

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of
Certain Real Property to the City of
Waconia from Waconia Township
(MBAU Docket A-7945)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF DISMISSAL
WITH PREJUDICE**

On August 17, 2015, the city of Waconia (City) adopted Ordinance Number 690 (Ordinance) annexing two parcels of real property consisting of approximately 70 acres (Property) owned by Waconia Public Schools, Independent School District No. 110 (School District) and presently located within the boundaries of the Township of Waconia (Township). Pursuant to Minn. Stat. § 414.033, subd. 2(3) (2014), the City petitioned for an Order from the Chief Administrative Law Judge approving the Ordinance, which will have the legal effect of detaching the Property from the Township and annexing it into the City.

Michael C. Couri, Couri & Ruppe, PLLP, appears on behalf of the Township. The City appears through Dave Hubert, Melchert, Hubert and Sjodin, PLLP. The School District appears through Patrick Devine, its Superintendent.

Based upon a review of the Ordinance together with all other filings submitted by the City, Township and School District, and upon a review of matters of public record of which the Chief Administrative Law Judge takes judicial notice as noted below, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The parties to this proceeding include the City¹ and the Township.²
2. The Property is located adjacent to the current boundaries of the City and legally described as follows:

Parcel 1

The South Half of the Southwest Quarter of Section 22, Township 116, Range 25, Carver County, Minnesota, EXCEPTING THEREFROM the following described parcel:

¹ Minn. Stat. § 414.12, subd. 4(1) (2014).

² *Id.*, subd. 4(2) (2014).

The East 659.44 feet of the Southeast Quarter of the Southwest Quarter of Section 22, Township 116, Range 25.

Parcel 2

That part of the East 659.44 feet of the Southeast Quarter of the Southwest Quarter which lies South of the North 894.89 feet thereof; together with that part of the West 10.00 acres of the Southwest Quarter of the Southeast Quarter which lies South of the North 894.86 feet thereof; all in Section 22, Township 116, Range 25, Carver County, Minnesota.³

3. The Property is located immediately adjacent to other properties owned by the School District that are operated as the Clearwater Middle School and the Waconia Senior High School, both of which are located completely within City boundaries.

4. The School District intends to use the Property to renovate and expand the middle school and the high school.⁴

5. Parcel 1, identified for tax purposes as Property ID Number 090220820 and made up of approximately 58.5 acres, was purchased by the School District on February 23, 2015.⁵

6. Parcel 2, identified for tax purposes as Property ID Number 090220800 and made up of approximately nine acres, was purchased by the School District on March 31, 2006.⁶

7. As properties used for public purposes, neither Parcel 1 nor Parcel 2 have generated any tax revenue for the Township since the dates they were purchased by the School District.⁷

8. In Section 3 of the Ordinance, the City makes the following findings:

The City Council finds the Land: a) abuts the present corporate limits of the City of Waconia; b) is not included within any other municipality, c) is less than 120 acres in area; d) is not platted; e) is urban or suburban in character; f) **is not presently served by public waste water facilities or public waste water facilities are not otherwise available**; and g) is an appropriate area to be subject to municipal government.⁸

³ Ordinance No. 690, Exhibit (Ex.) A (Aug. 15, 2015).

⁴ See Superintendent's Report, Waconia Board of Education (Apr. 13, 2015) (available at <https://v3.boardbook.org/Public/PublicItemDownload.aspx?ik=36815707>); see also Roadway Planning, Waconia Board of Education (May 8, 2015) (available at <https://sites.google.com/a/isd110.org/update/roadways>).

⁵ Carver County Property Report Card (Oct. 12, 2015) (available at <https://gis.carver.mn.us/publicparcel/>).

⁶ Carver County Property Report Card (Oct. 12, 2015) (available at <https://gis.carver/mn/us/publicparcel/>).

⁷ See Minn. Stat. § 272.02 (2014).

⁸ Emphasis added.

9. In Section 7 of the Ordinance, the City acknowledges the Ordinance is subject to the provisions of Minn. Stat. § 414.036 (2014). The City also provides for a \$35,000 payment to the Township labeled as “TAX REIMBURSEMENT” and described as follows:

Pursuant to Minnesota Statutes § 414.036, the City and Waconia Township have agreed that a single payment of \$35,000 is payable to the Township as reimbursement for all or part of the taxable property annexed by this Ordinance. The payment has already been made and a copy of the Township’s receipt acknowledging payment has been attached as Exhibit C (the “Receipt”). There are no special assessments assigned by the Township to the annexed property and no debt incurred by the Township prior to the annexation and attributable to the property annexed.

