

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of the Petition of the City of
Pine River for Annexation of
Unincorporated Property in the Township
of Wilson Pursuant to Minnesota Statutes,
Section 414.031 (A-7593)

**FINDINGS OF FACT,
CONCLUSIONS AND
ORDER**

The above-entitled matter came on for hearing before Administrative Law Judge Raymond R. Krause at 9:00 a.m. on October 13, 2008, at the Pine River City Hall, Pine River, Minnesota. The hearing continued for three subsequent days and concluded on October 16, 2008. An opportunity for public testimony was held on the evening of October 16, 2008. The post-hearing submissions were received on December 8, 2008, and December 23, 2008. The record closed on December 23, 2008. At the hearing, Exhibits 1-128 and 501-554 were accepted as evidence. Numerous public comments were submitted and those are included in the record.

Christopher M. Hood and Robert T. Scott, of Flaherty & Hood, P.A., appeared on behalf of the Petitioner, the City of Pine River (City or Pine River). Joseph A. Nilan and Mark J. Johnson, of Gregerson, Rosow, Johnson & Nilan, appeared on behalf of the Township of Wilson (Township or Wilson).

STATEMENT OF THE ISSUES

The issue in this proceeding is whether the Petition for Annexation should be granted based on the factors set forth in Minn. Stat. § 414.031.

The ALJ finds that the Petition should not be granted.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On September 11, 2007, Pine River filed a petition with the Municipal Boundary Adjustment Unit ("MBA") seeking the annexation of approximately 1,682

acres of unincorporated property ("the Subject Property") located in Wilson Township. The Subject area has a population of 284.¹

2. Pine River's petition was based on Resolution 9-11-07-3 of the Pine River City Council, passed on September 11, 2007. That resolution requested the Office of Administrative Hearings to conduct the proceedings required under Minn. Stat. § 414.031 to annex the Subject Area. Subsequently, Resolution 10-18-07-1 was passed to correct the legal description of the Subject Area. The legal description of the Subject Area is as follows:

Lands in Township 137 North, Range 29 West

All of Section 5, Township 137 North, Range 29 West, Cass County, Minnesota.

AND

All of Section 6, Township 137 North, Range 29 West Cass County, Minnesota, except that portion of said Section 6 incorporated into City of Pine River, Cass County, Minnesota.

AND

That part of Section 7, Township 137 North, Range 29 West, Cass County, Minnesota, lying Northerly of the Southerly right-of-way line of Hassman Hill Road SW.

AND

That part of Section 8, Township 137 North, Range 29 West, Cass County, Minnesota, lying Northerly and Westerly of the following described line: Beginning at the intersection of the West line of the Northwest Quarter of said Section 8 and the Southerly right-of-way line of Hassman Hill Road SW; thence Southeasterly along said right-of-way line to the centerline of State Trunk Highway Number 371; thence Northwesterly along said centerline to the intersection of said centerline and the centerline of County State Aid Highway Number 44; thence Northeasterly and Northerly along said County State Aid Highway Number 44 centerline to the North line of said Section 8 and said described line there terminating.²

3. On January 11, 2008, the Executive Director of the MBA conducted a brief preliminary hearing in the City of Pine River. Notice of the hearing was published in the *Pine River Journal* on December 27, 2007, and January 3, 2008.

4. On May 5, 2008, the Director of MBA determined that this matter should be referred to an Administrative Law Judge for hearing and final decision.

5. A prehearing conference was conducted by the Administrative Law Judge on June 6, 2008, and the evidentiary hearing was scheduled for October 13, 2008.

¹ Township Factual Information sheet filed January 25, 2008.

² Exs. 1 and 2.

Notice of the hearing was published in the *Lake Country Echo* and *Pine River Journal* on October 2, 2008 and October 9, 2008.³

6. Efforts to mediate a settlement of this dispute were unsuccessful and ended on May 5, 2008.

7. The Township brought a motion for summary disposition on August 29, 2008. Following a September 17, 2008, hearing on the motion, the ALJ denied the motion by order dated September 22, 2008.

8. Pursuant to Minn. Stat. § 414.0333, a public information session was held on September 8, 2008. Both the City and the Township made opening statements. The Township responded to questions from the public. The City did not.

9. The parties to this matter executed a Stipulation to Extend Statutory Decision Deadline. Under that Stipulation, the parties agreed that the statutory one-year deadline would be extended from January 9, 2009, to January 16, 2009.

Background

10. The City first began considering the current annexation in approximately May, 2007.⁴ In July 2007, two City Council members (Mr. McCord and Ms. Melby) spoke to the Wilson Township Board regarding annexation. Councilmember McCord stated to the Township Supervisors that the reason for annexation was to protect the water supply.⁵ He also stated that the Township should not oppose annexation because "[t]he townships have never won in the last 12 years."⁶

11. On July 11, 2007, the Pine River City Council formally considered the action for the first time.⁷ On August 22, 2007, the Pine River City Council considered updating its Comprehensive Plan. A large number of Wilson Township residents attended the meeting to voice objections to the portion of the plan regarding annexation.⁸ These attendees were told that annexation was not being considered as part of that meeting.⁹ The next City Council meeting occurred on September 11, 2007, where the annexation petition initiating this proceeding was passed, without discussion.¹⁰ The City scheduled no public meetings to discuss the impact of annexation or to receive comments from the public.

12. On May 15, 2008, City Mayor Jim Sabas circulated a message addressed to Wilson Township residents and business owners regarding the annexation proceeding. The message set out the City's stated reasons for wanting to annex the

³ Ex. 42.

⁴ Transcript, Vol. 1, at 102; Ex. 501, at 10.

⁵ Ex. 501, p. 1-3.

⁶ *Id.*

⁷ Transcript, Vol. 1, at 69-71.

⁸ Ex. 72.

⁹ Transcript, Vol. 1, at 74-76.

¹⁰ *Id.* at 78.

Subject Area. Wilson Township residents were asked to contact their Township Board members to express support for a negotiated agreement. Among the statements made in the message were the following:

Portions of the area proposed for annexation in Wilson Township, and the other townships as well, have been zoned by Cass County for an urban or suburban style of development. The small lot sizes that are allowed by Cass County utilizing individual septic systems and private wells have now and will in the future threaten to create a fragmented development pattern that has and will increase demand for services while at the same time making these areas less financially feasible to serve thereby driving up costs for services for property owners and creating the potential for future groundwater contamination. Annexation will allow environmentally sound development to be coordinated with the efficient, cost-effective provision of services to Township areas as they develop in the future. These areas were included in the City's comprehensive plan and selected for annexation as an outgrowth of the County comprehensive planning process.

The City and Township are located within a growth corridor along State Trunk Highway 371. This corridor extending northerly out from the City of Baxter and southerly from the City of Walker has seen considerable growth pressure in recent years and such growth is anticipated to continue. This community needs to be positioned to accommodate such growth in a planned, consistent, responsive and environmentally sound manner.

The City is seeking to annex only those areas within the Township where development at urban or suburban densities has occurred, or is likely to occur in the future. The City has no interest in imposing municipal government on rural areas of the Township that are not likely to be developed in the future....

What will happen with zoning regulations following annexation?

The current zoning for your property will not change following annexation, unless a property owner requests a zoning change in the future. The Joint Planning Board discussed above, if established, would be responsible for zoning within the orderly annexation areas prior to annexation.

Does the City intend to extend City water and sewer services to the entire annexation area following annexation?

No. The City would plan to extend sewer and water services to annexed areas in the future under a number of different circumstances, including but not limited to the following: (1) new development would be required to have sewer and water services extended and paid for by the development, (2) based upon property owner petition, and/or (3) to rectify environmental problems.

City ordinance also currently states that any business or residence with conforming individual septic systems and private wells do not have to hook up to City water and sewer services. When the private well or individual septic system needs to be replaced, a property owner would be required to hook up to City water and sewer services if a water or sewer trunk main are within close proximity to the property. The City has sewer and water connection charges that would apply in such circumstances as provided in City ordinance....

What are the City's plans to provide services to the annexed area?

The City of Pine River, through its 2007 Comprehensive Plan, has planned for the provision of municipal services to the proposed annexation area as growth occurs.

For all areas of the Township annexed, the City will provide fire, police, street improvement and maintenance (plowing, grading, etc.), and administrative services immediately. Sewer and water services would be primarily development driven and extended to the annexation area as orderly growth and development requires. Upon annexation, the City will develop a septic system inspection program for the annexed areas. This program will follow best management practices for a septic system inspection program.¹¹

13. Included in the message were a number of proposals to resolve the annexation outside of this contested process, one of which was:

Assessments for Services Limited. The City will not specially assess any properties in the Township related to the cost of construction of sanitary sewer, municipal water, streets, curb, gutter, or storm sewer.¹²

14. Pine River conducted no planning regarding the service impacts, fiscal impacts, engineering impacts, or future development in the City or surrounding townships before filing the annexation petition that initiated this proceeding. As part of this proceeding, the City offered expert testimony in the form of reports by witnesses in these areas.¹³ On October 7, 2008, less than one week before the hearing, the City adopted these reports as its planning in these areas.¹⁴ The City maintained that prior planning for infrastructure or the feasibility of engineering projects would be inappropriate before specific development projects were proposed.¹⁵

¹¹ Ex. 25, at 6, 8, and 12.

