

October 7, 2016

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RE: OAH 84-0330-32990 (MBAU A-7959 Houston/Houston Township)

Dear Counsel:

Attached and served upon you is Chief Administrative Law Judge Tammy L. Pust's **AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR SUPPLEMENTATION OF RECORD** in the above-entitled matter.

Please note that the only amendments are to the four footnotes noted below which should read as follows:

37 See 1879 Minn. Laws Spec. Laws ch. 240, at 364, of which the Chief Administrative Law Judge takes judicial notice pursuant to Minn. R. Evid. 201.

39 1874 Minn. Laws Spec. Laws ch. 6, § 1, at 167-175.

40 See 1876 Minn. Laws Spec. Laws ch. 9, § 1, at 73-74 (referencing Mons. Anderson Addition to Houston).

44 See 1876 Minn. Laws Spec. Laws ch. 9, § 1, at 73-74.

Please contact me at 651-361-7909 or star.holman@state.mn.us if you have any questions.

Sincerely,



STARLENE J. HOLMAN
State Program Administrator Senior

Attachment

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of
Certain Real Property to the City of
Houston from Houston Township
(MBAU A-7959)

**AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER FOR SUPPLEMENTATION
OF RECORD**

This matter came before Chief Administrative Law Judge Tammy L. Pust upon the Petition for Annexation filed by the City of Houston.

Jed J. Hammell, Hammell & Murphy, P.L.L.P., appeared on behalf of the Petitioner City of Houston (City). Mary Tietjen, Kennedy & Graven, Chartered, appeared on behalf of the Houston Town Board of Supervisors (Township).

The City and Township submitted proposed Findings of Fact, Conclusions of Law and Order and Memoranda on February 12, 2016; and Reply Memoranda of Law on February 26, 2016. The record closed on February 26, 2016.

Based upon the evidence in the hearing record, together with a review of the file and all proceedings herein, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

A. Procedural Posture

1. On November 10, 2015, the City filed a Petition for Annexation (Petition) with the Office of Administrative Hearings requesting the annexation of six¹ separate parcels of real property (collectively, the Properties) which, the City then asserted, are currently located within the Township.² The Petition was accompanied by several maps, all of which consist of photographs from the Houston County Geographic Information Systems (GIS) Department, a division of the Houston County Assessor's Office. The maps include a hand-drawn outline of the City superimposed on the GIS map plus maps with hand-drawn outlines of the subject properties referenced by Parcel Identification

¹ In its post-hearing submission filed on February 12, 2016, the City unilaterally announced that the Petition should be considered expanded to include all of the property described in the already-filed Exhibit (Ex.) 18 "[t]o avoid any further confusion as to whether South Chase Street is part of the City." See City's Proposed Findings of Fact, Conclusions of Law and Order and Memorandum at 22 (Feb. 12, 2016). As such would be in violation of Minn. Stat. §§ 14.01-.12 (2016), as well as the constitutional requirements of due process, the Chief Administrative Law Judge appropriately ignores the City's direction except to the extent that the substance of the City's inaccurate reading of the record is addressed in Findings below.

² Ex. 1.

(PID) numbers.³

2. The Township opposes the City's Petition.⁴

3. The majority⁵ of the owners of the Properties also oppose the annexation.⁶

4. On January 6, 2016, the City and Township hosted a joint informational meeting, as required by law.⁷ Twenty-three individuals attended the informational meeting, including three members of the City Council and four City employees or contractors, three Township Supervisors and two Township employees or contractors, six Property owners including four representatives of the Farmers Co-Op Elevator. All property owners and corporate representatives that spoke indicated their opposition to the annexations and their belief that annexation would bring them no additional municipal services.⁸

5. A public hearing was conducted on January 8, 2016, in the Council Chambers at Houston City Hall, 105 W. Maple Street, Houston, Minnesota 55943.

6. At the public hearing, the City took the position that Parcels 2 and 3 are already located within the City's boundaries, notwithstanding the fact that these tracts were included in the City's Petition as available for annexation.⁹

7. At the close of the City's case at the public hearing, the Township moved for summary disposition of the matter on the grounds that the City had failed to present any evidence of the monetary value of benefits to be conferred upon the Properties should annexation be granted. The Chief Administrative Law Judge took the motion under advisement.

8. Following the hearing on January 8, 2016, the Chief Administrative Law Judge conducted a tour of the Properties as required by Minn. Stat. § 414.031, subd. 3a (2016). The information received from the tour is incorporated, where germane, into the findings below.

9. The record in this matter closed on February 26, 2016 upon the parties' filings of final post-hearing submissions.

B. Houston Township

10. Houston Township is located in the southeastern corner of the state of

³ City's Petition at Ex. A; Hearing Ex. 3.

⁴ Testimony (Test.) of John Beckman.