10. In Exhibit C to the Ordinance, the Township memorializes the following statements directed to the School District:

“70 acres has been purchased by the Waconia Public Schools from the Waconia Township, as for annexation of the new school. **The agreement was made for the school to pay \$500.00 per acre.** A check in the amount of \$35,000.00 check number #5190040 was paid to the township on July 21, 2015.”⁹

11. On October 13, 2015,¹⁰ the Chief Administrative Law Judge issued Findings of Fact, Conclusions of Law, and Order Regarding Supplementation of Record wherein the parties were required to supplement the record in the following two respects: (1) the City was required to establish whether “public wastewater facilities are not otherwise available” to service the Property, as required by Minn. Stat. § 414.033, subd. 10 (2014); and (2) the Township was required to furnish “factual and/or legal authority related to its practice of charging the City and/or the School District a fee of \$500 per acre for tax reimbursement for the loss to the Township of the Property,” given the lack of identified statutory or other legal authority for the Township’s apparent practice of charging a “annexation tax reimbursement payment.”

12. Having received no supplementation of the record from either party, the Chief Administrative Law Judge amended and reissued her Findings of Fact, Conclusions of Law, and Order Regarding Supplementation of Record on November 3, 2015 to include a November 10, 2015 deadline for the required supplementation.

13. On November 9, 2015, the City filed correspondence with the Office of Administrative Hearings wherein it stated as follows: “The City hereby withdraws its request to annex the Subject Property by ordinance.”¹¹ The City further stated that “this

⁹ Emphasis added.

¹⁰ This filing was re-served on the Waconia Town Board on October 20, 2015 due to the original’s return by the U.S. Postal Service related to an incorrect address.

¹¹ Correspondence signed by Lane Braaten, Community Development Director for the City (Nov. 9, 2015).

withdrawal renders Judge Pust's order for information from the City moot...."¹²

14. Attached to its November 9, 2015 filing, the City enclosed correspondence from the City Administrator, dated November 2, 2015, which established that the Property is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available.¹³

15. Also attached to its November 9, 2015 filing, the City filed correspondence from the School District, dated October 27, 2015, wherein the School District states as follows:

We are writing this letter to explain the Waconia Public School District outlook on the issues surrounding the annexation of school district property out of Waconia Township and into the City of Waconia. We have been working with the city and the township since June to get the land annexed into the city. As part of that process we paid a fee of \$35,000, \$500 per acre times 70 acres, to the township for the right to move the property from the township to the city. We did not agree with that assessment and asked to have the assessment waived. We were told no that we would have to pay the assessment and that they would not waive it. When we asked for a justification for the assessment they told us that they did not have to justify the assessment. We paid the fee to move the annexation process along.

We are now in a position that we cannot get a permit to proceed with our project. With winter coming soon it is very important that this matter gets settled quickly. Failure to resolve this matter quickly will result in increased construction costs due to the extra costs to put foundations into frozen ground and inflation adjusted construction costs. This will potentially cost the district hundreds of thousands of additional construction dollars. All of this we were hoping to avoid by paying the \$35,000 to the township. We have asked the township to give zoning authority of the property to the county who would then turn it over to the city of Waconia who would oversee the project and give final permit authority. The township will not agree to do this. Please help us!

A timely resolution to this matter would be greatly appreciated.¹⁴

16. The last attachment to the City's November 9, 2015 filing was a Joint Resolution for Orderly Annexation executed between the City and the Township, filed in support of the City's and Township's "respectful[]" request that an order approving the annexation be entered within 30 days," pursuant to Minn. Stat. § 414.0325 (2014).¹⁵

¹² *Id.*

¹³ Correspondence from the City of Waconia (Nov. 2, 2015).

¹⁴ Correspondence from ISD #110, Waconia Public Schools (Oct. 27, 2015).

¹⁵ Correspondence signed by Lane Braaten, Community Development Director for the City (Nov. 9, 2015).