¹² Ex. 25, at 7.

¹³ Exs. 96 and 98.

¹⁴ Ex. 126.

¹⁵ Transcript, Vol. 1, at 115-116.

15. The City has referenced an expansion strategy that will require annexation of portions of all four neighboring townships. This strategy would increase the area of the City by approximately 8,000 acres.¹⁶

Annexation Factors – General

16. Minn. Stat. § 414.031, subd. 4(a), sets out 16 factors that must be considered in an annexation proceeding. These factors include demographics, geography, estimated growth in development, land use controls, governmental services, fiscal and other impacts, and the effect on the resulting political subdivisions arising from the changes. These factors will be discussed in the following Findings grouped by related subjects.

Demographics, Geography, and Land Use Planning

17. Pine River consists of 734 acres in area and has a population of 930 in 456 households.¹⁷ The Township has an area of 11,456 acres and a population of 623 in 238 households. Pine River is surrounded by Wilson, Waldon Township, Pine River Township, and Barclay Township. A small portion of the northeast boundary of Pine River abuts the southernmost portion of the City of Chicamaw Beach (Chicamaw Beach). A modest portion of Barclay Township forms an island between Pine River and Chicamaw Beach.¹⁸

18. The City and Township are both located in southern Cass County, approximately 30 miles north of Baxter/Brainerd, 90 miles north of St. Cloud, and 165 miles northwest of the Minneapolis/St. Paul metro area.¹⁹

19. The Subject Area consists of 1,682 acres, all located in Wilson Township. The Subject Area abuts the entire southern border of Pine River and extends eastward to 16th Avenue SW. The eastern edge of the Subject Area is 16th Avenue SW running south to its connection to State Highway 371. The edge of the Subject Area then runs southeast along State Highway 371 to the intersection with Hassman Hill Road SW. The southern boundary of the Subject Area runs along Hassman Hill Road SW, generally in a northwesterly direction, until the intersection with County Road 1. At that intersection the western boundary of the Subject Area runs directly north until reaching the southeastern corner of Pine River.²⁰

20. The Subject Area is bordered by the City and Barclay Township to the north, Wilson Township to the east and south, and Walden Township to the west.²¹ The Subject area has approximately 230% of the geographic area of the City. The subject area has a population of 284, or 30% of the City's total population.

¹⁶ Ex. 96, Appendix A, at 48; Transcript Vol. 3, at 641-643.

¹⁷ Ex. 19.

¹⁸ Ex. 500, at 7-16.

¹⁹ Ex. 96, p.10.

²⁰ Ex. 6.

²¹ Ex. 506, Evaluation of Growth Pressure and Annexation, at 34.

21. The eastern and western portions of the Subject Area are rural in character and consist of agricultural, wooded and wetland areas. There are single family residences, mostly located between the southern boundary of the City and north of State Highway 371 where that road nears the City.²²

22. Most of the development in the Subject Area is located on lots comprising approximately 18% of the Subject Area. The development is almost entirely single family residences on very large lots, resulting in very low population density. Most of this development is located immediately adjacent to the southern boundary of the City and along State Highway 371. This portion of the Subject Area is known as Southtown. The location of the developed lots is not compact in the Subject Area and not contiguous with the City.²³ While the land is platted for residential development in this area, most of the lots are undeveloped. Many of these lots are densely wooded. None of the platted lots in the Subject Area have water or sewer connections available to them.²⁴

23. Cass County's zoning ordinance governs unincorporated land in the County, including the Subject Area. Under the Cass County ordinance, the minimum lot size (outside of a shoreland area) for a single-family residence not served by a sewer is one acre (43,560 square feet). A larger lot size could be required to protect sensitive resources.²⁵

24. The City's zoning requirement for unsewered lots requires a minimum of 20,000 square feet.²⁶ Developing a residence on such a lot is dependent on the presence of an adequate drainfield for a septic system to serve the type of building constructed.

25. The County's Rural Residential 1 zoning unit, requiring a minimum one-acre lot, is designed to ensure that there is sufficient room on the lot to place both a private well and an individual sewage treatment system (ISTS or septic). Approximately two-thirds of the developed lots in the unincorporated areas of Cass County are classified as Rural Residential 1. The minimum lot size is also designed to preserve the rural character of areas with this density of development.²⁷ The need to preserve adequate lot size for ISTS is due to the economic infeasibility of serving such scattered development with municipal sewer and water.²⁸

26. Cass County maintains additional classifications for agricultural (40-acre lot minimum size), Rural Residential 20 (20-acre lot minimum size), Rural Residential 10 (10-acre lot minimum size), Rural Residential 5 (5-acre lot minimum size), and Rural

²² Visual observation by ALJ on tour of Subject Area, 10/16/08.

²³ Ex. 96, at 17, Figure 6.

²⁴ The only exception to the sewer and water connections are a small group of residences along 2nd Avenue, discussed in more detail in the Findings below.

²⁵ Ex. 124; Transcript Vol. 1, at 178-179.

²⁶ Transcript Vol. 1, at 178-179.

²⁷ Transcript Vol. 3, at 707-708.

²⁸ Transcript Vol. 3, at 722.

Residential 2.5 (2.5-acre lot minimum size). The normal pattern of development in Cass County is for the developed lot size to grow smaller as one draws closer to municipal boundaries.²⁹

27. Petitions to subdivide property in unincorporated areas are submitted to Cass County for issuance. Pine River has never requested that it be given notice of any such petitions. Pine River has never sought to provide input into Cass County's land use planning. Pine River has never sought to cooperatively plan development in the Pine River subregion with Cass County.³⁰

28. As of July 14, 2008, the City had no plans for land use in the Subject Area or any plans for utilities, tax impact, law enforcement, or service provision for the Subject Area.³¹

29. Six days prior to the hearing in this matter, on October 7, 2008, the City Council adopted three expert reports that were prepared as exhibits for trial, as the City's plans for annexation. During his testimony at hearing, the mayor testified that he had not even seen the tax portion of the reports that the City Council voted on.³² In addition, the City Council approved new policies on snowplowing, sewer maintenance, pothole repair, sidewalks, and rights-of-way.³³

30. The official notice of the City Council Meeting for October 7, 2008, listed adoption of the capital improvement budget and discussion on the urban/rural service district ordinance. It did not contain a notice regarding adoption of the expert reports as the City's plans.³⁴

Estimated Growth in Development

31. The City's Planning Report relied upon population figures showing that the population of Pine River would rise to 1,166 by the year 2030. That same report showed the population of Wilson Township reaching 985 by 2030.³⁵

32. The City predicted that between 81 to 90 new households would be established in the area of the State Highway 371 corridor over the next 20 years. Based on this estimated growth figure, the City relied on a study that concluded an additional 22 to 40 acres were needed to accommodate this development.³⁶ The City

²⁹ Transcript Vol. 3, at 709.

³⁰ *Id.* at 710-713.

³¹ Ex. 505.

³² Transcript, p. 98, 112, 122, 159.

³³ Exs. 30, 31, 32, 33, 73, and 83.

³⁴ Ex. 127.

³⁵ Ex. 96, at 13, Table 1. The planning report cites "population projections from the Minnesota State Demographer's Office," but does not reference what projections were used. The figures match the 2004 projections from that source.

³⁶ Ex. 11, at 10; Ex. 96, at 10; Transcript Vol. 1, at 91-92.

already has more than that amount of land available within its existing boundaries to accommodate potential development.³⁷

33. In October 2007, the Minnesota State Demographer predicted that the population of the City would increase from 935 in 2006 to a peak of 976 in 2025. From that point, the population is projected to decline to 955 in 2035.³⁸ The estimates of the Township population are 626 in 2006, increasing steadily to a population of 832 by 2035.³⁹ The State Demographer projects that the City will have 201 fewer residents in 2030 than the figure relied upon by the City.⁴⁰ The local perception is that the population of the City is decreasing, not increasing.⁴¹

34. Construction of single-family homes in the City amounted to four in the period from 1985 to 1989, dropping to three from 1990 to 1995.⁴² No one discussed subsequent home construction in the City or Subject Area.⁴³

35. In 2002, the City platted an area (known as the Oxford Road development) within Pine River for new single family dwelling. The Oxford Road development is subdivided into seven lots, each served by water and sewer. While this development has been ready for construction since 2002, none of the lots has been built upon.⁴⁴ The sanitary sewer bill of \$42.00 per month was cited as "the biggest deterrent" to new residents in the City.⁴⁵

36. In 2005, the City completed water and sewer connections to an industrial park near Roosevelt Avenue in the northeast of the City. The industrial park has seven lots, and two of them have been developed.⁴⁶

37. The City Planning Report asserts that "Suburban style development is occurring and will continue to occur within the proposed annexation area."⁴⁷ No instances of "suburban style development" are cited in the report. Current zoning requirements in the Subject Area require a lot size of one acre for a single-family home.⁴⁸ Due to the current lack of sewer service, any single-family home constructed

³⁷ Transcript Vol. 3, p. 611-612.

³⁸ Ex.104. The projection for the City's population in 2010 was 955. The current population is 930. With a lower starting population, a reasonable inference is that both the actual 2025 peak and 2035 populations will be lower than projected.