⁵ The record is unclear regarding whether the owners of Parcel 4 oppose the annexation. See Test. of J. Beckman.

⁶ Test. of J. Beckman; Exs. 210-212

⁷ Minn. Stat. 414.0333 (2016). Written minutes and a recording of the meeting were admitted into the record at Exs. 210, 211.

⁸ Ex. 210, 211.

⁹ Test. of Christina Peterson.

Minnesota.¹⁰

11. As of 2014, the Township was home to approximately 373 people, down from a count of 440 in 2005.¹¹

12. The Township does not, and has no plans to, provide any municipal water or sewer service to the Properties or other properties within its boundaries. The Township does provide street maintenance and improvements for approximately 21 miles of roadways,¹² which service benefits its residents.¹³

13. The Township is part of a rural fire association through which it supports half of the costs of the City's Fire Department and receives corresponding fire protection services for its residents.

14. Township residents receive law enforcement services through the Houston County Sheriff's Office, though in emergencies the City's law enforcement personnel also respond.¹⁴

15. The Township and the City enjoy a history of cooperation between the residents of their communities.

16. Property owners subject to the Petition testified at the January 6, 2016 joint informational session that the Township manages its affairs better than the City does.¹⁵

C. City of Houston

17. The City is also located in Houston County in the southeastern corner of the state of Minnesota.¹⁶

18. The City is accessible to vehicular traffic via State Highway 16 and State Highway 76, as well as County Road 13 and various local roadways.¹⁷

19. As of 2014, approximately 970 people resided in the City, the population of which has decreased slightly over the past decade as evidenced by a loss of approximately 41 residents since 2005.¹⁸

20. The City's properties are generally platted into residential, commercial and/or industrial lots intersected by municipal streets.¹⁹

¹⁰ Ex. 213.

¹¹ Ex. 200.

¹² Test. of J. Beckman.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Ex. 211.

¹⁶ Ex. 4.

¹⁷ E. 7 at 15.

¹⁸ Ex. 200.

¹⁹ Exs. 7 at Figure 3, 207.

21. There has been no recent development in the City, and no specific development projects are planned.²⁰

22. The proposed annexation would have no relevant effect on the City's present transportation network or on Independent School District No. 294, which provides public education services to area residents.²¹

D. Subject Properties

23. The six parcels that are the subject of this annexation proceeding are legally described as follows:²²

Parcel 1

That part of the Northwest Quarter of Section Four, Township One Hundred Three North, of Range Six West of the Fifth Principal Meridian, Houston County, Minnesota, described as follows;

Commencing at the Northeast corner of the said Northwest Quarter of said Section Four, thence westerly along the North section line of said Section Four a distance of 300 feet; thence southerly a distance of 150 feet on a line parallel with the East section line of the Northwest Quarter of said Section Four; thence easterly a distance of 300 feet on a line parallel with the North section line of said Section Four; thence northerly along the East section line of the Northwest Quarter of said Section Four to the place of beginning.

Parcel 2

That part of the Northwest Quarter of the Southwest Quarter and that part of the Northeast Quarter of the Southwest Quarter lying North of Elm Street and lying West of the northerly extension of the East line of Chase Street, all in Section 33, Township 104 North, Range 6 West, Houston County, Minnesota described as follows;

Commencing at the Southwest corner of said Section 33; thence on an assumed bearing of North 00 degrees 55 minutes 29 seconds West along the West line of the Southwest Quarter of said Section 33 a distance of 2009.75 feet to the Southwest corner of the North Half of the Northwest Quarter of said Southwest Quarter; thence North 89 degrees 37 minutes 57 seconds East 1321.72 feet to the Southeast corner of said North Half of the Northwest Quarter of the Southwest Quarter; thence South 37 degrees 14 minutes 20 seconds East 46.80 feet to the Northeast corner of Lot 13 Block 3 of Mons Anderson's Addition to Houston; thence North 09 degrees 40 minutes 54 seconds West 40.55 feet to the point of beginning; thence continuing North 09 degrees 40 minutes 54 seconds West 296.71 feet; thence North 00 degrees 40 minutes 54 seconds West 154 feet; thence South 89

²⁰ Test. of Connie Edwards.

²¹ See Minn. Stat. § 414.031, subd. 4(a)(6), (13) (2016).

²² Ex. 1.

degrees 19 minutes 6 seconds West 36.04 feet; thence North 00 degrees 40 minutes 54 seconds West 30.49 feet; thence South 75 degrees 34 minutes 20 seconds East 179.35 feet to a point on a line which bears North 00 degrees 33 minutes 17 seconds West from a point which is 1420 feet East and 2213.50 feet North of the Southwest corner of said Section 33; thence South 00 degrees 33 minutes 17 seconds East 225.42 feet to a point which is 1420 feet East and 2213.50 North of the Southwest corner of said Section 33; thence North 88 degrees 49 minutes 26 seconds West 46.16 feet; thence South 11 degrees 20 minutes 28 seconds West 211.51 feet to the point of beginning; containing .95 acres and subject to any easements covenants and restrictions of record.

