

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of the Petition of the City of Elysian for Annexation of Unincorporated Abutting Property To The City of Elysian Pursuant to Minnesota Statutes, Section 414.031 (A-7657)

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

The above-entitled matter came on for hearing before Administrative Law Judge Manuel J. Cervantes (ALJ) at 10:00 a.m. on September 10, 2009, at the Elysian City Hall, Elysian, Minnesota. An opportunity for public testimony was provided the same day. The ALJ announced at the hearing that written testimony would be received so long as it was postmarked September 10, 2009. Exhibits 1-7 were received as evidence at the evidentiary hearing. One written public comment was hand-delivered to the ALJ, subsequent to the hearing but before the ALJ left the City of Elysian on September 10, 2009. The letter is included in the record and was considered.¹ Petitioner's (Elysian or City) post-hearing submission was received on October 23, 2009.

The City and Township of Elysian (Township) participated in the Joint Informational Meeting on August 13, 2008 as required by statute.² Although the Township does not favor the proposed annexation of the surface lake water,³ it did not file an initiating document or timely objection.⁴

Jason L. Moran, Christian, Keogh, Moran & King, appeared on behalf of the Petitioner, the City of Elysian. No one appeared on behalf of the Township at the evidentiary hearing.

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 be **GRANTED**.

¹ Letter of Brad Gohla, dated September 30, 2009.

² Minn. Stat. § 414.0333. (All citations refer to the 2008 law, unless noted otherwise.)

³ Letter of Elysian Township attorney, Robert T. Ruppe, dated April 16, 2009. The Township did not formally appear for the hearing nor file any post-hearing submission.

⁴ Minn. Stat. § 414.12, subd. 4 (1).

Based on the evidence in the hearing record, the ALJ makes the following:

FINDINGS OF FACT

Background

1. On October 16, 2008, Elysian filed a Petition with the Municipal Boundary Adjustment Unit ("MBA") seeking the annexation of the unincorporated surface area of lake water which is bounded by the City, consisting of approximately 157.6 acres (Subject Area) located in the Township of Elysian.⁵ The Subject Area has zero population as no one lives on the lake's surface.

2. Elysian's Petition was based on Resolution 316/08 of the Elysian City Council, passed on August 11, 2008. The resolution requested the Office of Administrative Hearings to conduct the proceedings required under Minn. Stat. § 414.031 to annex the Subject Area. The legal description of the Subject Area is as follows:

Commencing at the southeast corner of the northeast quarter of section 35-109-24 west, thence north approximately 625 feet to the Lake Tustin south shoreline to the point of beginning, thence north along the east boundary line of section 35 approximately 1,235 feet to the north shore of Lake Tustin, thence a northwesterly direction following the shoreline of Lake Tustin and the City of Elysian's boundary in a counterclockwise direction to the point of beginning, and containing approximately 74 acres of lake water body area.

And

Commencing at the southwest corner of the northwest quarter of section 35-109-24 west, thence north approximately 74 feet to the Lake Francis south shoreline to the point of beginning, thence north along the west boundary line of section 35 approximately 972 feet to the north shore of Lake Francis, thence a northeasterly direction following the shoreline of Lake Francis and the City of Elysian's boundary in a clockwise direction to the point of beginning, and containing approximately 83.6 acres of lake water body area.⁶

3. On December 3, 2008, the Executive Director of the MBA conducted a brief preliminary hearing in the City of Elysian. Pursuant to statute, notice of the hearing was published in the *Elysian Enterprise Newspaper* on November 20, 2008 and November 27, 2008.⁷

⁵ Factual Information Document, filed November 24, 2008.

⁶ Elysian's Resolution 316/08, dated August 11, 2008.

⁷ Publisher's Affidavit of Publication, filed at the December 3, 2008 hearing.