³⁹ *Id.* Wilson Township's current population is 623, which is well below the projected population of 681 by 2010. A reasonable inference is that the actual growth between now and 2035 will be below the projected levels.

⁴⁰ Similarly, the combined population of the City and Wilson Township in 2030 is now projected to be smaller by 362 residents when compared to the projection made in 2004.

⁴¹ Transcript Vol. 1, at 157; Transcript Vol. 3, at 620-21.

⁴² Ex. 96, 10.

⁴³ Ex. 508 lists building permit applications, but without context or an indication of where the construction was to be performed or if it was completed.

⁴⁴ Transcript Vol. 1, at 94-95.

⁴⁵ Transcript Vol. 1, at 189.

⁴⁶ Transcript Vol. 2, at 398, 438.

⁴⁷ Ex. 96, at 17.

⁴⁸ Transcript Vol. 1, at 155.

would need a lot size adequate for installation of a septic system. That requirement would not change after an annexation of the Subject Area until such time as the existing sewage system was extended to the particular lot.

38. The City asserts that development has occurred in the neighboring townships, and not in Pine River, due to "the big disparity" in tax rates.⁴⁹ As discussed in subsequent Findings, Pine River has proposed a property tax plan that will keep tax rates low on properties that are not connected to water or sewer. That approach encourages development that is not suburban in nature, but falls within the category of rural residential. In addition, the City planning expert and the Cass County Director of Environmental Services agreed that one to 2.5 acre lots are not typically considered urban, in part because of the excessive expense of providing city utilities to parcels that large and spread out.⁵⁰

39. The City also maintained that annexing the Subject Area would result in controlling development through zoning.⁵¹ The City modified its zoning ordinance in September 2008 to remove the requirement that a structure or use served by ISTS be connected as soon as community sewer service becomes available. Such a connection is only required when the existing ISTS becomes noncompliant.⁵²

40. The City's new ordinance on connections conflicts with the regulations regarding connections of the Pine River Area Sanitary District (PRASD). Those regulations require connections when PRASD wastewater facilities are available, located within 150 feet of the parcel boundary. PRASD has the authority to make the connection and assess a lien against the benefitted property. No exception is made for facilities with functioning ISTS.⁵³ In addition, the City's zoning ordinance lacks classifications to deal with some of the types of land uses that currently exist in the Subject Area.⁵⁴

41. Occasional construction of single family residences on large lots in the neighboring townships was described by the City as "stifling growth in the City of Pine River and economic development ... in the region."⁵⁵ The City did not identify any economic projects for which annexation was in any way necessary.

42. The growth information relied upon by the City showed that, on a percentage basis, Wilson Township was growing at only a slightly higher rate than the City.⁵⁶ The only governmental unit growing at a significantly higher rate than the others

⁴⁹ Transcript Vol. 1, at 117.

⁵⁰ Transcript, p. 667.

⁵¹ Transcript Vol. 1, at 119-120.

⁵² Ex. 26, Pine River Zoning Ordinance, Section 4.4 (supplemental sheet); Transcript Vol. 3, at 586-590.

⁵³ Exhibit 61, Sections 2.2 through-2.4,

⁵⁴ Transcript Vol. 3, at 590-591.

⁵⁵ Transcript Vol. 3, at 574.

⁵⁶ Ex. 96, at 13, Figure 4. This does not take into account the underperformance in actual growth experienced in both the City and Wilson Township.

in the Pine River subregion is Pine River Township. There is no indication as to where in Pine River Township that growth is occurring.⁵⁷

43. The City asserted that there was a "failure of regional governments to act to coordinate growth and development."⁵⁸ The record is devoid of any effort by the City to engage in any coordination with any other regional government, at the County, municipal, or township level. The City chose not to participate in the County's Comprehensive Plan process in 2002 or during its current update.⁵⁹ The City has demonstrated no willingness to coordinate its activities, even with the neighboring townships that the City seeks to annex.⁶⁰

44. The City's Comprehensive Plan emphasized the need to improve dialog between the City and residents of both the City and neighboring townships.⁶¹ The City's conduct leading up to this annexation proceeding actively foreclosed any significant input from residents regarding the proposed annexation. There is no evidence in the record to suggest that the City will act any differently regarding the additional annexations proposed as part of the City's overall plan.

Governmental Services and Transportation

45. If the Petition is granted, the Subject Area will become subject to City governance. Wilson Township has participated as a party in this matter and strongly opposed annexation of the Subject Area. Wilson Township contended that the Subject Area has been well served by township government and that form of government is appropriate for the Subject Area into the future. This opinion is shared by virtually all of the population of Wilson Township, including many of those persons owning land located in the Subject Area.⁶²

46. The City has a police department consisting of a Chief of Police and three officers (one of whom is a .75 FTE position).⁶³ The projected 2009 budget for the City Police Department is \$257,038.⁶⁴ The City Police Department is housed in the Law Enforcement Center in Pine River, which is a converted post office building. The service area for the City Police Department is approximately two square miles, covering the City and the adjacent City of Chickamaw Beach.⁶⁵ Wilson Township receives its police services, including patrol services, from the Cass County Sheriff's Department.⁶⁶ Through a mutual aid agreement between the City and Cass County, the Pine River Police Department will respond to calls from Wilson Township (if an officer is available)

⁵⁷ *Id.*

⁵⁸ Ex. 96, at 13.

⁵⁹ Transcript, p. 704.

⁶⁰ See Ex. 501.

⁶¹ Ex. 96, Comprehensive Plan Update, at 12; Transcript, Vol. 3, at 577.

⁶² See comments from Information Session, Sept. 8, 2008, and public testimony on Sept. 16, 2008.

⁶³ Ex. 98, p. 19; Transcript, Vol. 2, at 309, 354.

⁶⁴ Ex. 16; Transcript, Vol. 2, at 321.

⁶⁵ Transcript, Vol. 2, at 309-310, 315.

⁶⁶ Transcript, Vol. 4, at 762.

when the County Sheriff's Department has no deputy available. Similarly, the Sheriff's Office will respond to calls in the City when needed.⁶⁷

47. The County Sheriff's Department maintains all the policing records for the City Police Department. Dispatch is conducted by the County Sheriff's Department. The City Police Department does not maintain any dispatch functionality. The City Police Department does not provide 24-hour, seven-days per week coverage. The County Sheriff's Department provides the police coverage when the City Police Department does not have an available officer.⁶⁸

48. The City has entered mutual aid agreements with the City of Pequot Lakes, Cass County, and Crow Wing County to provide police service. As part of these agreements, the City Police Department assists Backus, Hackensack, and Pequot Lakes. One City Police Department officer is provided to the Pine River/Backus School District. The cost of that officer is paid by the School District for the duration of the school year.⁶⁹

49. There were 152 calls for police service from Wilson Township in 2007 and 131 calls in 2008 (through September 15). Pine River officers responded to approximately 32% of those calls.⁷⁰ The majority of the calls responded to in Wilson Township by the City Police Department come from the Subject Area.⁷¹

50. The number of law enforcement service calls attributed to Wilson Township amounted to a small fraction of the total number of City service calls. The Cass County Sheriff's Department alone responded to 1,549 calls for service to the City.⁷² Wilson Township does not contract for additional protective services from either the City Police Department or the Cass County Sheriff's Department. In 2007, a joint powers agreement was explored between Wilson Township and the City to provide enhanced policing to a portion of the Township. The proposed cost to Wilson Township was \$2,917.00 per month. The agreement was never finalized because of cost considerations.⁷³ The Cass County Sheriff's Department was requested to make additional patrols in the area, and that was done with no additional cost to the Township.⁷⁴

51. No plans have been developed by the City or City Police Department to provide enhanced policing to the Subject Area, should the City's annexation petition be granted. Currently, the Sheriff's Department provides adequate police protection to the

⁶⁷ Transcript, Vol. 2, at 312-314.

⁶⁸ Transcript, Vol. 2, at 312-314, 371.

⁶⁹ Transcript, Vol. 2, at 343-344, 357.

⁷⁰ Ex. 70. There was no breakdown of calls from within Wilson Township to determine how many of those calls came from the Subject Area. Calls for service can range from serious offenses and responding to auto accidents to reports of livestock wandering or children throwing snowballs at vehicles. See, e.g. Ex. 70, 2007 Totals, Wilson Township, Pine River Officers, at 3.

⁷¹ Transcript, Vol. 2, at 340.

⁷² Transcript, Vol. 4, at 758

⁷³ Ex. 46; Transcript, Vol. 2, at 338. Transcript, Vol. 4, at 780.

⁷⁴ Transcript, Vol. 4, at 780.

Subject Area.⁷⁵ Absent additional patrolling, the Subject Area will experience the same level of policing whether or not the City annexes the Subject Area.

