

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of A-7840 - City of
Proctor/Midway Township; the Petition for
Annexation of Midway Township

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

The above-entitled matter came on for hearing before Administrative Law Judge James E. LaFave on September 9, 2013, in the chambers of the Duluth City Council, Duluth, Minnesota. The hearing continued for the next three days and concluded on September 12, 2013. An opportunity for public testimony was held on the evening of September 11, 2013. The post-hearing submissions were received and the record closed on October 7, 2013.

John H. Bray, Maki & Overom, Ltd., appeared on behalf of the City of Proctor (Proctor). Kenneth D. Butler, Kenneth D. Butler, Ltd., appeared on behalf of Midway Township (Midway or Subject Area). Robert E. Asleson and Nathan LaCoursiere, Assistant Duluth City Attorneys, appeared on behalf of the City of Duluth (Duluth).

STATEMENT OF THE ISSUE

Minnesota law allows the annexation of unincorporated land by an adjoining municipality. Should the City of Proctor's Petition for Annexation of Midway Township be granted?

SUMMARY OF CONCLUSIONS

Because, among other reasons, Midway Township is not now, nor is likely to become, urban or suburban in character, the Administrative Law Judge finds that the Petition should be denied.

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

FINDINGS OF FACT

1. An Orderly Annexation Agreement between Midway and Duluth was filed with the Municipal Boundary Adjustment Unit (MBAU) on January 15, 2013.
2. On January 16, 2013, Proctor filed its petition with the MBAU seeking the annexation of Midway. Midway consists of approximately 11,451 acres of unincorporated property (Subject Area). The legal description of the Subject Area is:

That portion of Township Forty-Nine North (T49N), Range Fifteen West (R15W) located within the County of St. Louis, Minnesota, and designated as Midway Township, more properly described as the Westerly One-Half (W 1/2) of Township 49 North, Range 15 West, St. Louis County, Minnesota.

3. On February 6, 2013, Assistant Chief Administrative Law Judge Timothy J. O'Malley¹ ruled that no action would be taken on the Orderly Annexation Agreement between Midway and Duluth pending the resolution of Proctor's petition to annex Midway.²

4. On February 12, 2013, Assistant Chief Administrative Law Judge Timothy J. O'Malley determined that this matter should be referred to an Administrative Law Judge for hearing and final decision. The Chief Administrative Law Judge appointed Administrative Law Judge James E. LaFave.

5. By letter dated February 20, 2013, Duluth asserted that it had a direct legal interest in the proceeding and requested to become a party.³ The request was granted and Duluth became a party to this proceeding.⁴

6. On March 6, 2013, Assistant Chief Administrative Law Judge Timothy J. O'Malley and Administrative Law Judge James E. LaFave conducted the first statutory hearing. Notice of the hearing was published in the *Duluth News-Tribune* on February 20 and 27, 2013.⁵

7. A prehearing conference was conducted by Administrative Law Judge James E. LaFave on March 26, 2013 and the evidentiary hearing was scheduled to begin September 9, 2013. Notice of the hearing was published in the *Duluth News-Tribune* on August 21 and 28, 2013.⁶

8. Midway filed a motion to dismiss Proctor's Annexation Petition for lack of jurisdiction on April 19, 2013. On the same day Duluth joined the Motion to Dismiss and, in the alternative, moved for consideration of the Orderly Annexation Agreement between Duluth and Midway. Following a May 30, 2013, hearing on the motions, the Administrative Law Judge denied the motions by order dated August 20, 2013.

9. Pursuant to Minn. Stat. § 414.0333, a public information session was held on September 11, 2013. Both Proctor and Midway responded to questions from the public.

¹ Assistant Chief Administrative Law Judge Timothy J. O'Malley was designated by the Chief Administrative Law Judge to exercise the authority conferred by Minn. Stat. § 414.01, subd. 1.

