.<sup>37</sup>

45. There is a joint project planned by Brainerd and Crow Wing County to improve Riverside Drive in the year 2002. Brainerd's current plans included installing water and sewer trunk lines along the road's right of way during this reconstruction.<sup>38</sup>

46. The existing roadways would be sufficient to serve the proposed annexation area.

#### Existing governmental services

47. Crow Wing County provides most of the existing services to the subject property. This includes law enforcement, street improvements and maintenance and administrative services. Brainerd provides fire protection, under contract to the County.<sup>39</sup>

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<sup>33</sup> Vogt at 193; Scheeler at 116.

<sup>34</sup> Cottingham at 21.

<sup>35</sup> Vogt at 193.

<sup>36</sup> Hulsether at 51.

<sup>37</sup> Hulsether at 55.

<sup>38</sup> Hulsether at 52.

<sup>39</sup> Ex. 4, p. 4; Vogt at 181.

48. Crow Wing County provides no water, sanitary sewer or wastewater treatment services. Residents in the proposed annexation area receive water and sewer services from private wells and septic systems.<sup>40</sup>

49. Brainerd's wastewater treatment facility treats approximately 2.4 million gallons of wastewater each day. Its permit capacity is 3.6 million gallons per day, sufficient to accommodate an additional population of about 8000. The wastewater treatment facility currently serves Brainerd and a portion of Baxter. It is adequate to support additional population in the proposed annexation area.<sup>41</sup>

50. Brainerd's water supply comes from an aquifer, with filtration through sand. The current system has the capacity to store, filter, treat and pump water sufficient to serve the proposed annexation area. Preliminary plans are to run a new water main along Riverside Drive to serve the area.<sup>42</sup>

51. If the property is annexed, Brainerd will continue to provide fire protection. In addition, it will provide law enforcement, street improvements and maintenance, planning, building and zoning services, administrative services and recreational facilities. The City is currently purchasing additional acres within the subject property for a park to tie into the existing Paul Bunyan/Northland Arboretum and Paul Bunyan Trail.<sup>43</sup>

#### Environmental problems

52. A small portion of the subject area lies within 1000 feet of the Mississippi River. Any development in this area will be tightly restricted.

53. The significant wetlands within the proposed annexation area decrease that portion of the land available for development. Nearby development can threaten the wetlands unless precautions are taken for proper handling of sewage, wastewater run-off, and the vegetation.

54. Storm water runoff in the subject property is a concern if new development occurs. Brainerd would like to assure that the runoff is collected and directed through a series of settlement basins prior to discharge into public waters.<sup>44</sup>

#### Fiscal Impact

55. Prior to annexation, Brainerd's net tax capacity for 2001 is \$5,835,825. The Unorganized Territory's net tax capacity for 2001 is \$4,177,826.

56. After annexation, Brainerd's net tax capacity would be \$5,898,668 and the Unorganized Territory's net tax capacity would be \$4,114,983. The current net tax capacity of the proposed annexation area is \$62, 843.<sup>45</sup>

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<sup>40</sup> Cottingham at 23.

<sup>41</sup> Hulsether at 59; Ex. 4, p. 5.

<sup>42</sup> Hulsether at 66.

<sup>43</sup> Ex. 4 at 4.

<sup>44</sup> Hulsether at 68.

<sup>45</sup> Ex. 13, p.1.



57. The estimated potential tax capacity of residential development on 300 acres in the proposed annexation area, with four units per acre, and an average value of \$120,000 per unit is \$1.8 million.<sup>46</sup> If the city's tax levy remains constant and the tax capacity increases, the tax rate would go down slightly for individual property owners in Brainerd, and up slightly for property owners in the Unorganized Territory.<sup>47</sup> However, the property taxes would rise for those property owners in the proposed annexation area once they are annexed to Brainerd.<sup>48</sup>

58. Brainerd has two taxing districts, a rural service district, and a non-rural service district.

59. There is no evidence that Brainerd's or the County's financial viability will be adversely affected if the subject property is annexed.

#### School districts

60. The annexation area is already within the Brainerd School District boundaries. If annexed, the subject property may be more intensively developed than it would be if it remained part of the unorganized territory, with a resulting increase in the number of students.

#### Adequacy of current government to deliver services

61. The County does not plan to provide sewage treatment services to the proposed annexation area within the next 20 years.

62. The County does not desire nor can it assume the responsibilities associated with urban development and the related urban services.

63. The County provides no water, sanitary sewer or wastewater treatment services. The residents of the subject property receive water and sewer services from private wells and septic systems.

64. The County can provide adequate government services to areas used or developed for agricultural, open space and rural residential purposes. It can not provide adequate services to intensively developed areas with residential, commercial, industrial or governmental purposes.