52. Wilson Township, along with seven other townships and one city, contracts for fire protection services from the City. The contract amount is calculated by a formula that incorporates the area covered and service hours spent on calls.⁷⁶ Wilson Township recently renewed its fire protection services contract with the City. For fire protection through the 2008-2009 fiscal year, Wilson Township pays \$16,340.03 and the City pays \$22,726.20. The other covered city and townships each pay a proportional share of the cost.⁷⁷

53. The City has not identified any way in which fire protection service would be changed in the event of annexation. The amount paid by Wilson Township for fire protection would be reduced after annexation, in accordance with the formula. The level of fire protection service provided to the Subject Area will not change if the area is annexed.⁷⁸

54. City sewer and water services are not provided in the Subject Area, except for ten residences located on 2nd Street immediately adjacent to the City.⁷⁹ Those residences are connected to the City's sewer service, which are provided by the Pine River Area Sanitary District (PRASD). Those ten residences are served by private wells.⁸⁰

55. PRASD is organized under the authority of Cass County.⁸¹ The City transferred ownership of its sewage and wastewater treatment facilities to PRASD in 1979 and 1982.⁸² The City transferred ownership of the main lift station serving the City to PRASD in 1996. While the City retained ownership of the sewer lines, the sewage treatment is provided by PRASD.⁸³ The City maintains the sewer lines and collection facilities where the City has retained ownership. The proposed annexation would have no impact on the City's maintenance of the sewer system.⁸⁴ The City cannot extend its sewer lines without the approval of PRASD.⁸⁵ That approval is not likely to be withheld, due to the excess capacity available in the sewage treatment system.

56. Payments by property owners for sewer service go to PRASD.⁸⁶

⁷⁵ Transcript, Vol. 2, at 345, 373; Transcript, Vol. 4, at 765.

⁷⁶ Transcript, Vol. 1, at 149-151.

⁷⁷ Ex. 37; Transcript, Vol. 1, at 149-151.

⁷⁸ Transcript, Vol. 1, at 83 and 226.

⁷⁹ The record contains varying references to whether there are nine or ten residences along 2nd Street at this location. The ALJ has opted to refer to the number as ten.

⁸⁰ Ex. 89, at 11, 15.

⁸¹ Ex. 109, at 4.

⁸² Ex. 108.

⁸³ Ex. 82.

⁸⁴ Transcript, Vol. 1, at 253-254 and 257.

⁸⁵ *Id.* at 281.

⁸⁶ Transcript, Vol. 2, at 392-395.

57. Within the City, 36 parcels (comprising about 8% of all parcels) are served by ISTS systems and private wells. An additional 11 parcels are served by private wells, even though City water connections are available.⁸⁷ Some of the existing parcels in the City using ISTS are considered high-use (when compared to residential volumes).⁸⁸

58. Cass County performs inspections of septic systems in the City and the Subject Area. There are no plans to change that process in the event of annexation.⁸⁹ The City has identified no failing septic system or existing environmental problem that would require extending municipal sewer service to any location in the Subject Area.⁹⁰ Cass County has an aggressive ISTS compliance program that requires initial design approval and compliance testing. The compliance testing is required whenever a permit is sought for any improvement to property served by ISTS.⁹¹ Since 2000, Wilson Township has had 35 new ISTS systems installed and 11 failing systems replaced.⁹² Over that same period, 4 new ISTS systems were installed within the City.⁹³

59. As part of its permit process, Cass County assesses the soil type and geologic features affecting the proposed ISTS installation. Protection of drinking water sources is assisted by the creation of Wellhead Protection Areas. This process ensures that ISTS outflows are not likely to contaminate sources of municipal water.⁹⁴ The Wellhead Protection Area for the City's water supply runs from within the City limits northwest along State Highway 371 (away from the Subject Area) into Pine River Township.⁹⁵ The water flow from the Subject Area is away from the Wellhead Protection Area.⁹⁶

60. Cass County maintains ISTS standards that are higher than required.⁹⁷ The threat of contamination of private wells is diminished because Cass County regularly reviews and upgrades its ISTS standards.⁹⁸

61. The City provides its own water service, using six wells (including one currently under construction). The City has sufficient capacity to provide water to the Subject Area if the water mains are extended to that area.⁹⁹ As part of this proceeding, the City commissioned a study estimating that extending water service along State Highway 371 would cost \$350,000. To extend that system to the remaining commercial properties and the residences in the Southtown area not already served would cost an

⁸⁷ Ex. 89, at 15.

⁸⁸ Transcript, Vol. 2, at 335-336.

⁸⁹ Transcript Vol. 1, at 184-185; Transcript Vol. 2, at 407-408.

⁹⁰ Transcript, Vol. 1, at 87-89.

⁹¹ Transcript, Vol. 3, at 713-719.

⁹² Transcript, Vol. 3, at 719, 731.

⁹³ Transcript, Vol. 3, at 719.

⁹⁴ Transcript, Vol. 3, at 719-721.

⁹⁵ Ex. 7, Figure 8; Transcript, Vol. 3, at 652-653, and 720-721.

⁹⁶ Ex. 96, p. 14; Ex. 500, p. 41-42.

⁹⁷ Transcript Vol. 3, p. 715.

⁹⁸ Transcript, Vol. 3, p. 721-722.

⁹⁹ Transcript, Vol. 2, at 413-416.

additional \$1,031,800. An additional \$961,100 would be required to rebuild paved roads that would be disrupted by installation of the water mains.¹⁰⁰ The City did not produce evidence of any monetary benefit to the Subject Area residents as a result of an investment of \$1,381,800 to provide water service to an area that already obtains water through private wells and incurring the cost of \$961,100 to rebuild affected paved roads.

62. The same study estimated that extending sanitary sewer service along State Highway 371 would cost \$434,000. Extending that system to the remaining commercial properties and the residences in the Southtown area not already served would cost an additional \$665,800.¹⁰¹ The City estimated that 75 connections would ultimately be made to the sewer extensions.¹⁰² Any further extensions of the sewer system would be based solely on demand for the service.¹⁰³ There was no evidence produced to demonstrate monetary benefits that would be provided by investment of \$1,099,700 to provide sewer service to the Subject Area.

63. There are no current plans to make the \$3.4 million investment that would be required to extend water and sewer services to any unserved portion of the Subject Area as a result of annexation by the City.¹⁰⁴ The City planner thought that some form of assessment and possibly grants or loans could be used to fund the project, but there were no plans to do so.¹⁰⁵ Despite the absence of any meaningful planning regarding how this investment will be funded, the City maintains that sewer and water can be extended into the Subject Area along the State Highway 371 corridor in five years.¹⁰⁶

64. Minnesota Highway 371 runs north from Little Falls through Wilson Township and Pine River to Highway 210 near Walker. Highway 371 is a medium priority interregional corridor connecting the central lakes area to the Twin Cities.¹⁰⁷ The Minnesota Department of Transportation is considering upgrading Highway 371 from two lanes to a four lane divided highway. Due to funding constraints, completion of this upgrade will not occur until the 2018-2020 period at the soonest.¹⁰⁸

65. The City operates the Rides with Us bus service. The service is conducted on a "dial-a-ride" basis, that is first-come, first-served. The service currently extends three miles beyond the City boundaries. Two Wilson Township residents currently use the bus service.¹⁰⁹ One Pine River Township daycare provider is a frequent user of the service. The City currently expends \$12,000 annually to provide bus service. The City's contribution is about 15% of the cost of the service. The bulk of

¹⁰⁰ Ex. 89, at 17.

¹⁰¹ Ex. 89, at 17. If the construction was performed at the same time as installing water mains, no additional cost for road replacement would be incurred.

¹⁰² Transcript, Vol. 2, at 402.

¹⁰³ *Id.* at 407.

¹⁰⁴ Transcript, Vol. 1, at 81-83, 89; Ex. 511, at 8.

¹⁰⁵ Transcript, Vol. 3, at 680-681.

¹⁰⁶ Transcript, Vol. 1, at 293-296; Transcript, Vol. 2, at 400.

¹⁰⁷ Ex. 96, p. 30, Ex. 89, p. 5.

¹⁰⁸ Ex. 89, p. 6; Transcript p. 674.

¹⁰⁹ Both of these residents live in the Subject Area. Transcript, Vol. 1, at 172-173.

the cost is paid through state and federal funds.¹¹⁰ Those eligible to request rides will increase substantially in the event that annexation is approved, since the three mile limit beyond the City boundary will radically expand. There is no indication that the number of rides available using this service will be expanded as a result of annexing the Subject Area.¹¹¹

66. The City contains 7.1 miles of City streets of which 6.2 miles are paved and 0.9 are gravel. The Subject Area contains 6.1 miles of road. Of this, 3.55 miles are paved and 2.55 miles are gravel.¹¹²

67. Predicted growth and development for the area does not indicate a need for new roads in the Subject Area or for significant upgrade of those roads.¹¹³

68. The Pine River Public Library is situated in the middle of the City. The City described the Library's budget as having two major components; services and maintenance. The services portion of the budget is funded through taxes of both the surrounding townships and the City. The maintenance portion is funded by the City to conduct snowplowing, building repair, utilities, and other supplies. The City budgeted \$9,000 to address these costs for the Library. A daycare in Pine River Township was identified as using the Library's services, particularly for story time, but no specific usage by residents of the Subject Area was identified. No changes to the library services are planned if annexation were approved.¹¹⁴

69. Pine River has two parks, Forbes Park and Dam Park, that are suitable for gatherings. Each of these parks is available for rental. Residents of the townships have rented the space in the past for gatherings that use the available shelter and electrical power supply. Dam Park includes a swimming beach. The City charges no user fee for use of the beach.¹¹⁵ The City also maintains softball fields, known locally as Shamp's Field. Softball leagues that include township residents as players use Shamp's Field. The City has no plans to develop any park or recreation facilities in the Subject Area.¹¹⁶

70. The Public Works Department (Public Works) of the City maintains roads, plows snow from roadways, cuts brush, conducts repair and maintenance of the stormwater and wastewater collections systems, and conducts repair and maintenance of the City parks and City airport. Public Works shares maintenance responsibility for

¹¹⁰ Transcript, Vol. 1, at 174.