² See, Letter from Timothy J. O'Malley, Assistant Chief Administrative Law Judge, to John Bray and Kenneth D. Butler (February 6, 2013).

³ Letter from Robert E. Aleson, Assistant Duluth City Attorney, to Timothy J. O'Malley, Assistant Chief Administrative Law Judge (February 20, 2013).

⁴ Second Prehearing Order (April 1, 2013).

⁵ Affidavit (Aff.) of Joe Grammond, publisher of the *Duluth News-Tribune* (March 1, 2013).

⁶ Aff. of Joe Grammond, publisher of the *Duluth News-Tribune* (August 30, 2013).

Background on Proctor's Annexation Petition

10. The Proctor City Council met on December 3, 2012. At that meeting Proctor City Administrator, James Rohweder, presented the Council with a memorandum entitled "Boundary Adjustment" (Memo).⁷ Mr. Rohweder maintained the City Council should immediately begin the process of annexing Midway.⁸

11. The Memo stated that annexation was "essential to guarantee that [Proctor] can continue to provide services our citizens expect without burdening them with higher property taxes." It went on to argue the annexation would increase Proctor's tax base and allow it to continue to provide services to the citizens of Proctor without increasing taxes or reducing services.⁹

12. It was also noted that the additional population would put Proctor close to the "magic" 5,000 population number that would qualify the City for additional State aid.¹⁰

13. On December 3, 2012, the Proctor City Council voted 3-2 to adopt Resolution 17-12 and proceed with the annexation of Midway.¹¹

14. Proctor did not schedule public meetings to discuss the impact of annexation or to receive comments from the public. In addition, Proctor did not conduct any planning or analysis of Midway's present needs, or prepare any plans, budgets, or bonding proposals for the extension of any particular services to Midway within a reasonable time following annexation.¹² However, Mr. Rohweder, as Proctor City Administrator, did meet with the Proctor city department heads on how annexation would happen and how to pay for it.¹³

Annexation Factors – General

15. Minn. Stat. § 414.031, subd. 4(a), sets out a number of factors that must be considered in an annexation proceeding. These factors include: the informational meeting, 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.

⁷ Joint Exhibit (Ex.) F-1.

⁸ Testimony (Test.) of James Rohweder; Joint Ex. F-1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Joint Ex. E-2(d) at 56.

¹² Ex. 312 and Joint Ex. F-6.

¹³ Test. of J. Rohweder.

The joint informational meeting

16. On September 11, 2013, a joint informational meeting was held in the chambers of the Duluth City Council.¹⁴ Thirty people spoke. Only five spoke in favor of Proctor annexing Midway.¹⁵

17. Several speakers expressed concern over the historical relationship between Proctor and Midway.¹⁶ Mr. Larry Sillanpa observed that the “bad blood” between Proctor and Midway “goes back for decades.”¹⁷ Mr. Todd McCoannell has “no faith or trust in Proctor.”¹⁸ Ms. Lois Hoffbauer described the annexation process as a “hostile takeover.”¹⁹

18. The prospect of increased taxes troubled many.²⁰ Mr. McCoannell noted that taxes would increase for Midway residents by approximately 60 percent and Mr. Jeff Line questioned what Midway would get in return for the increased taxes.²¹

19. Mr. Keith Anderson was worried about snow removal. Snow removal for Midway is currently handled by St. Louis County, and he does not believe Proctor can do the job.²²

20. Mr. James Rohweder, who spoke in favor of annexation, believed the “hostility” was only related to the annexation and that a lot of misinformation was being spread.²³

21. Ms. Lois Lennartson spoke of her love of the township government that Midway provided and noted that over 600 Midway residents signed a petition opposing the annexation.²⁴

Demographics, Geography, and Land Use Planning

22. Proctor and Midway are part of the greater Duluth-Superior metropolitan area and are located adjacent to the western border of Duluth.²⁵ The Duluth region is the economic and cultural center of northeastern Minnesota and western Wisconsin.²⁶

¹⁴ Aff. of Joe Grammond, publisher of the *Duluth News-Tribune* (August 30, 2013).