#### Brainerd's ability to provide services

65. Brainerd employs about 22 sworn peace officers, plus support staff.<sup>49</sup>

66. Brainerd has full-time fire fighters to provide 24-hour coverage, plus additional volunteers.<sup>50</sup>

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<sup>46</sup> Ex. 13, p.5; Dragisich at 87.

<sup>47</sup> Dragisich at 88, 93.

<sup>48</sup> Dragisich at 94.

<sup>49</sup> Vogt at 174.

<sup>50</sup> Vogt at 181.

67. Brainerd has full-time employees who repair and maintain public infrastructure such as streets, water and sewer mains, water towers and pumping stations.

68. Brainerd is capable of providing police, fire protection and street maintenance services to the proposed annexation area. It does not anticipate that additional staff will be needed.<sup>51</sup>

69. If annexation occurs, Brainerd plans to extend water service to the subject property from a main line extension along Riverside Drive, then looping back to the existing system in northeast Brainerd<sup>52</sup>. Fire hydrants will be added as the city water supply is extended, improving the level of fire protection.<sup>53</sup>

70. Brainerd's water supply and distribution system and sewage treatment system are capable of serving the proposed annexation area.<sup>54</sup>

71. Brainerd has a comprehensive plan and zoning ordinances in place to guide development.<sup>55</sup>

72. Brainerd provides parks, recreational facilities, library and a civic center and plans to expand its parkland.<sup>56</sup>

#### Ability of remaining township to continue

73. The subject property is currently Unorganized Territory. Annexation will not have a detrimental effect on the County's ability to carry on governmental functions.

74. Crow Wing County plans to continue services to the remainder of the Unorganized Territory if the annexation petition is granted.

#### Whether governmental services can best be provided through annexation

75. Interest in development of rural property outside the current Brainerd city limits is increasing. Brainerd has recently annexed several parcels by ordinance that are marked in pink and orange on Exhibit 14 and are east of the subject property, extending into it. Other nearby property owners, some of whom are within the proposed annexation area, have requested annexation.

76. Some of the landowners near Highway 371, and east along Wise Road, are interested in development, and some have petitioned for annexation.<sup>57</sup> Others, including the County and some corporate property owners, have not taken a position on the proposed annexation.<sup>58</sup> Some property owners would prefer that their property

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<sup>51</sup> Vogt at 174.

<sup>52</sup> Hulsether at 61.

<sup>53</sup> Hulsether at 69.

<sup>54</sup> Hulsether at 66; Vogt at 188-189.

<sup>55</sup> Cottingham at 25.

<sup>56</sup> Cottingham at 29; Scheeler at 113; Vogt at 184, 190.

<sup>57</sup> Scheeler at 116-119, 122.

<sup>58</sup> Scheeler at 119-121.

remain part of the unorganized territory.<sup>59</sup> In particular, many residents of Dal-Mar Estates oppose the annexation because they have already installed individual water and septic systems. They do not expect to benefit from the annexation and fear that they will be required to install costly water and sewer connections when city water and sewer are extended to their area.<sup>60</sup> They also object to any additional restrictions on the use of their property.<sup>61</sup>

77. Because of the pressure for development and minimal zoning restrictions imposed in the Unorganized Territory, Brainerd is concerned that incompatible development will adversely effect the parkland, planned residential development and groundwater.<sup>62</sup>

78. Brainerd can best provide necessary government services to the proposed annexation area.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter through the Office of Strategic and Long Range Planning under Minnesota Statutes §§ 414.01, 414.031, 414.11, and 414.12.

2. Proper notice of the hearing in this matter was given.

3. The subject property is about to become urban or suburban in character.

4. Annexation of the subject property to Brainerd is in the best interest of the area.

5. The errors in the property description published in the Notice of Hearing did not deprive interested persons of actual notice and do not effect the findings or conclusions herein.

6. Any increase in revenue to Brainerd will bear a reasonable relationship to the monetary value of the benefits conferred upon the property to be annexed.

7. The remainder of the Unincorporated Territory will not suffer undue hardship by virtue of the annexation of the subject property to Brainerd.

8. The citations to transcripts or exhibits in these Findings of Fact are not intended to indicate that all evidentiary support in the record has been cited.

9. These conclusions are reached for the reasons set out in the Memorandum which follows and is incorporated into these conclusions by reference.

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<sup>59</sup> Scheeler at 123; Ryan at 154-157; Holden at 161.

<sup>60</sup> See e.g., Huber at 152.

<sup>61</sup> Ryan at 154-157; Holden at 161.