4. On January 22, 2009, the MBA determined that this matter should be referred to an ALJ for hearing and final decision.

5. Prehearing conferences were conducted by the ALJ on April 29, 2009 and June 30, 2009, and the evidentiary hearing was scheduled for September 10, 2009.⁸ Notice of the evidentiary hearing was published in the *Elysian Enterprise* on August 6, 2009 and August 13, 2009.⁹

6. Pursuant to Minn. Stat. § 414.0333, a joint public informational session was held on August 13, 2009. Elected officials from both the City and Township were at the head table. The City made an opening statement through its attorney, Jason L. Moran. During the hearing, Mr. Moran explained that the City intended to annex the Subject Area for safety and liability reasons. By annexing the Subject Area, the City could then exercise control and enforcement authority on the lakes, specifically; it would have the ability to regulate hunting and the use of fire arms within its City boundaries. Approximately a dozen people commented at the informational hearing as explained below.¹⁰

7. Douglas Swedberg and Steve Tolzman, Township Supervisors, felt the Township did not have jurisdiction over the Subject Area, were not sure whether annexation of surface lake water could legally be done, and in any event, did not contest the annexation. Svedberg's belief that lake portions could not be annexed was based on his discussions with two different offices of the Department of Natural Resources (DNR). He also indicated that the Township did not wish to spend any of its resources challenging the annexation.

8. The City brought this Petition because of its concern during hunting season for its citizens who reside around the Subject Area. The City has received numerous complaints from its citizens that they have been hit with gunshot pellets while present on their decks or yard in the fall during the hunting season.¹¹ The City is fearful that it would be liable for a tort claim should it take no action and someone gets seriously injured.¹²

9. An evidentiary hearing and visual tour of the Subject Area was conducted on September 10, 2009.

10. Patricia Nusbaum, City Clerk Administrator testified at the evidentiary hearing. She described the City as being surrounded by four lakes: Lake Elysian to the south, Lake Francis to the West, Ray Lake to the north, and Lake Tustin to the east. She testified that there has been significant growth in the City over the past ten years.

⁸ ALJ's Second Prehearing Order.

⁹ The City did not submit a Publisher's Affidavit of Publication, but the Publisher confirmed by telephone to the ALJ that publication occurred on the dates noted above.

¹⁰ Written Minutes of the Informational Meeting, August 13, 2009, prepared by Kathy Rients, Elysian Township Clerk; also see, CD digital recording of the hearing submitted by the City. These constitute the only submissions from the informational session.

¹¹ *Id.*

¹² Testimony of Jason L. Moran, City Attorney.

She said that the growth has occurred around the lakes and expects further growth and development in the area. She testified that hunting is lawful on the lakes but the City has received numerous complaints that people have been struck by shot gun pellets. These complaints have been reported to the DNR and Le Sueur County Sheriff's Office. She testified that the City has an Ordinance that prohibits the discharge of a weapon within the City limits. The Township does not. She is not aware of any fiscal or other impacts on the Township if the Petition were granted.¹³

11. Gary Buchschach testified at the informational and evidentiary hearings. Mr. Buchschach is a resident and President of the Lakeview Manor Townhouse Association. He represents the residents. The multifamily housing development is situated in the northeast quadrant of the City and juts into Lake Tustin like a finger.¹⁴ He has resided there for four years. He testified that residents have complained that they have been hit by gunshot pellets numerous times while in their yards or on their decks during the hunting season. They are afraid to walk their dogs at that time of year. He has also been hit while drinking coffee on his deck. He is hit by pellets, once a year on average. He is aware that his home has been hit by pellets on at least three occasions. He has been an avid hunter since boyhood and has been hit many times by gunshot pellets while hunting. This is a risk he accepted as part of hunting. The residents, however, were not hunting when they were struck nor have they accepted the risk of being struck while in their yards. He testified that the annexation would remove a portion of the lakes from hunting. In addition to protecting the public from the risk of being injured, this area could serve as a resting area for waterfowl which would benefit waterfowl hunting overall because the ducks would remain in the area longer.¹⁵

12. Raol Johnson is an avid hunter, a certified instructor for the DNR, and a member of numerous hunting associations. As a resident of Lakeview Manor, he testified that his deck and siding have been damaged by gunshot pellets. Based on his knowledge, he believes that the gunshot of today is more powerful than when the 500 foot state imposed buffer between a hunter and a residential area was created. Some gunshot exceeds 500 feet. He believes a larger buffer is necessary. He concurred that making the subject area a waterfowl resting area would benefit hunting.¹⁶