¹¹¹ Transcript, Vol. 1, at 140-142. With the substantial increase in area to be covered, it is possible that the overall number of available rides will decrease.

¹¹² Ex. 89, p. 6.

¹¹³ Ex. 104.

¹¹⁴ Transcript, Vol. 1, at 142-143.

¹¹⁵ Transcript, Vol. 1, at 176-177.

¹¹⁶ Transcript, Vol. 1, at 143-146.

the cemetery in the City and operates the dam at Dam Park.¹¹⁷ The City contracts out for maintenance of gravel roads and some sewer repair work.¹¹⁸

71. Public Works employs three full-time staff for the maintenance of roadways, clearing brush, maintaining City parks and performing other duties. The City has no plans to change any of the existing roadways in the Subject Area. The City expects to contract out for the maintenance of the 2.55 miles of gravel road in the Subject Area, the same as Wilson Township has done.¹¹⁹

72. The City has not developed any plans or budget for oversight, inspection, or licensing of businesses in the Subject Area.¹²⁰ The City hired an assistant to the City Clerk, but this position was tasked with supporting the move of City offices regarding the new law enforcement center. The Assistant City Clerk also performed duties regarding the City's petition to annex the Subject Area.¹²¹ None of these duties are related to the needs of or provide a benefit to the Subject Area.

73. Two ongoing activities of the City Clerk's office not relating to the annexation process are bus scheduling and returning lost dogs.¹²² Animal control services are provided under contract and would be extended to the Subject Area.¹²³ Discrete projects that were identified as arising from the annexation, if approved, were updating the 9-1-1 messaging database and determining if the City would need to subdivide into two precincts (rather than the existing single precinct) for elections.¹²⁴ Other specific duties identified were maintaining cemetery maps, issuing dog licenses, answering election questions, assisting with voter registration, and processing revolving loan payments (including tax increment financing).¹²⁵ Despite the limited benefit to the Subject Area, the City has included the full cost of the Assistant City Clerk as part of the total benefit to the Subject Area.¹²⁶

74. The City calculated the overall benefit to the Subject Area for the various services proposed to be extended by determining the per capita cost of the service currently afforded to its own residents. That per capital cost was then multiplied by the number of residents in the Subject Area. There was no effort made to determine what actual services would be used by the residents of the Subject Area.¹²⁷

75. The City used a similar method, comparing balance sheet items, to assess the impact of the annexation on the remaining residents of Wilson Township. The City's calculation assumed that the reductions in revenue arising from lost tax base could be

¹¹⁷ Transcript, Vol. 1, at 249.

¹¹⁸ *Id.* at 250.

¹¹⁹ Transcript Vol. 2, at 387, 427.

¹²⁰ Transcript, Vol. 1, at 89-90.

¹²¹ Transcript, Vol. 1, at 130-136.

¹²² Transcript, Vol. 1, at 134.

¹²³ Transcript, Vol. 1, at 146-147.

¹²⁴ *Id.*

¹²⁵ Transcript, Vol. 1, at 137-139.

¹²⁶ Ex. 98, at 53, Table 4.11.

¹²⁷ Transcript, Vol. 2, at 468-476, 524-528.

made up by reducing the cost of services actually provided to those residents. The City made no effort to identify any actual expense that could be reduced or avoided by Wilson Township.¹²⁸

76. Annexation of the Subject Area by the City will not result in a significant increase in service levels provided to the Subject Area, compared to the existing service levels in the City or the Township. The residents and landowners in the Subject Area will be required to pay significantly more in property taxes to receive their existing levels of service if the Subject Area is annexed by the City.¹²⁹

77. A significant portion of the Subject Area is densely wooded and hilly, and is best suited for rural residential use. Large portions of the Subject Area are working farms and are appropriately classified as rural.¹³⁰

78. The City has no plans to develop any portion of the Subject Area for urban residential, commercial or industrial purposes. No developments have been proposed in the Subject Area for which municipal sewer and water service would be cost effective to install.¹³¹

79. The City currently has eight residential lots and five industrial park lots, all with sewer and water available. No development has been proposed for any of these existing lots.¹³²

80. After the hearing in this matter, the ALJ toured the subject area accompanied by counsel. A visual survey of the Subject Area convinced the ALJ that the vast majority of the Subject Area is, and will remain for some time, rural.

Economic Impacts of Annexation

81. The City describes its development as being "choked off" by a disparity in zoning regulations and tax rates. The City has repeatedly stated its desire to have the Wilson Township residents (at least those in the Subject Area) pay their "fair share" of taxes to support services provided by the City.¹³³

82. The City proposes to divide the Subject Area into an urban service tax district (urban district) and a rural service tax district (rural district) pursuant to Minn. Stat. § 272.67, subd. 2. At the time the ordinance is passed that creates this taxing district, the statute requires the City to designate the area comprising the rural district, as "rural in character, and not developed for commercial, industrial, or urban residential purposes"

¹²⁸ Transcript, Vol. 2, at 476-479.

¹²⁹ Ex. 98, p. 53, Table 4.11.

¹³⁰ Visual observation by ALJ on tour of Subject Area.

¹³¹ There is no evidence in the record regarding any proposed development in the Subject Area.

¹³² Transcript, Vol. 2, p. 438.

¹³³ Transcript Vol. 1, at 122.

83. The rural district would consist of all of the residential property in the Subject Area until such time as water and sewer service are extended to the property. The rural district comprises approximately 92% of the Subject Area. The City was not clear as to whether extending water and sewer to the property meant making it available or actually connecting the service. The urban district would be composed of all of the commercial industrial property in the Subject Area. The urban district would follow a narrow corridor running along State Highway 371 (which is the location for phase 1 of the hypothetical water and sewer extension).¹³⁴

84. As described by the City, its tax proposal would increase the existing tax paid by commercial property owners in the Subject Area by 60.2% in the year following the proposed annexation. The rate would fall by 5.6% in the following year. The rate would increase by 45.7% in next year and then increase by 30% in the fifth year following annexation.¹³⁵ The City estimated the property tax revenues from the Subject Area as \$81,264 in 2010, \$81,264 in 2011, \$89,731 in 2012, and \$97,426 in 2013.¹³⁶

85. On a percentage basis measured over the four years after annexation, commercial property owners would experience a 185.6% increase in the property tax paid over their existing tax burden while residential property in the Subject Area would rise 42.8%. The tax burden on existing City property owners would go down 4.65% over this same period. The City would gain a total of \$350,000 in property tax revenue over that four year period.¹³⁷ It is estimated that the remainder of Wilson Township would have to raise its property tax by 16.4% to make up for lost tax base.¹³⁸

86. The property tax increases described in the foregoing Finding do not account for any increase in tax levy for the extension of sewer and water service to the Subject Area. No forecast of the additional cost in either property taxes or assessments has been made by the City. There have been vague statements that any such levy would be made City-wide.¹³⁹ There is no legal impediment to the City Council choosing to impose a special assessment for the cost of extending water and sewer into the Subject Area.¹⁴⁰

87. Existing residents of the City currently have their property tax rates set at approximately 60% of the City's tax capacity. That rate would increase to 68.7% in 2009 to cover the costs of the annexation proceeding. In 2010 the rate would return to 60.7% and decrease in subsequent years.¹⁴¹

¹³⁴ Transcript Vol. 1, at 96-98.

¹³⁵ Transcript Vol. 1, at 86.

¹³⁶ Ex. 98, at 53, Table 4.11.

¹³⁷ Transcript Vol. 2, at 516.

¹³⁸ *Id.*

¹³⁹ Transcript Vol. 2, at 517.

¹⁴⁰ Minn. Stat. § 429.021.

¹⁴¹ Ex. 98, p. 50-51.

88. The City estimates that it would gain approximately \$54,784 in Local Government Aid (LGA) if the Subject Area is annexed. The City acknowledged that LGA is subject to change by the Legislature. Wilson Township is not eligible for LGA.¹⁴²

89. Wilson Township estimated that the Subject Area contains 45% of the existing tax capacity of the entire Township. If annexation is granted, Wilson Township will be required to cover the cost of providing services to 85% of the existing area of the Township with only 55% of its existing tax capacity. A number of its costs are fixed or variable only by area, not population (a road grader, snow removal, Town Hall, and sufficient employees to provide services to the remaining population). In the event of annexation, Wilson Township will be required to significantly increase taxes to cover the remaining expenses that are not reduced through the annexation.¹⁴³

90. The entire area in question is within one school district and annexation would not have an impact on that district.

91. The parties did not agree to a division of the costs of this proceeding.

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

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. §§ 414.12, 414.031, 414.09 and by the assignment by the Director of the MBA to the Office of the Administrative Hearings.