17. In its filing, the City explains that it has “has agreed to withdraw its original request for annexation by ordinance and instead submit the enclosed joint resolution proposed by Waconia Township” in order to avoid further financial harm to the School District resulting from the project’s delay.

18. Through counsel, on November 9, 2015 the Township filed correspondence in which it joined in the City’s request for approval of the joint resolution.

19. The Township’s counsel also noted that “[r]ather than locate and submit the documentation requested by the Court in its most recent order pertaining to the now-withdrawn annexation by ordinance request,” counsel chose to submit instead various pleadings and an Order of the Honorable Gary Pagliaccetti, Judge of District Court, Sixth Judicial District, State of Minnesota, filed on September 30, 2013 in a matter titled *Town of White v. City of Biwabik*, No. 69VI-CV-12-1190 (Minn. Dist. Ct. Sept. 30, 2013). Counsel asserted that these materials were legally relevant to the issue of whether Waconia Township had any lawful authority to demand public funds from the School District as an “annexation tax reimbursement payment.”¹⁶

20. As evidenced in the Joint Resolution for Orderly Annexation of the Property, the City and the Township still desire and intend to have the Property detached from the Township and annexed to the City, as requested by the School District in furtherance of its efforts to meet the community’s needs for expanded public school facilities.

21. Notwithstanding this desire and intent, and notwithstanding the Township’s demand for and receipt of a \$35,000 “annexation tax reimbursement payment” paid by the School District, the Township and the City decided, in a coordinated manner, to withdraw the annexation-by-ordinance petition for the purpose of circumventing the Chief Administrative Law Judge’s October 13, 2015 Order in which the Township was required to publicly disclose the factual and legal authority upon which it relied in demanding the School District’s payment of the \$35,000 “annexation tax reimbursement payment.”

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

CONCLUSIONS OF LAW

1. Annexations by ordinance are governed by the provisions of Minnesota Statutes Chapter 414 (Municipal Boundary Adjustment Act) and, most specifically, by Minn. Stat. § 414.033 (2014).

2. The Chief Administrative Law Judge is authorized to review and approve an annexation ordinance pursuant to Minn. Stat. §§ 414.01-.12 (2014) and Minn. R. 6000 (2015).

¹⁶ Correspondence from Michael C. Couri (Nov. 9, 2015).

3. The Ordinance was passed under Minn. Stat. § 414.033, subd. 2(3), which provides:

A municipal council may by ordinance declare land annexed to the municipality and any such land is deemed to be urban or suburban in character or about to become so if . . . the land abuts the municipality and the area to be annexed is 120 acres or less, and the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available, and the municipality receives a petition for annexation from all the property owners of the land.

4. A municipality's attempt to annex property by ordinance is final once the adopted ordinance is approved by the Chief Administrative Law Judge.¹⁷

5. The Municipal Boundary Adjustment Act authorizes the Chief Administrative Law Judge to scrutinize proposed municipal boundary changes "to protect the integrity of land use planning in municipalities and unincorporated areas so that the public interest in efficient local government will be properly recognized and served."¹⁸

6. Minn. Stat. § 414.036 sets forth the following with regard to statutorily authorized payments to townships as compensation for the lost value of property annexed into an adjoining municipality:

Unless otherwise agreed to by the annexing municipality and the affected town, when an order or other approval under this chapter annexes part of a town to a municipality, the order or other approval must provide a **reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order**. The reimbursement shall be completed in substantially equal payments over not less than two nor more than eight years from the time of annexation. The municipality must reimburse the township for all special assessments assigned by the township to the annexed property, and any portion of debt incurred by the town prior to the annexation and attributable to the property to be annexed but for which no special assessments are outstanding, in substantially equal payments over a period of not less than two or no more than eight years.¹⁹

7. The annexation-by-ordinance statute allows the Chief Administrative Law Judge to request additional information from the parties as necessary to inform the Chief Administrative Law Judge regarding the ordinance's conformity with specified statutory

¹⁷ Minn. Stat. § 414.033, subd. 7.

¹⁸ Minn. Stat. § 414.01, subd. 1b(3).

¹⁹ Emphasis added.

criteria,²⁰ and provided a legally sufficient basis for the Chief Administrative Law Judge's October 13, 2015 Order.