¹⁵ See, Testimony of James Rohweder, Janice Rohweder, Dan Rohweder, Rebecca Benna and Kelly Colt.

¹⁶ See, Testimony of Larry Sillanpa, Todd McCoannell, and Win Erickson.

¹⁷ Test. of L. Sillanpa.

¹⁸ Test. of T. McCoannell.

¹⁹ Test. of Lois Hoffbauer.

²⁰ See, Test. of T. McCoannell, Grant Forsyth, Doug Hoffbauer, Scott Lonne, Dave McLeod, Al Haugsand, Leon Bruhjell, Wayne Abraham, Peggy Ostman, Jeff Line and Mathew Bettendorf.

²¹ Test. of T. McCoannell and J. Line.

²² Test. of Keith Anderson.

²³ Test. of J. Rohweder; See, Ex. 400 (Ex. 400 is a post card, mailed to Midway residents, which encouraged only those opposed to the annexation to appear at the September 11, 2013, information hearing).

²⁴ Test. of Louis Lennartson; See, Ex. 208 (Petition Opposing Proposed Annexation of Midway Township by the City of Proctor, Minnesota signed by 633 individuals).

²⁵ Ex. at 119.

²⁶ *Id.*

23. The Subject Area consists entirely of Midway.²⁷ Proctor shares nearly one-half of Midway's eastern border – 3.35 out of 6.23 miles. Duluth shares the remaining portion of Midway's eastern border – 2.88 miles and all three miles of Midway's southern border. Midway's northern border (three miles) is shared with Hermantown and its western border is shared with Thomson Township (six miles).²⁸

24. Proctor is slightly larger than three square miles (1,988.5 acres) and in 2010 had a population of 3,057.²⁹ Midway is slightly less than 18 square miles (11,451.5 acres) and in 2010 had a population of 1,399.³⁰

25. The Subject Area consists of two distinct topographical areas. The northern one-half has rolling hills, intersected by swamps and streams. The southern one-half is dominated by high rocky hills, steep cliffs, and rocky ravines.³¹

26. There are extensive areas of woodland coverage in the Subject Area. Woodlands cover approximately 63 percent of Midway (7,248 acres).³² Wetlands cover an additional 21.5 percent of the Subject Area (2,486.9 acres).³³

27. Prime farmlands are found in the western two-thirds of the Subject Area. However, since the southern portion of Midway is intersected by a network of highways and railroads that preclude significant farming, the key areas of prime farmland are in the northwestern corner of the Subject Area.³⁴

28. Growth towards the Subject Area from Proctor is limited by natural features, primarily a large wetlands complex in the northeast corner of Midway. Growth in the southern portion of the Subject Area is likely to align closely with Becks Road from Gary/New Duluth towards Interstate 35 due to steep slope constraints.³⁵

29. The land use of Midway consists primarily of low-density rural residential development.³⁶ Midway's land is 77.8 percent in ownership parcels of 10 acres or more, and approximately 60 percent is in parcels of 20 acres or more.³⁷ Less than one percent of Midway is contained in parcels of one acre or less.³⁸

30. There are two exceptions to the "low-density rural" nature of the Subject Area. First, there are scattered commercial and industrial uses located in the northwest corner of the intersection of I-35 and Midway Road, in the southern portion of the township along Becks Road, and in the far northeastern corner of the township adjacent to the rail yards.³⁹ The second is Midway Park. Midway Park is an approximately 20

²⁷ Ex. 201 at 16.

²⁸ Ex. A-1.

²⁹ Ex. 201 at 16; Ex. 112 at 3.

³⁰ *Id.*

³¹ Ex. 201 at 16.

³² Ex. 300 at 19.

³³ Ex. 200 at 21.

³⁴ Ex. 300 at 20.

³⁵ *Id.*

³⁶ Ex. 300 at 29.