2. Proper notice of the hearing in this matter has been given and it is properly before this ALJ.

3. The City has the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for annexation have been met.

4. Minn. Stat. § 414.031, subd. 4(b), allows the ALJ to approve an annexation petition where: the subject area is now, or is about to become, urban or suburban in character; that municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare; or annexation would be in the best interest of the subject area.

5. The only portion of the Subject Area that is urban or suburban in character is the portion of 2nd Street that has ten residences. That portion has not been separately identified for annexation independently of the rest of the Subject Area.

¹⁴² Ex. 98, at 36, Table 3.2; Transcript Vol. 2, at 480, 528-531.

¹⁴³ The City maintained that tax rates for the remaining Township would stay low, but based this assessment on unreasonable estimates of cost savings to the remaining Township. See Ex. 98, at 50-52.

6. Except for the portion along 2nd Street, the Subject Area is predominantly rural in character. There are no portions of the Subject Area that are likely to become urban or suburban in character within a foreseeable time frame.

7. The fact that the City itself designated 92% of the Subject Area as "rural" for purposes of Minn. Stat. § 272.67, subd. 2, is not conclusive of the nature of the area when considering Minn. Stat. § 414.031, subd. 4(b)1. It is, however, a relevant factor that may be considered.

8. Because the Subject Area is rural in character, and it has not been developed for urban residential, commercial or industrial purposes, the criterion set forth in Minn. Stat. § 414.031, subd. 4(b)(1) is not met.

9. There has been no showing that the municipal government in any portion of the Subject Area proposed for annexation is required to protect the public health, safety, and welfare. For that reason, the criterion set forth in Minn. Stat. § 414.031, subd. 4(b)(2) is not met.

10. There has been no showing that the annexation would be in the best interest of the Subject Area. For that reason, the criterion set forth in Minn. Stat. § 414.031, subd. 4(b)(3) is not met.

11. Only a portion of Wilson Township is proposed for annexation. The record in this proceeding does not conclusively show that the remainder of that township cannot continue to carry on the functions of government without undue hardship if the annexation is granted. For that reason, the criterion set forth in Minn. Stat. § 414.031, subd. 4(c) is not met.

12. Under Minn. Stat. § 414.031, subd. 4(d), the Administrative Law Judge shall deny the annexation where the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits received by the Subject Area. The record in this matter shows that the increase in taxes paid to Pine River far exceeds the monetary benefits of services that are actually received by the residents of the Subject Area, including those residing along 2nd Street. By operation of Minn. Stat. § 414.031, subd. 4(d), the annexation petition of the City must be denied.

13. Alleged violations of the Open Meeting Law, Minn. Stat. § 13D.04, subd. 2(a), do not fall within the jurisdiction of this proceeding and the ALJ makes no finding on this issue.

14. Any conclusion more properly denominated a finding is adopted as such.

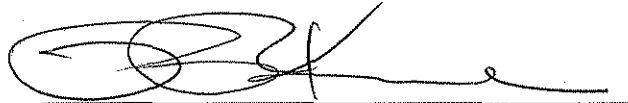
Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that:

1. The Petition by the City of Pine River for the Unincorporated Property in the Township of Wilson is **DENIED**.
2. The Executive Director of the Municipal Boundary Adjustments Unit shall cause copies of this Order to be mailed to all persons described in Minn. Stat. § 414.09, subd. 2.
3. Pursuant to Minn. Stat. § 414.12, subd.3, the cost of these proceedings shall be divided as follows; to the City of Pine River 90%, and to Wilson Township 10%.
4. This Order becomes effective upon issuance.

Dated: January 13, 2009



RAYMOND R. KRAUSE
Chief Administrative Law Judge

Reported: Mary Wunderlich, Kennedy & Associates
Transcript Prepared (Five Volumes)

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.09 and 414.12. Any person aggrieved by this Order may appeal to Cass County District Court by filing an Application for Review with the Court of Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.¹⁴⁴

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within 7 days from the date of the mailing of the Order.¹⁴⁵ A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

MEMORANDUM

This is an annexation proceeding under Minn. Stat. ch. 414 to consider a petition filed with the Municipal Boundary Adjustment Unit. The City of Pine River seeks to annex a significant portion of the neighboring Wilson Township. This is the first of multiple annexations proposed by the City that would significantly increase the area of

¹⁴⁴ Minn. Stat. § 414.07, subd. 2.

¹⁴⁵ Minn. R. 6000.3100.

the City of Pine River. Neighboring property owners in several townships appeared at the public hearing in this matter to object to these proposals. The City maintains that annexation is necessary to prevent “choking off” development. Wilson Township opposed the annexation, maintaining that the Subject Area is rural and agricultural and therefore better suited to township governance.

Statutory Factors

To approve an annexation petition, a subject area must (A) be, or be in the process of becoming, urban or suburban in character; (B) be in need of municipal government to protect the public health, safety, and welfare; or (C) have annexation be in the best interest of the subject area.¹⁴⁶ Each of these factors will be discussed individually.

A. Urban or Suburban in Character

Volume of Development Pressure

The City and its environs are not experiencing the significant growth and development that characterizes a need for annexation. The essence of an area becoming urban or suburban in character is about growth in development. Rural land becomes urban or suburban when the density of development begins to burden the existing infrastructure of the area. When that development occurs, a balance must be struck between the desires of individual property owners and the cost of infrastructure development needed to support an increasing population. The Minnesota Supreme Court noted the importance of growth and development pressures in the *Lake Elmo* case:

According to the 1996 Regional Blueprint, by 2020, the metropolitan area must accommodate 330,000 new households and 650,000 new residents. Of this new growth, the Regional Blueprint predicts that 110,000 new households will settle in the east metropolitan area, of which Lake Elmo is a part

From 1990-2000, Lake Elmo's population grew by 16.3 percent. In the same time period, nearby communities such as, Oakdale, Cottage Grove, and Woodbury, grew by 45, 33, and 131 percent respectively.¹⁴⁷

Contrary to the City's assertion that “urban or suburban in character” can be determined by a mathematical ratio of residential dwellings per acre, reasonable anticipation of growth and the manner in which that growth conforms to the planned utilization and development of property is at the core of the determination as to whether

¹⁴⁶ Minn. Stat. § 414.031, subd. 4(b).

¹⁴⁷ *City of Lake Elmo v. Metropolitan Council*, 685 N.W.2d 1 (Minn. 2004).

an area is becoming urban or suburban.¹⁴⁸ For example, in the recent annexation of property by Chisago City (cited by the City in support of its position) the anticipated growth was described as:

The City of Forest Lake, the City of Wyoming, the Township and Chisago City have grown significantly in the past 15 years. The Township has grown more than Chisago City because it is larger and closer to the highway. The Township's pattern of development has been generally to grow out from Interstate 35. It has grown substantially to the south and the east, toward Chisago City. The Township's development has been almost entirely residential, on one-, two-, and five-acre lots using individual wells and individual sewage treatment systems (ISTS).[footnote omitted] *There is tremendous pressure from developers to turn the remaining open land in Chisago County into residential subdivisions.* [Footnote omitted, emphasis added.]¹⁴⁹

The growth experienced and anticipated in places like Chisago City and Lake Elmo are at the heart of an area becoming urban or suburban in character. There is no such development pressure occurring in the City or the Subject Area.

In Pine River, an existing subdivision, with residential lots available for connection to sewer and water, has been vacant for five years. The industrial development area with sewer and water has had only two lots of seven built upon. The overall rate of growth in both the City and Wilson Township has been low and easily accommodated by the existing infrastructure. Even the City's witness recognized that the land available "vastly outstrips any demand that ... [the City will] see in the next 20, 30 years when you look at the subregion as a whole and how it's zoned."¹⁵⁰ Furthermore, the state demographer's estimate is that growth pressure will diminish rather than increase.

Between 1980 and 2010 the four townships surrounding the City are expected to grow by 1,233 people. Assuming that Wilson Township grows at an average of the total growth of the four townships, that would mean 10 people per year would be settling in the 11,456 acres of Wilson. The City is anticipated to grow by 144 people in the same period. That translates to five people per year on 790 acres. Even in relative terms, this is not close to the volume of growth that was being experienced in the *Lake Elmo* or *Chisago City* cases. It does not demonstrate that the area is "about to become urban or suburban" any time soon.

¹⁴⁸ City Memorandum, at 13. The City has also relied on the criteria submitted by the former Minnesota Planning Agency to the Legislature. Those criteria have never been adopted as binding in any proceeding. The Minnesota Planning Agency described the criteria as intended as "a starting point for further debate and discussion." Ex. 74, at 9. The municipality of Lake Elmo, for example, sought to preserve its "rural character" by limiting development to a density of six units per 20 acres or 16 units per 40 acres, served by individual sewage treatment systems.

¹⁴⁹ *ITMO the Petition of Chisago City for Annexation of Unincorporated Property in Wyoming Township* (A-6996), OAH Docket No. 3-2900-16083-2, Findings 17 and 18 (ALJ Findings of Fact, Conclusions of Law, and Order issued on January 24, 2004) (<http://www.oah.state.mn.us/aljBase/290016083.rt.htm>).

¹⁵⁰ Transcript Vol. 3, at 614.