13. Karen Nasal, a townhouse resident at Lakeview Manor testified at the informational and evidentiary hearings. She described her townhouse location as being at the tip of the Cul-de-Sac and that her home is surrounded by Lake Tustin on all three sides. She has resided there five years. She said she was hit by gun shot pellets while on her deck and had bruising on her leg where the pellets hit her body. She collected the pellets and gave them to the Sheriff when he arrived to take a report. She also reported the incident to the DNR. She said that her home had been shot numerous times and that her home sustained holes and other damage. The damaged siding has since been replaced. She said she does not have her grandchildren at her townhome

¹³ Test. of Patricia Nusbaum, City Clerk Administrator.

¹⁴ Exhibit 1, zoning map.

¹⁵ Test. of Gary Buchschach, resident.

¹⁶ Test. of Raol Johnson, resident.

during hunting season for fear that they may be injured. She does not feel safe at that time of year but that she cannot afford to move.¹⁷

14. Dan Engebretson is Vice-President of the Lakeview Manor Association and a former hunter. He does not believe hunters are always conscious of their surroundings while hunting or follow the current hunting rules. He witnessed juveniles exit their vehicle and shoot at ducks from Highway 14 within 100 yards of his home on Lake Ray. He is thankful that the duck took off to the east rather than to the west where he lives, thereby avoiding the possibility of being shoot at by the boys.¹⁸

15. Bernard Meyer is an avid hunter and testified to the same incident as described above by Mr. Engebretson. He said that the Subject Area is like a war zone during hunting season, that hunters do not respect the rules of hunting and is afraid that there will be an accident if nothing is done.¹⁹

16. Steve Moline, 15-year City Planner for the City of Elysian, testified at the informational and evidentiary hearings. He said he has been aware that other cities have annexed surface lake water to their cities for a long time. Even Elysian has recently annexed surface lake water in its Kaplan Project which extended its boundary across the water surface of Lake Elysian. In that project, the City extended its boundary across the lake along the section line and continued on to the other side, resulting in the annexation of a large area of water. No one challenged the legality of that action at the time.²⁰

17. At the evidentiary hearing, Mr. Moline testified that he conducted additional research since the informational session and found that many Minnesota towns and cities annexed lakes. Albert Lea annexed a large portion of a lake in the southwest corner of their City, as illustrated by Exhibit 3. The City used the section lines to create the boundary as circled on Exhibit 3. Other examples of this type of annexation can be seen at Minnesota Lake²¹, Mountain Lake²², the City of Waterville²³, and the City of Windom.²⁴ Mr. Moline said that annexations of this nature are very common in Minnesota. They occur because it makes legal descriptions easier if boundaries are charted along section lines and are more accurate than using a lake's shoreline. Mr. Moline expressed regret that the Subject Area was not annexed when the Elysian boundaries were originally created, but at that time, he was not sure how development was going to occur.²⁵

18. Mr. Moline recalls that discussions were had many years ago between the City and Township about the current issues and regulating hunting on the lakes. It was

¹⁷ Test of Karen Nasal, resident.

¹⁸ Test. of Dan Engebretson, resident.

¹⁹ Test. of Bernard Meyer, resident.

²⁰ Test. of Steve Moline.

²¹ Ex. 4.

²² Ex. 5.

²³ Ex. 6.

²⁴ Ex. 7.

²⁵ Test of S. Moline.

Mr. Moline's belief that the Township was not interested in expending its resources for the benefit of City residents and, therefore, no Township regulation was initiated.²⁶

19. Mr. Moline noted that not all hunting would be prohibited, hunting could continue on other areas of the same lakes. Mr. Moline sees no other impact on the Township by the annexation other than the limited regulation of hunting. He predicted that if the annexation is not permitted, the hunting risks will only get worse as more City housing developments occur.