³⁷ Ex. 201 at 21.

³⁸ *Id.*

³⁹ Ex. 300 at 29.

acre moderate-density development platted in 1910 to house workers at the adjacent rail yard and is served by sewer and water.⁴⁰ The extent of Midway Park has not changed over the past 60 years.⁴¹ Midway's 2008 Comprehensive Plan states that "extensions of utility services from Midway Park will only be permitted to existing development to address public health issues related to drinking water supply and sewage treatment."⁴²

Estimated Growth in Development

31. Based on projections from the Minnesota State Demographer's Office, the population of Proctor is expected to be 3,402 in 2020, which would be an increase of 11.35 percent from 2010. Midway is projected to have a population of 1,337, or a decrease of 4.4 percent from 2010.⁴³

32. By contrast Duluth had a population of 86,265 in 2010 and the population of Duluth is expected to increase to 88,927 by 2020 (1.3%). Hermantown (on Midway's northern border) had a population of 9,414 in 2010 and is expected to have a population increase of 27.6 percent by 2020. Finally, Thomson Township with a population of 5,003 in 2010 is projected to have a population increase of 7.1 percent by 2020.⁴⁴

33. The Minnesota State Demographer estimated that the number of households in Midway will increase from 541 in 2010 to 612 in 2020 (13.2%).⁴⁵ In Proctor, over the same time period, it is projected that households will increase from 1,268 to 1,396 (10.1%).⁴⁶

34. Proctor does not intend to change the land use of the Subject Area, with the exception of the I-35 Corridor.⁴⁷

35. Proctor looks at the I-35 Corridor as a prime location for future development.⁴⁸ However, commercial real estate brokers familiar with the market believe that the area surrounding this section of the I-35 Corridor does not have a lot of demand associated with it.⁴⁹ In addition, population densities are lower in this part of the Corridor than to the west in Cloquet or the east in West Duluth.⁵⁰ The brokers believe that attracting any new development will be difficult.⁵¹

36. Proctor's expert calculated that approximately 10,000 square feet of retail development could be supported along the I-35 Corridor through 2020.⁵² This limited amount of demand is largely due to the limited amount of forecasted household growth

⁴⁰ *Id.*

⁴¹ *Id.* at 29, n. 46.

⁴² Ex. C-1 at 4.

⁴³ Ex. 112.

⁴⁴ *Id.*

⁴⁵ Ex. 199 at 3.

⁴⁶ *Id.*

⁴⁷ Test. J. Rohweder.

⁴⁸ Ex. F-2 at 3.

⁴⁹ Ex. 119 at 7.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Test. of Philip Carlson; Ex. 119 at 8.

in the region and the decreased amount of vehicle traffic along the Corridor since 2000.⁵³ Proctor's expert also believes that approximately 4,000 square feet of additional office space could be supported in the Corridor through 2020.⁵⁴

37. A single acre of land supports 10,000 square feet of new commercial development.⁵⁵

38. Proctors' Comprehensive Plan – 2020 Vision, prepared July 2010, does not address the annexation or its plans for the Subject Area because the annexation had not taken place.⁵⁶

Governmental Services and Transportation

39. If the Petition is granted, the Subject Area will be governed by Proctor. Midway strongly opposed annexation. Midway contended that the Subject Area has been well served by township government and that form of government is appropriate into the future. This opinion is shared by a vast majority of the population of Midway, including many of those persons owning land located in the Subject Area.⁵⁷

40. Midway is a duly established township under Minnesota Statutes with a town board of supervisors elected by its residents, with a town clerk, town treasurer, and other officials managing for the provision of services to its residents. These services include:

- contracting for the maintenance of township roads;
- contacting for emergency medical services;
- contracting for fire protection;
- obtaining law enforcement services from the St. Louis County Sheriff;
- owning water and sewer utilities;
- performing the duties required by the Municipal Separate Storm Sewer System;
- adopting a comprehensive plan;
- adopting and enforcing its own zoning ordinances;
- maintaining a town park;
- operating a recycling center; and
- providing general governmental services.⁵⁸

⁵³ Ex. 119 at 8.