Further evidence that even the City recognizes the rural character of the Subject Area is the fact that it has designated all the residential land in the Subject Area, including Southtown, as rural for tax purposes. Just days before the hearing in this matter, the City adopted an ordinance that creates a rural taxing district for approximately 92% of the Subject Area.¹⁵¹ Rural taxing districts are governed by Minn. Stat. § 272.67, subd. 2, which states in pertinent part:

The rural service district shall include only such unplatted lands as in the judgment of the governing body at the time of the adoption of the ordinance are rural in character, and are not developed for commercial, industrial, or urban residential purposes, and for these reasons are not benefited to the same degree as other lands by municipal services financed by general taxation. The rural service district may include lands which are not contiguous to one another. The ordinance may designate lands outside the city which, if annexed, shall be included within the rural service district

The rural taxing district provision is designed to afford tax relief to areas that are appropriate for annexation, but not immediately suitable for development. The most prevalent circumstances for its use are where orderly annexation is occurring by agreement, or special circumstances exist in a contested annexation to indicate that a delay in development is likely. Under the circumstances of this proceeding, the delay in providing suburban-style services to the Subject Area appears to be permanent. Under the facts present here, the determination by the City that 92% of the Subject Area is rural is further evidence that the residential portions of the Subject Area are not urban or suburban in nature.

The City's planning witness described how a successful relationship between a municipality and a township should work using the example of Pequot Lakes and an adjacent township located approximately nine miles south of Pine River. Development is occurring in sufficient quantity in the Pequot Lakes area to place pressure on the resources of the neighboring township. That pressure was dealt with, in part, through an urban/rural taxing district.¹⁵² There is no such development pressure occurring in the Pine River subregion.

The City claims that the problem is not immediate growth pressure but rather unrestricted development supposedly allowed by Cass County that is "choking off" the City. This claim is belied by the fact that the City does not plan to change the existing zoning or septic practices of the county nor has the City ever communicated such a concern to Cass County prior to this proceeding. Under the City's ordinances, development could go forward on lots approximately one-half the size as under the current applicable County zoning rule.

¹⁵¹ Transcript Vol. 3, at 654-662.

¹⁵² Transcript Vol. 3, at 632-33.

Pattern of Development

A closely-related factor to the rate of growth is the pattern of that growth in an area. As both the *Chisago* and *Lake Elmo* examples show, significant development pressure results in demand for infrastructure extension that will support dense development patterns. The record in this matter is unambiguous as to the preference for what limited development exists in the Pine River area. The only development occurs in the townships surrounding the City on large, widely dispersed lots. Even within the City, residents have engaged in the practice of purchasing two adjoining lots, one for the residence and the second for open space.¹⁵³ Compact development is not the preferred pattern of growth in the Pine River subregion.

The only areas arguably developed enough to meet the standards for annexation are the Southtown area and the Highway 371 business corridor. The degree of development present raises the issue as to whether Southtown or the Highway 371 business corridor is sufficiently "intensively developed" to support annexation. The Southtown lot density of residential development is low. The Highway 371 business corridor has a few businesses spread over a wide area. No proposed development has been identified in either of these areas. The businesses situated along the Highway 371 corridor are of a type (ready-mix concrete, garbage truck storage, a lumberyard and a MNDOT operations and storage site) that are more sensibly located in a rural environment.

The Subject Area is not now urban or suburban in character. The forecast rate of growth does not support a conclusion that the Subject Area is becoming urban or suburban in character. The proposed tax treatment of the Subject Area by the City supports a conclusion that the Subject Area is rural in character. The City has not met its burden regarding this statutory factor for annexation under Minn. Stat. § 414.031, subd. 4(b).

B. Need of Municipal Government

The Minnesota Legislature has explicitly found that municipal government "most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial and governmental purposes."¹⁵⁴ Conversely, the Legislature has found that township government "most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes."¹⁵⁵ Here, the bulk of Subject Area is rural, undeveloped and better suited to township governance. The City has not demonstrated that municipal government is needed to protect the public health, safety, and welfare of the Subject Area or the City.

¹⁵³ Transcript Vol. 3, at 611.

¹⁵⁴ Minn. Stat. § 414.01, subd. 1a(2).

¹⁵⁵ *Id.*

Health and Safety

The City asserts that “growth pressures on the subject area pose a threat to the environment and public health, safety and welfare of the subject area and the broader Pine River sub-region.”¹⁵⁶ The record in this matter shows that there is little growth to be expected in the area, and the existing facilities are ample to meet that modest growth. The City’s own proposals regarding taxation, water, and sewer demonstrate that no environmental, health, or safety threats arising from growth exist in the Pine River sub-region. The situation in this matter stands in contrast to areas where annexation has been found appropriate, where significant growth in limited areas is either proposed or projected to occur over the near term future.

Most notably, the City is not proposing to change the rural residential pattern of development if the annexation petition were to be granted.¹⁵⁷ The minimum lot size would decrease to approximately one-half acre, but ISTS would be allowed on these smaller lots.¹⁵⁸

Even in the relatively compact Southtown area, the City forecast a cost of \$2.6 million for water and sewer installation. Using the current population figure for the entire Subject Area, this amounts to approximately \$8,000 per capita for this service.¹⁵⁹ Assuming that the City’s ordinance change is somehow effective in preventing the PRASD from requiring residents to connect to the system, no resident would be required to use the system until that resident’s existing facility (well for water connection, ISTS for sewer connection) became noncompliant. This would result in the City investing substantial capital (presumably by incurring debt) in a system that the current residents are not required to use for up to 25 years.¹⁶⁰

Based on the City’s own analysis, sewer and water is to be installed into areas that are already served by ISTS. These areas are identified in the City’s own analysis as being the most suitable for ISTS systems.¹⁶¹ The land in the Subject Area that is the least suitable for ISTS is the land that will not be served by water or sewer under the City’s proposals, even if the residential phase is undertaken.¹⁶² Even if the annexation

¹⁵⁶ City Memorandum, at 15. One of the public safety threats identified by the City was the introduction of cul-de-sacs in some of the residential development in the Subject Area. No showing has been made in this proceeding that any legitimate problem arises from platting development in a cul-de-sac rather than a through street.

¹⁵⁷ Ex. 511, at 8; The City’s planner was aware that the Mayor had promised that there would be no zoning changes without the request of the affected property owner. Transcript Vol. 3, at 688.

¹⁵⁸ Not surprisingly, the City did not maintain that ISTS could not be installed on lots of that size. Transcript Vol. 3, at 630. The City’s contention that ISTS was not the “most advantageous approach” was not balanced by any comparison of the cost per parcel of extending sewer and water throughout the Southtown area or the eastern portions of the Subject Area that had been described as becoming urban or suburban. *Id.*

¹⁵⁹ The actual per capita cost for persons receiving the new service would be significantly higher. The ten residences already on the system and those living in the Subject Area outside of the proposed area to be served would be subtracted from the denominator.

¹⁶⁰ Transcript, Vol. 2, at 447.

¹⁶¹ Ex. 89, Figure 4; Transcript, Vol. 2, at 442.

¹⁶² *Id.*

were granted, residential development on that land could go forward using ISTS (assuming a suitable drainfield could be located).

Because City ordinances do not require property owners to hook up to the sewer system, the City could invest \$3.4 million in a system that is not used, while ISTS use proliferates in areas not served by that investment. Annexation would do nothing to improve the health risks in the area.

The law enforcement officials that testified agreed that while there are more calls for service from the Southtown area than from more remote parts of Wilson, the number of calls is really quite manageable under the current mutual aid pact between the Cass County Sheriff and the Pine River Police Department (PRPD). The City argues that Wilson residents are using the PRPD without paying their share of the cost. The PRPD is not providing service to Wilson out of the goodness of its heart. There is a mutual aid agreement between the City and the county that presumably also benefits the City. There is no evidence that the Subject Area is in need of police services beyond those already provided.

The proposals of the City regarding other municipal services to the Subject Area provide further confirmation that there is no current need for municipal government there. While the City has added staff, none of the duties of these staff members are fully applicable to the services that will be received in the Subject Area. No differences will be experienced regarding fire protection prior to extension of municipal water to the Subject Area and even then, the differences will be extremely limited. The existing roadways will remain, with the only difference being who will operate the road grader. None of these potential changes respond to a demonstrated need. Municipal government is not, at this time, necessary or appropriate for the Subject Area.

C. Best Interest of the Subject Area

There is no simple test to determine whether annexation is in the best interest of an area adjacent to a municipality. In this proceeding, the Administrative Law Judge has taken into account the anticipated growth rate and likely patterns of growth, the reasons offered by the City to support annexation, the services that municipal government offers, and the cost of those services to be imposed on residents who have overwhelmingly and repeatedly chosen to remain under the township form of governance.

Absence of Planning

Wilson Township, and a number of persons who provided public comment, complained of the absence of meaningful planning and public participation in the City's annexation process. The City asserted that it has done what planning is required. This petition has been characterized by changing rationales for the need for annexation, the absence of prior knowledge as to the economic impact on the Subject Area, and important decisions being made on an *ad hoc* basis (in some instances, driven by this litigation rather than public policy).