20. Lieutenant Joseph Frear, 27-year DNR Conservation Officer, testified at the evidentiary hearing. He said, generally speaking, the hunting season runs from mid-September for about 60 days. He saw no issue with the City seeking the proposed annexation. He acknowledged that the Township had no regulations governing hunting and felt the City's Ordinance was the only way that City residents could be protected from the hunting risks. He indicated that without the Ordinance, this issue would persist. The Ordinance would be enforced by local police or the Sheriff's Office. He said that he was aware that the City of Waseca annexed Clear Lake to the City and that no further hunting incidents have occurred since the annexation.²⁷

21. Brad Gohla, City resident, testified at the informational session and submitted written comments following the evidentiary hearing. He spoke against the proposed annexation and is opposed to any restriction of hunting. He advocated for the enforcement of the existing laws such as the ban on shooting game from less than 300 feet or from the public roadside. He acknowledged that this conduct is illegal and can be enforced by the DNR or the Sheriff but people have not requested that. Further, he does not believe that one can make a boundary across a body of water based on his communications with the DNR. Finally, he said that he has been "rained on" by shot gun "BBs." He felt the risk of being seriously injured from this is minimal and characterized the testimony of those in favor of the annexation as exaggerated.²⁸

22. Others testified to the enforcement of the existing laws by the placement of signs along Highway 14 where hunting is already prohibited. The problems arise because hunters do not abide by the current laws. If the current laws were enforced, the problems would go away.²⁹

Annexation Factors

23. 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. The ALJ notes that many of the factors do not directly apply to this case given the nature of this

²⁶ *Id.*

²⁷ Test. of Joseph Frear, Conservation Officer.

²⁸ Test. of and Letter of B. Gohla, dated September 30, 2009.

²⁹ See testimony of Michael Meyer, resident, for example.

annexation, specifically, the request to annex surface lake water, not land, and, absent any contemplated land development. Hence, there are no resulting fiscal or other impacts on the Township arising from the change.

Demographics, Geography, and Land Use Planning

24. The City and Township are located in the South Central region of the State and in southern Le Sueur County.³⁰ They are located 70 miles southwest of the Minneapolis/St. Paul metro area and at approximately the midpoint between Faribault on the east and Mankato on the west.³¹

25. Elysian has a population of 569 in 252 households. The Township has a population of 972 in 404 households.³² Little growth was seen in Elysian between 1970 and 1990. The 1990's was when a larger seasonal population began to appear. It was anticipated that the City would grow by 22% for the period from 2000 to 2010. The Township has seen a 19% population growth between 1990 and 2000.³³ The City basically grew around the south shores of Lake Tustin and Lake Francis.³⁴

26. Lakeview Manor is a townhouse development located in the northeast quadrant of the City. There are 27 occupied townhouses in Lakeview Manor and approximately 50 people reside there. When the development is complete, there will be 47 townhomes and approximately 100 residents.³⁵

27. The City has dense residential areas that are around Lake Tustin and Lake Francis. The heaviest concentration sits along the southwest shore of Lake Tustin and continues westward to the southeast shore of Lake Francis. Also in this area is a public beach and park. The aforementioned Lakeview Manor is across Lake Tustin in the northeast quadrant of the City. Finally, there is a residential area across Lake Francis in the northwest quadrant of the City, too.³⁶

28. The Subject Area consists of relatively small portions of Lake Francis and Lake Tustin. There are no residents on the Subject Area, the surface water of the lakes. The lakes are used for recreation and hunting and abut residential property. The proposed annexation would affect 157.6 water body acres, all located in Elysian Township. The Subject Area of Lake Tustin of approximately 74 acres is surrounded by the City on three sides in a horseshoe fashion on the east half of the City. The Subject area of Francis Lake of approximately 83.6 is surrounded by the City on three sides in a horseshoe fashion on the west half of the City.³⁷

³⁰ A small portion of the City spills over into Waseca County in the north; Ex. 1.

³¹ Elysian Land Use Plan, adopted 12/10/2007.

³² Test. of P. Nusbaum, City Clerk Administrator; Minnesota State Demographer, 2007 Population and Household Estimates.

³³ *Id.*, Ex. 1.

³⁴ Ex. 1.

³⁵ Test. of G. Buchschach, resident.