⁵⁴ *Id.*

⁵⁵ Test. of P. Carlson.

⁵⁶ Test. J. Rohweder; See, Ex. C-5.

⁵⁷ See, public testimony on Sept. 11, 2013; Ex. 208 (Petition Opposing Proposed Annexation of Midway Township by the City of Proctor, Minnesota signed by 633 individuals).

⁵⁸ Ex. 214.

41. The St. Louis County Sheriff provides law enforcement services to Midway.⁵⁹ The level of protection provided by the St. Louis County Sheriff's office is adequate to meet the needs of Midway.⁶⁰

42. If the annexation petition is granted, Proctor would hire at least another police officer and perhaps an investigator.⁶¹ If Proctor were to provide police service to Midway, it would be able to respond to calls more quickly than the St. Louis County Sheriff.⁶²

43. Midway is served by 62 miles of roads including I-35, which transects the Township.⁶³ Of the 62 miles, 34.7 are St. Louis County Roads, and there are 18.8 miles of township roads.⁶⁴ Midway contracts with St. Louis County for snowplowing and maintenance of those roads.⁶⁵ The Midway Township Board conducts annual road inspections and has an ongoing program of road upgrade and maintenance.⁶⁶

44. Prior to the hearing in this matter, the Administrative Law Judge toured the subject area accompanied by counsel. A visual survey of the Subject Area convinced the Administrative Law Judge that the vast majority of the Subject Area is rural.

Economic Impacts of Annexation

45. St. Louis County Deputy Auditor, Brandon Larson, testified that if the petition for annexation were granted, a combined Proctor and Midway would have a 2013 levy of \$1,319,752 (Proctor's 2013 budget of \$1,089,762, plus an additional \$230,000 annual expense due to annexation) with a local tax extension rate of 39.03 percent.⁶⁷

46. If the petition is granted, Proctor's tax levy would go down by 28.7 percent and Midway's levy would go up by 63.4 percent.⁶⁸

47. Proctor would phase-in any tax increase on the citizens of Midway over a five-year period.⁶⁹

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

49. 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:

⁵⁹ Test. of Lt. Jason Lukovsky.

⁶⁰ *Id.*

⁶¹ Test. of Proctor Police Chief Walter Wovig.

⁶² Test. of J. Lukovsky.

⁶³ Ex. 201 at 34.

⁶⁴ *Id.*

⁶⁵ *Id.* at 36.

⁶⁶ *Id.*

⁶⁷ Test. of Brandon Larson.

⁶⁸ *Id.*, Ex. 201 at 65.

⁶⁹ Test. J. Rohweder.

CONCLUSIONS OF LAW

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 Chief Administrative Law Judge of the Office of the Administrative Hearings.

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

3. Proctor 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 Administrative Law Judge 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 that 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 Midway Park. That portion has not been separately identified for annexation independent of the rest of the Subject Area.

6. Except for Midway Park, the Subject Area is predominantly rural in character. There are no other portions of the Subject Area that are likely to become urban or suburban in character within a foreseeable time frame.

7. 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.

8. 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.

9. 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.

10. 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 Midway's taxes would increase by over 63 percent. Given the benefits currently enjoyed by the residents of the Subject Area, and examining the services to be provided by Proctor, the increase in taxes exceeds benefits of services that are actually received by the residents of the Subject Area. Pursuant to Minn. Stat. § 414.031, subd. 4(d), the annexation petition of the City must be denied.

11. Any conclusion more properly denominated a Finding of Fact is adopted as such.

Based upon these Conclusions of Law, 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 Proctor for the Unincorporated Property in the Township of Midway is **DENIED**.
2. The Municipal Boundary Adjustment 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 Proctor 33.4%; to Midway Township 33.3%; and to City of Duluth 33.3%.
4. This Order becomes effective upon issuance.