Prior planning, however, is not a statutory factor for granting an annexation.¹⁶³ The case law governing annexation does not require written plans, stating:

While it may be typical for a municipality to have written plans related to a proposed annexation, neither the statute nor case law appears to require a municipality to submit a formal, written plan. In fact, it is generally recognized that plans and policies may exist despite the fact that they have not been reduced to writing.¹⁶⁴

But even in the case where plans have not been reduced to writing, successful annexation requires extensive joint planning.¹⁶⁵ No joint planning with the Township or the county has been done in regard to this annexation. The City's approach to this annexation has lacked any meaningful opportunity for the Township or the affected residents to know what to expect from the process.

For an annexation to be in the best interests of the subject area the municipality should show that it is able to successfully implement and manage the transition. If a municipality is to successfully implement the annexation, it needs to have a well thought through and coordinated plan. Here the conflicting rationales and ordinances relating to annexation do not reflect that the City is in a position to successfully manage the annexation.

For example, the Mayor and City Resolutions state that hook up to the proposed sewer system will not be mandated. The City's own expert, however, testified that it is "beyond ridiculous" not to mandate it.¹⁶⁶ The City expresses concern about health issues for private wells and PRASD's overcapacity, but passes an ordinance that permits even current City property owners to refuse to hook up to the existing sewer and water. The Mayor states that water and sewer will be provided within five years, yet he testified that as a practical matter, the City has no intention of extending sewer and water into the Subject Area.¹⁶⁷ The City complains of lax and unplanned zoning by the county, but then promises not to change the zoning. The City cannot have it both ways. The record in this matter demonstrates that the City has not conducted the planning needed to support a successful expansion of the City and its services into the Subject Area.¹⁶⁸

Taxation

According to the City expert's report, which was adopted by the City as its plan, the tax rate for commercial property owners would rise by 185% over four years if annexation is successful. City residents would enjoy a reduction of 4.65% over the

¹⁶³ See Minn. Stat. § 414.031, subd. 4.

¹⁶⁴ *McNamara v. Office of Strategic and Long Range Planning*, 628 N.W.2d 620, 630 (Minn. App. 2001), rev. denied (Minn. Aug. 22, 2001).

¹⁶⁵ *Id.*

¹⁶⁶ Transcript, Vol. 3, p. 596.

¹⁶⁷ Transcript, Vol. 1, p. 82-83, later amended to add "immediately" Vol. 1, p. 109.

¹⁶⁸ See *In Re Petition of Forest Lake to Annex Portions of Columbia Township, (A-7371), Docket Number 15-6051-16937, 2006WL2716395 (Minn. Office Admin. Hrgs. 2006)* for a full discussion on this point.

same period. These figures do not account for any increase that may come as a result of the proposed sewer and water extension. Residents of the rural tax district would have their property tax go up by 42.8% and the remainder of Wilson Township is estimated to have to raise its property tax by 16.4% to make up for revenue lost to the City.

This alone does not mean that annexation is not in the best interests of the residents of the Subject Area. If those residents and businesses were gaining some significant benefit and the annexation were really needed to deal with encroaching suburbanization, the tax increases might be justified. In this case, however, there is virtually no development pressure and annexation would not provide significant benefit to the Subject Area. Given these circumstances, annexation is not in the best interest of the Subject Area.

Affirmative Defenses

Revenue-Benefit Relationship

Even if all the forgoing statutory factors are met, a petition for annexation must be denied where "the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area."¹⁶⁹ The City estimates that most of the value conferred on the Subject Area is the cost of changes already made for increased staffing of police, public works, and an Assistant Clerk.¹⁷⁰ The increased staffing costs amount to approximately \$133,000 of the total \$149,815 that constitutes the City's "Total Estimated Value of Services Conferred to Subject Area." This compares to the City's estimate of property taxes collectible in 2010 of \$81,264, rising to \$97,426 in 2013.¹⁷¹

The Township noted that all of the staff added by the City have been performing work for the City, not the Subject Area. The Township inquired as to what additional work would be performed for Subject Area. The City did not offer any assessment of how much of each staff member's time would be spent performing duties for the benefit of the Subject Area. The record in this matter shows that little time will be spent by these employees performing work for the Subject Area. The attribution of the entire cost of these staffing changes to the Subject Area is not a demonstration of the value of services conferred on the Subject Area. The methodology of arbitrarily assigning costs to a subject area without demonstrable benefits corresponding to those costs is flawed and does not produce a credible result.

The ALJ concludes that the benefit conferred on the Subject Area by a properly attributed portion of the new staff members' duties consists of only a modest fraction of their total salaries. The amount of property tax revenue received by the City substantially exceeds the cost to the City of the services conferred.

¹⁶⁹ Minn. Stat. § 414.031, subd. 4(d).

¹⁷⁰ Ex. 98, at 53 Table 4.11.

¹⁷¹ *Id.*

Another factor that weighs into the revenue-benefit relationship is the lack of any proposal for financing the extraordinary costs of extending water and sewer to either the commercial parcels (phase 1) or residential parcels (phase 2) in the Subject Area. Phase 1 will cost approximately \$1 million to extend water and sewer to properties that currently have functioning ISTS systems and private wells. The City's planner noted that this sort of project, particularly where the benefit is so limited, is usually funded by assessment.¹⁷² The City Council determines how the assessment is to be applied. The potential for a special assessment, to be paid only by the owners of the parcels served by phase 1, adds to the weight of evidence that the revenues to the City far outweigh the monetary value of benefits to be extended to the Subject Area.¹⁷³

The City has also relied upon its proposed urban/rural property tax division to support the proposition that the costs to residents of the Subject Area do not outweigh the benefits received. This means that, under this proposal, no water or sewer will be extended to residential properties in the Subject Area for the foreseeable future. If sewer and water were extended, the expense of doing so would ratchet up the cost (either through a tax increase to pay for the debt or an assessment) to a point much higher than the value or benefits of annexation. As a result, the only new residential development in the Subject Area will be rural residential utilizing ISTS and relying on individual water wells. This factor strongly supports denial of the City's annexation petition.

The City states that the Subject Area will enjoy all the benefits of other City property owners. However, the City would designate 92% of the Subject Area as a rural taxing district under Minn. Stat. § 272.67, subd. 2. The statute permits this designation if the area "[is] not benefitted to the same degree as other lands by municipal services financed by general taxation." Here the City realistically recognizes that the Subject Area will not, in the near future, receive benefits it does not already enjoy at a lower tax rate.

The City's own case in chief strongly indicated that the annexation being proposed is not intended to address existing issues of managing impending growth. Rather, the annexation has been proposed to relieve the conditions that have left Pine River financially "a city in distress."¹⁷⁴ The record in this matter shows that the City proposes to address its financial problems by taking a large portion of Wilson Township's tax base, while extending few, if any, services to the Subject Area that are not already received by that area at a far lower cost in taxes. This is exactly the situation identified in Minn. Stat. § 414.031, subd. 4(d), as one to be avoided.

Since there is no reasonable relationship between the demonstrated costs of the annexation to the Subject Area and the contingent and potential benefits to be afforded

¹⁷² Transcript Vol. 3, at 680.

¹⁷³ The City has maintained that it would not impose a special assessment. The lack of planning and the conduct of the City's elected officials in all aspects of this annexation proceeding does not make such assurances credible. Should annexation be granted, the City's elected officials would be able to adopt any desired funding mechanism, including special assessment.

¹⁷⁴ Transcript Vol. 3, at 631.

to the Subject Area, the City's annexation petition must be denied. Based on the City's evidence alone, the Township has met its burden of proof that the increase in revenues does not bear a reasonable relationship to the monetary value of the benefits conferred.

Undue Hardship

A petition for annexation may be denied upon a finding that the remainder of the township would suffer undue hardship.¹⁷⁵ In this case, the future of Wilson Township is in doubt should annexation be approved.

The Subject Area represents about 45% of the existing tax capacity of the entire Township, while it represents only 15% of the total area of the Township. This means that the Township will have to provide services to 85% of the territory with only 55% of the tax capacity. Many of the costs of providing services are fixed (staff, equipment maintenance, etc.) and are not reduced by the reduction in land to be covered. Some of the costs would be reduced, such as fire service casts and some road maintenance expenses like gravel. A significant tax increase would likely be needed to make up the loss. While it appears that this may present an insurmountable challenge to the Town Board, the Township did not present sufficient evidence that annexation would prevent the Township from being able to carry on or that annexation would result in so large a tax increase that it would amount to an undue hardship on its citizenry.

Conclusion

After careful consideration of the 16 factors, the ALJ finds that the area to be annexed is not urban, suburban or about to become so; that municipal government is not needed to protect the health and safety of the area; and that annexation is not in the best interests of the Subject Area. Furthermore, the increase in revenues resulting from annexation bear no reasonable relationship to the monetary value of benefits conferred on the annexed area.

The petition for annexation has not met the statutory criteria for approval and has met the criteria for mandatory denial as found in Minn. Stat. § 414.031, subd. 4(d). The petition is therefore denied.

Division of Costs

The parties did not agree to a division of the hearing costs between themselves. Pursuant to Minn. Stat. § 414.12, subd. 3, the cost of the proceedings is allocated as follows: to the City 90% and to Wilson Township 10%. This allocation is meant to reflect the relative financial positions of the parties, the burdens in this proceeding created by the City's approach to the annexation, and the lack of planning that unnecessarily complicated this matter.

R. R. K.

¹⁷⁵ Minn. Stat. § 414.031, subd. 1(e)(2).