³⁶ Ex. 1.

³⁷ *Id.*

29. The proposed east boundary starts on the south side of Lake Tustin and runs north across Lake Tustin on the section line to the north side of the City. In the southeast quadrant of the City, the existing eastern City boundary is the section line. The proposal is to continue the new boundary on the section line north across Lake Tustin to where it meets with land at the shoreline across the lake. Similarly, the existing western boundary of the southwest quadrant of the City is the section line. The proposal there is to continue the boundary north across Lake Francis on the section line to where it meets with land at the shoreline across the lake.³⁸

30. There will be no physical development on the Subject Area, itself. The City intends to exercise legal jurisdiction over the Subject Area not unlike its jurisdiction over the land in the City, specifically, prohibiting the use of fire arms within the City limits.³⁹ By granting the Petition, the City would have a straight line across the lakes creating a larger buffer between the area where hunting may lawfully occur and an area which would come under the legal jurisdiction of the City where fire arm discharge would be prohibited.

Government Services

31. The proposed annexation does not impact on transportation issues.

32. The Township has taken the position that it has no control over the Subject Area within its Township borders and as such has exercised no regulation over them.⁴⁰ On the other hand, the City has demonstrated a necessity to regulate the Subject Area for the benefit of its residents and has indicated an intention to do so. The City has a no discharge fire weapons city ordinance, the Township does not. If the Petition is granted, the Subject Area will become subject to City governance. The City has indicated its willingness and intention to enforce its ordinances over the Subject Area, thereby benefiting its City residents. The Township may benefit as well since it would no longer be subject to tort liability relative to the Subject Area. With clarity over who has jurisdiction, the Sheriff could enforce the City Ordinance. The City already contracts with the Sheriff's Office for protection and law enforcement services. Based on the record before the ALJ, there will be no financial or other impact on the City or Township by the granting of the Petition.

33. There is no record of prior annexation agreements or orders.

34. The risk of being hit by shot gun pellets during hunting season can be viewed as a potential environmental problem. Granting the Petition would give relief to the public who recreate and City residents who live near the Subject Area. Furthermore, if the Subject Area became a resting area for waterfowl, it would benefit hunting generally by keeping the waterfowl around longer.⁴¹ This would not only benefit game birds but other birds as well. It would serve as a sanctuary for other birds and

³⁸ *Id.*, Visual tour of the Subject Area on September 10, 2009, the day of the evidentiary hearing.

³⁹ Test. of J. Moran; Ex. 2, Elysian City Ordinance #16, sec. 4 (9).

⁴⁰ Test. of Douglas Swedberg, Township Supervisor.

⁴¹ Test. of G. Buchschach and R. Johnson.

birdwatchers, too.⁴² There would be no additional need for more governmental services.

Fiscal or Other Impact

35. There is no fiscal impact on adjacent units of local government or on the school district.

36. The Township has been unable or unwilling to do anything to protect the safety or health of the public who recreate near or residents whose property abuts the Surface Area. The Township has been satisfied to rely on the existing DNR hunting regulations. Given the testimony at the informational session and evidentiary hearing, these regulations are insufficient.

37. The City has expressed an interest in enforcing a more stringent regulation; its City ordinance prohibiting the discharge of a weapon within City limits, and is in the best position to do so.

38. By permitting the annexation of the Subject Area, it has no impact on the ability of the remainder of the Township to continue or the feasibility of it being incorporated separately or being annexed to another municipality.

39. The record is silent as to the division of costs of this proceeding. The Township is not a formal party to 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. The ALJ has considered the factors enumerated in Minn. Stat. § 414.031, subd. 4.

5. 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

⁴² Test. of K. Nasal.

is required to protect the public health, safety, and welfare; or annexation would be in the best interest of the subject area.

6. The City has demonstrated by a preponderance of the evidence that the annexation of the Subject Area proposed for annexation is required to protect the public health, safety, and welfare as required by the criteria set forth in Minn. Stat. § 414.031, subd. 4(b)(2).

7. There has been a showing that the annexation would be in the best interest of the Subject Area as set forth in Minn. Stat. § 414.031, subd. 4(b) (3).