Dated: March 6, 2014



JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally recorded

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 St. Louis 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.⁷⁰

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within seven days from the date of the mailing of the Order.⁷¹ A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

⁷⁰ Minn. Stat. § 414.07, subd. 2.

⁷¹ Minn. R. 6000.3100.

MEMORANDUM

This is an annexation proceeding under Minn. Stat. ch. 414 where Proctor seeks to annex neighboring Midway. Proctor is trying to ensure its long-term survival. It believes the annexation is essential to guarantee that Proctor can continue to provide services to its citizens without burdening them with higher property taxes. Midway opposed the annexation, maintaining that the Subject Area is rural and agricultural and therefore better suited to township governance.

Statutory Guidelines

For an annexation petition to be approved, the subject area must either: (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.⁷² Each of these factors will be discussed individually.

It is important to note that the focus of the analysis is on the Subject Area, not the petitioning municipality.⁷³

A. Urban or Suburban in Character

Planned Development

Neither Proctor nor Midway is experiencing the significant growth and development that characterizes a need for annexation. As former Chief Judge Krause observed “[T]he 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.”⁷⁴

Proctor acknowledges that the only portion of the Subject Area that is about to become urban or suburban in character is Midway Park.⁷⁵ Midway Park is only around 20 acres in size, and represents a mere .002 percent of the Subject Area’s total 11,451 acres.

Midway Park was platted and built out beginning in 1910 to house railroad workers and has not changed in size in 60 years. No evidence was introduced to suggest that was going to change. The evidence revealed that growth towards Midway Park from Proctor is limited by a large wetlands complex.⁷⁶

According to the record, the only other property within the Subject Area with potential for significant development is the I-35 Corridor. Proctor’s own expert, however, testified that the potential growth in retail and office space in the I-35 Corridor

⁷² Minn. Stat. § 414.031, subd. 4(b).

⁷³ See, Minn. Stat. § 414.01, subds. 1a(1) and (2); Minn. Stat. § 414.031, subds. 4(b)(2) and (3).

⁷⁴ *ITMO the Petition of the City of Pine River for Annexation of Unincorporated Property in the Township of Wilson Pursuant to Minnesota Statutes 414.031 (A-7593)*, FINDING OF FACT, CONCLUSIONS AND ORDER, at 23, Docket No. 2-0330-19383 (Jan. 13, 2009).

⁷⁵ Findings of Fact, Conclusions of Law and Order, submitted by Proctor at 13 (October 7, 2013).

⁷⁶ See, Ex. 300 at 29.

through 2020 was only 14,000 square feet. It would take slightly more than one acre to accommodate that development. The evidence demonstrated that the growth in the Duluth area was likely to be to the north in Hermantown and beyond, missing the Proctor–Midway area almost entirely. There is no evidence that the services being provided to the citizens of Midway are inadequate or that any growth would put a strain on the infrastructure.

Growth, both experienced and anticipated, is at the heart of an area becoming urban or suburban in character. There is no such development pressure occurring in Proctor or Midway. The overall rate of growth in both Proctor and Midway has been low and can easily be accommodated by the existing infrastructure.

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. Proctor 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 declared that township government “most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes.”⁷⁷ In this case, the vast majority of Subject Area is rural, undeveloped and better suited to township governance. Proctor has not demonstrated that municipal government is needed to protect the public health, safety, and welfare of the Subject Area.

Enhanced Governmental Services

Proctor asserts that there are four areas where Proctor would provide enhanced governmental services to Midway. Those are: fire and first responder services, police services, street services, and administration.⁷⁸

Proctor currently provides fire protection to the Subject Area. There will, therefore, be no difference in fire protection to the Subject Area. With regard to police services, while the police services being provided by the St. Louis County Sheriff’s Office are more than adequate, Proctor would be in a position to respond to calls more quickly. There is no evidence that the Subject Area is in need of police services beyond those already provided.