<sup>62</sup> Scheeler at 128, 130, 133.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

### ORDER

IT IS HEREBY ORDERED THAT:

1. The Petitioner's request for annexation A-6285, is GRANTED.
2. The territory to be annexed to the City of Brainerd is described as follows:

The SW ¼-SW ¼, Section 28, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SE ¼-SW ¼ Section 28, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SW ¼-SE ¼ Section 28, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SW ¼-SW ¼ Section 29, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SE ¼-SW ¼ Section 29, Township 134 North, Range 28 West., Crow Wing County, Minnesota

The SW ¼-SE ¼ Section 29, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SE ¼-SE ¼ Section 29, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The NE ¼ Section 32, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The NW ¼-NW ¼ Section 32, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The NE ¼-NW ¼ Section 32, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SE ¼-NW ¼ Section 32, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SE ¼ Section 32, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The North ½ of NW ¼-NW ¼ Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota except part platted as Dal-Mar Estates

The NE ¼-NW ¼ Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota except part platted as Dal-Mar Estates and First Addition to Dal-Mar Estates

The SW ¼-NW ¼ Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The North ½ of NW ¼-NE ¼ Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota except part platted as Dal-Mar Estates and First Addition to Dal-Mar Estates

Dal-Mar Estates and First Addition to Dal-Mar Estates, Crow Wing County, Minnesota

The NE ¼-SW ¼ Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The NW ¼-SW ¼ Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SW ¼-SW ¼ Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The SE ¼-SW ¼ Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota except part located in the City of Brainerd

The North 30 feet of the SW ¼-SE ¼ Section 33, Township 134 N., Range 28 W., Crow Wing County, Minnesota

The NW ¼-NW ¼ Section 4, Township 133 N., Range 28 W., Crow Wing County, Minnesota

The SW ¼-NW ¼ Section 4, Township 133 N., Range 28 W., Crow Wing County, Minnesota except the west 250 feet of the south 650 feet thereof

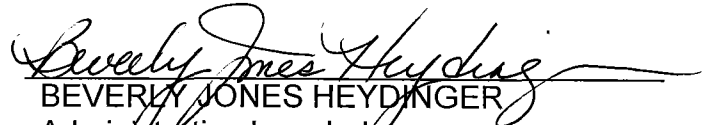
The SE ¼-NW ¼ Section 4, Township 133 N., Range 28 W., Crow Wing County, Minnesota

That part of River Heights Addition lying west of the centerline of Beaver Dam Road, Crow Wing County, Minnesota except part located in the City of Brainerd

3. The effective date of the annexation is March 1, 2001.

4. Brainerd shall prepare an estimate of population and households in the annexed area and submit it to the state demographer for certification, pursuant to Minn. Stat. § 414.01, subd. 14.

Dated this 6<sup>th</sup> day of February, 2001

  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Reported: Transcribed (one volume).

### MEMORANDUM

This is a proceeding under Chapter 414 to consider a resolution by the City of Brainerd to annex certain adjoining unincorporated territory in Crow Wing County.

#### Burden of Proof

The burden of proof in this matter is on Brainerd to show that the fact relevant to the statutory criteria support annexation of the subject property.

#### Scope of Authority

The decision-maker's authority to decide the request for annexation is broad. The boundaries may be increased or decreased to include only the area that is now or about to become urban or suburban in character, to add property to protect the symmetry of the area, or to exclude property that may be better served by another unit of government. Annexation may be ordered if it is in the "best interest" of the subject area. The boundaries may be adjusted to follow visible, clearly recognizable physical features, or the decision-maker may conclude that a different municipality can better serve the subject property.<sup>63</sup> It is clear that the Legislature intended that the decision-maker broadly examine the best, most appropriate disposition of the property, and apply the detailed criteria set out in the statute.

In so doing, one must balance the need for sound urban development with preservation of agricultural land and open spaces.<sup>64</sup> Orderly, regulated development is valued, along with the goal of stabilizing and protecting open areas that are not needed for more intensive development.<sup>65</sup>

The Legislature enacted a procedure to insure that the creation of a municipality or changes to a municipal boundary would be determined in a fair way, according to established criteria. It made the following findings relevant to this proceeding:

[T]hat sound urban development and preservation of agricultural land and open spaces through land use planning is essential to the continued economic growth of this state;

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<sup>63</sup> Minn. Stat. § 414.031, subd. 4.

<sup>64</sup> Minn. Stat. § 414.01, subd. 1.

<sup>65</sup> Id.

[That] municipal government most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial, and governmental purposes; and township government most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes; and

[That] annexation to existing municipalities of unincorporated areas unable to supply municipal services should be facilitated.<sup>66</sup>

Against this framework, the Legislature directed that certain statutory factors be weighed in the decision to grant or deny a petition for annexation and for review of a joint resolution for orderly annexation.<sup>67</sup> Each of those factors has been considered.