8. Only a portion of the Township is proposed for annexation. The record in this proceeding conclusively shows that the remainder of the township can 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 met.

9. The Township is not a formal party to this proceeding; therefore, the ALJ cannot assess any costs of this proceeding to the Township.⁴³

10. Any conclusion more properly characterized as a finding is adopted as such.

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

ORDER

IT IS HEREBY ORDERED that:

1. The Petition by the City of Elysian for the Unincorporated Subject Area in the Township of Elysian is **GRANTED**.
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 paid by the City of Elysian.

⁴³ Minn. Stat. § 414.12, subd. 4 (1).

4. This Order becomes effective upon issuance.

Dated: December 1, 2009



MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digital Recording

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 Le Sueur County District Court by filing an Application for Review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.⁴⁴

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.⁴⁵ 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 MBA. The City of Elysian seeks to annex a portion of Lake Francis and a portion of Lake Tustin which lay in the neighboring Township of Elysian.

This annexation is not a typical case. Generally speaking, annexation is invoked when the growth of a community transitions from town to suburban or urban. Often times, municipal government services and infrastructure are necessary to protect the public health, safety, and welfare. The factors in Minn. Stat. § 414.031 address these issues. Some of these factors do not specifically apply to the instant case because the City is not annexing land for purposes of land use development but rather is attempting to take limited control of surface lake water for safety purposes relating to hunting. While the development of the City around the lakes is the underlying reason for the annexation, the City is not annexing land to promote orderly development as in the usual annexation case. Hence, there are no fiscal or other impacts on the resulting political subdivisions arising from the proposed changes.

This annexation is unusual for another reason. While this matter has proceeded under the provisions of a contested case, the Township expressed early on, through its

⁴⁴ Minn. Stat. § 414.07, subd. 2.

⁴⁵ Minn. R. 6000.3100.

attorney that it did not wish to spend the resources to contest the annexation. The Township did not become a party to this case.

Residents of Elysian and the Township appeared at the informational session and the evidentiary hearing in this matter. The majority of the testimony was in favor of the granting of the Petition which would simply permit the City to exercise governance over the use of fire arms within its borders, including the annexed surface lake water of the Subject Area. A few Township residents expressed doubt whether annexation of bodies of water could occur. A few Township residents expressed opposition to the annexation. Their preference was that the current DNR hunting regulations be enforced.

The sad fact is that the DNR regulations have not protected the City's residents.⁴⁶ The City has an ordinance that prohibits the discharge of fire arms within the City. The Township does not, and given the tenor of the Township testimony, it is apparent that the Township is not interested in any additional regulation of the lakes. By the granting of the Petition, the Sheriff is given specific authority to enforce the City ordinance and regulate the discharge of weapons within the City.

Finally, the ALJ heard testimony of the City Land Use Planner. He testified at the informational session and the evidentiary hearing. His unrebutted testimony indicated that it is quite common that boundaries are created on sectional lines across bodies of water through annexation and Exhibits 3-7 to illustrate this in the immediate area of Elysian on Minnesota Lake, Mountain Lake, and in the cities of Waterville, Windom, and Albert Lea. He further testified that the City initiated discussions with the Township to develop a township ordinance that would proscribe fire arm use in the Subject area. The Township declined.

Conclusion

After careful consideration of the relevant statutory factors, the ALJ finds the City has carried its burden by meeting the criteria for approval in Minn. Stat. § 414.031, subd. 4(b) and that municipal government is needed to protect the health, safety, and welfare of the area. Furthermore, there has been a showing that the annexation would be in the best interest of the Subject Area. The Petition is therefore granted.

Division of Costs

As stated at the onset, there is only one party to this Petition, the City of Elysian. Pursuant to Minn. Stat. § 414.12, subd. 3, the cost of the proceedings will be borne by the City of Elysian.

M.J.C.

⁴⁶ Lt Frear testified that on one occasion when the DNR was called, the Conservation Officer was in the middle of a lake with a broken motor and could not respond. He further indicated that the fall is their high season due to hunting and that DNR resources are limited.