The proposals of Proctor regarding other municipal services to the Subject Area provide further confirmation that there is no current need for municipal government there. While Proctor’s city offices are open five days a week, there was no evidence that Midway’s current operation was insufficient. The existing roadways will remain, with the only difference being who will plow and care for them.

⁷⁷ Minn. Stat. § 414.01, subd. 1a(2).

⁷⁸ Findings of Fact, Conclusions of Law and Order, submitted by Proctor at 12 and 13 (October 7, 2013).

After reviewing the evidence it is clear 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.”⁷⁹ In this proceeding, the Administrative Law Judge has considered the anticipated growth, the reasons offered by Proctor to support annexation, the services that Proctor 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

Midway argued there was no meaningful planning and public participation in Proctor’s annexation process. Proctor asserted that it has done what planning is required.

Prior planning is not a statutory factor required for granting an annexation.⁸⁰ The Minnesota Court of Appeals declared the 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.⁸¹

But even in the case where plans have not been reduced to writing, successful annexation requires extensive joint planning.⁸² No joint planning with Midway has been done in regard to this annexation. Proctor’s approach to this annexation has lacked any meaningful opportunity for Midway 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. The record in this matter demonstrates that Proctor has

⁷⁹ *ITMO the Petition of the City of Pine River for Annexation of Unincorporated Property in the Township of Wilson Pursuant to Minnesota Statutes 414.031 (A-7593)*, FINDING OF FACT, CONCLUSIONS AND ORDER, at 28, Docket No. 2-0330-19383 (Jan. 13, 2009).

⁸⁰ See, Minn. Stat. § 414.031, subd. 4.

⁸¹ *McNamara v. Office of Strategic and Long Range Planning*, 628 N.W.2d 620, 630 (Minn. Ct. App. 2001), rev. denied (Minn. Aug. 22, 2001).

⁸² *Id.*

not conducted the planning needed to support a successful expansion of Proctor and its services into the Subject Area.⁸³

Taxation

According to the St. Louis County Deputy Auditor, the tax rate for property owners in the Subject Area would rise by 63.4 percent if annexation is granted. Proctor residents would enjoy a reduction of 28.7 percent.

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

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.”⁸⁴ Proctor estimates that the value conferred on the Subject Area is the cost of buying a plow truck, in addition to hiring one or two police officers and a person for the road crew.⁸⁵ The project cost of annexation for the first year would be \$360,000 with an annual cost thereafter of approximately \$230,000.⁸⁶

The crux of the analysis is the value of the benefits conferred upon the annexed area. Midway will receive some benefit. There is no dispute that if Proctor is handling police service, that calls will be answered more quickly than by the St. Louis County Sheriff’s Office. Beyond that, however, Midway will not receive benefits it does not already enjoy at a lower tax rate.

Proctor’s own evidence and testimony indicate that the proposed annexation is not intended to address issues of managing impending growth. Rather, the annexation has been proposed to relieve the conditions that have left Proctor with the prospect of reducing services to its resident or raising taxes.⁸⁷ The record in this matter shows that Proctor proposes to address its financial problems by annexing Midway, and hoping for development in the I-35 Corridor, while extending few, if any, services to Midway that are not already received by that area at a far lower cost in taxes.

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

⁸³ 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.

⁸⁴ Minn. Stat. § 414.031, subd. 4(d).

⁸⁵ Test. J. Rohweder.

⁸⁶ *Id.*

⁸⁷ *Id.*; Joint Ex. F-1.

to the Subject Area, Proctor's annexation petition must be denied. Based on Proctor's evidence alone, Midway 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.

Conclusion

After careful consideration of the statutory factors, the Administrative Law Judge 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 of Proctor 33.4%, to Midway Township 33.3% and to the City of Duluth 33.3%. This allocation is meant to reflect the equal participation of all parties to this action.

J. E. L.