### Application of the Statutory Factors to the Annexation Decision

The findings of fact address each of the statutory criteria. Each one was considered in reaching this decision. Weighing all of the facts, it is apparent that it is in the best interests of the property to be annexed to Brainerd. The factors are incorporated into the analysis that follows.

The subject property is bordered on three sides by encroaching development. Although there are only about 300 acres within the proposed annexation area where development can occur, the subject property also includes parkland, an arboretum and wetlands that Brainerd would like to protect. Because of these natural resources, the city wants to control the type and intensity of development. Both Brainerd and neighboring Baxter are faced with increasing demand for new housing with urban services (sewer and water) and extension of urban services to current residences. Brainerd wants to plan for compact, contiguous new development and rational extension of its urban services. Since virtually all of the land within the current city limits is developed, additional land is needed to meet the increasing demand for housing.

Further evidence of this trend is the number of petitions for annexation the city has received from individual landowners. Several parcels have been annexed piecemeal, leaving irregular boundaries and pockets of development. Annexation of the subject property will consolidate the various parcels and straighten the city's boundaries so that better planning can go forward. This is logical and consistent with the Legislature's preference for orderly, regulated development. It is logical to allow development to spread in stages into the areas immediately contiguous to present urban development.

An additional factor in this case is the trend for seasonal homes in the area to be remodeled for year-around residence. This has placed increased stress on the individual wells and septic systems serving the homes around Gilbert Lake, to the northeast of the proposed annexation area. The plans to run water and sewer along Riverside Drive will facilitate delivery of urban services to the Gilbert Lake area, but will

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<sup>66</sup> Minn. Stat. §414.01.

<sup>67</sup> Minn. Stat. §§414.031, subd. 4; 414.0325, subd. 3.

further increase pressure for development of recently annexed parcels and the subject property.

The current road system can handle projected development. Significant improvements to Riverside Drive and Beaver Dam Road are planned. It would be sensible to extend urban services as part of these projects. The sewer and water systems have the capacity to accommodate the extensions and the projected development. Brainerd has the zoning ordinances and administrative staff to work with developers and oversee development projects to assure that there is appropriate land use and protection of its natural resources. The city's staff has carefully considered its current capacity to serve the proposed annexation area and has demonstrated its ability to do so.

The demand for development and the petitions by landowners for annexation created friction between Brainerd and Baxter. To the credit of the leaders of both cities, they agreed upon the areas most appropriately annexed to each one and are moving ahead cooperatively.<sup>68</sup>

It is worth noting that residents of the Unorganized Territory have not incorporated as a township. While some property owners have petitioned for annexation, others prefer to remain in a loosely regulated, unorganized area. Yet, the pressure for development has appropriately triggered efforts by the cities to gain greater control so that the development of the subject property is effective, efficient and in the best interests of the community as a whole. Although one is sympathetic to those who would like to limit annexation only to the property owners who request it,<sup>69</sup> this is not a wise way to plan and develop services.

Some landowners want to prevent development of the subject property because of the wetlands.<sup>70</sup> But annexation will assure that any development within the area protects the wetlands. Continued county control and lack of urban services could leave the wetlands at greater risk.

Encroaching development will eventually change the way of life for those who live within the proposed annexation area. To its credit, Brainerd is reviewing the restrictions it has applied in its fully developed areas and loosening them in the undeveloped areas. Admittedly these accommodations may diminish as intense development spreads, but it does reflect the city's desire to avoid unnecessary restrictions on the current property owners and to ease their transition into an increasingly developed area.

Overall, it is apparent that Brainerd has carefully prepared for annexation. Although some residents oppose it, annexation is appropriate and will allow the city to control spreading urban development and protect the natural resources that contribute to the area's quality of life.

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<sup>68</sup> The division of the Braak property between Brainerd and Baxter is unfortunate, but only a portion is subject to this proceeding.

<sup>69</sup> Jedlenski at 150; Ryan at 159; Holden at 160.

<sup>70</sup> Blum at 162-3.



### Viability of the Township Following Annexation

There is no evidence that annexation of the subject property will have any significant detrimental effect on the remainder of the Unorganized Territory or Crow Wing County and the County has not opposed annexation.

### Conclusion

The record in this proceeding has been carefully reviewed and each statutory factor considered. Annexation of the subject property to Brainerd is in the best interests of that property, and it is about to become urban or suburban in character. Annexation will assure the planning and development of urban services into the area by a city that has the capacity to manage it. Development will expand contiguous to a fully developed urban area.

**B.J.H.**