8. In its November 2, 2015 correspondence filed with the Chief Administrative Law Judge on November 9, 2015, the City established that the Property "is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available," and in so doing established that all statutory requirements of Minn. Stat. § 414.033, subd. 2(3) had been met and that the City of Waconia had fulfilled all procedural requirements of law and rule such that this matter was properly before the Chief Administrative Law Judge and ready, in all legal respects under Minn. Stat. Ch. 414, for the issuance of a final Order approving the annexation.

9. The Order of the Honorable Gary Pagliaccetti, Judge of District Court, Sixth Judicial District, State of Minnesota, filed on September 30, 2013 in *Town of White v. City of Biwabik*, St. Louis County District Court File No. 69VI-CV-12-1190, addressed a contract claim between parties to an orderly annexation proceeding. As no contract claims are presented in this matter filed before the Office of Administrative Hearings, and noting that district court decisions are not considered precedential,²¹ this submission does not sufficiently establish the "factual and/or legal authority related to its practice of charging the City and/or the School District a fee of \$500 per acre for tax reimbursement for the loss to the Township of the Property," as required by the October 13, 2015 Order of the Chief Administrative Law Judge.

10. Both the City and the Township having filed requests for withdrawal of the petition seeking an Order approving the Ordinance whereby the Property would be detached from the Township and annexed into the City, the voluntary withdrawal of the matter is considered effective.²²

11. Pursuant to Minn. Stat. § 414.12, subd. 3, the costs of these proceedings will be distributed to the parties in an equitable manner.

Based upon these Findings of Fact and Conclusions of Law, and for the reasons set forth in the Memorandum below, the Chief Administrative Law Judge issues the following:

ORDER

1. This matter is dismissed with prejudice.
2. The costs of this matter, billed as required by law at the approved hourly rates of

²⁰ Minn. Stat. § 414.033, subd. 10.

²¹ See *In re Guardianship of Tschumy*, 853 N.W.2d 728, 758 (Minn. 2014) (stating that "district court orders have no precedential value and govern *only* the rights of the parties to the litigation").

²² Although the parties do not cite to Minn. R. Civ. P. 41, the rule would support this result.

the Office of Administrative Hearings, shall be borne by the parties as follows: to the Township – 99%; and to the City – 1%. An itemized invoice for costs will be sent under separate cover.

Dated: November 20, 2015



TAMMY L. PUST
Chief Administrative Law Judge

MEMORANDUM

The Office of Administrative Hearings is an administrative court charged with the legal responsibility to issue impartial decisions in all filed matters that come before it. The agency does this work in compliance with all relevant legal authorities, which exist to protect the statutory and constitutional rights, including the right to due process, of all persons and entities that come before the court to seek orders authorizing various desired actions. The work of the Office of Administrative Hearings, like the work of all judicial and administrative courts, is foundational to our democratic system of government.

Respect for the courts requires respect for the courts' orders. While the law and the rules of legal procedure allow parties many avenues to challenge a court's orders, the law and applicable rules do not allow parties to merely ignore or avoid court orders that they do not like.

The Township's actions in this case constitute a direct attempt to circumvent the Court's Order of October 13, 2015. Rather than identify its legal authority to demand a "annexation tax reimbursement payment" from a public governmental agency – for Property that does not generate any taxes such that it is not obvious what funds require "reimbursement" – the Township "mooted" the Order by directing the City to withdraw the petition for approval of the Ordinance. The withdrawal of the petition is the Petitioner's right.

The purposeful avoidance of the Court's pending Order is not within the parties' rights, authority or control given their simultaneous filing of a Joint Resolution for Orderly Annexation. In the second filing, the parties again seek the Chief Administrative Law Judge's approval of the same annexation, albeit under a different statutory process.

Other than with respect to its duty to enforce the Minnesota Rules of Professional Conduct which regulate the ethical duties of attorneys, the Office of Administrative Hearings has no direct statutory authority to sanction parties, or their counsel, for displays of disrespect for the Court's process in municipal boundary adjustment matters. However, the Legislature has provided the Office of Administrative Hearings with authority

to charge the parties for the cost of the services provided by the agency.²³ Accordingly, the parties are ordered to reimburse the State of Minnesota for the services of the Office of Administrative Hearings in the proportions identified above.

T.L.P.

²³ Minn. Stat. § 414.12, subd. 3.