Parcel 3

That part of the Northwest Quarter of the Southwest Quarter lying North of Elm Street and lying West of the northerly extension of the East line of Chase Street, in Section 33, Township 104 North, Range 6 West, described as follows;

Commencing at the Southeast corner of the North Half of the Northwest Quarter of the Southwest Quarter; thence South 37 degrees 14 minutes 20 seconds East 46.80 feet to the Northeast corner of Lot 13 Block 3 of Mons Anderson's Addition to Houston; thence North 9 degrees 40 minutes 54 seconds West 248 feet to the point of beginning; thence West 50.00 feet; thence North 241.51 feet; thence North 89 degrees 19 minutes 06 seconds East 36.04 feet; thence South 00 degrees 40 minutes 54 seconds East 154 feet; thence South 09 degrees 40 minutes 54 seconds East 89.26 feet to point of beginning. This description intended to describe land lying between the land owned by grantee and the previously owned by grantor in the Northwest Quarter of the Southwest Quarter in Section 33, Township 104 North, Range 6 West.

Parcel 4

Lots 17, 18, 19, 55, 56, 57 of Block 3 of Crookston's Addition to the City of Houston according to the recorded map or plat thereof on file and of record in the office of the county recorder in and for said county and state. All of the vacated alley lying between said Lots 17, 18, 19, 55, 56 and 57.

Parcel 5

That part of the Northeast Quarter of the Southwest Quarter of Section 33, Township 104 North, Range 6 West, Houston County, Minnesota described as follows;

Commencing at the Northeast corner of said Northeast Quarter of the Southwest Quarter; thence on an assumed bearing of South 89 degrees 41 minutes 41 seconds West along the North line of said Northeast Quarter of the Southwest Quarter 1321.35 feet to the Northwest corner of said Northeast Quarter of the Southwest Quarter; thence South 64 degrees 18 minutes 19 seconds East 515.50 feet to the point of beginning; thence South 78 degrees 18 minutes 19 seconds East 305.25 feet; thence South 40 degrees 18 minutes 19 seconds East 247.50

feet; thence South 00 degrees 18 minutes 19 seconds East 198.00 feet; thence South 89 degrees 41 minutes 41 seconds West 445.50 feet; thence North 01 degrees 51 minutes 02 seconds West 451.23 feet to the point of beginning.

Parcel 6

That part of the East 31 rods of the Northeast Quarter of the Northwest Quarter of Section 4, Township 103 North, Range 6 West of the Fifth Principal Meridian, Houston County, Minnesota, described as follows:

Commencing at the Northeast corner of the said Northwest Quarter of said Section Four, thence westerly along the North section line of said Section Four a distance of 300 feet to the place of beginning, thence westerly along the North section line of said Section Four a distance of 211.5 feet, thence southerly a distance of 300 feet on a line parallel with the East section line of the Northwest Quarter of said Section Four; thence easterly a distance of 211.5 feet on a line parallel with the North section line of said Section Four; thence northerly on a line parallel with the East section line of the Northwest Quarter of said Section Four a distance of 300 feet to the place of beginning.

24. The six parcels are currently owned by the following individuals and are used for the following described purposes:

A. Parcel 1, Houston County Tax Parcel ID. No. 06.0329.001, consists of approximately 1.03 acres owned by Randy L. and Mary L. Muller and used for residential purposes. It is accessible via E. Elm Street, a City road.²³

B. Parcel 2, Houston County Tax Parcel ID. No. 06.0236.001, consists of approximately .93 acres owned by Farmers Co-Op Elevator Co. and used for commercial purposes related to the operation of a grain elevator.²⁴

C. Parcel 3, Houston County Tax Parcel ID. No. 06.0238.000, consists of approximately 5.56 acres owned by Farmers Co-Op Elevator Co. and used for the commercial operation of a grain elevator.²⁵

D. Parcel 4, Houston County Tax Parcel ID. No. 06.0394.000, owned by Valley View Nursing Homes, Inc., is currently an empty lot located adjacent to a property on which the Valley View Nursing Home is operated.²⁶

E. Parcel 5, Houston County Tax Parcel ID. No. 06.0237.000, consists of approximately 3.88 acres owned by Green Acres Properties, LLC and currently maintained as an empty lot.²⁷

²³ Exs. 1, 3, 8 at 3, 201.

²⁴ Exs. 1, 3, 8 at 1-2, 202.

²⁵ Exs. 1, 3, 8 at 1-2, 203.

²⁶ Exs. 1, 3, 8 at 4, 204.

²⁷ Exs. 1, 3, 8 at 5, 205.

F. Parcel 6, a small part of Houston County Tax Parcel ID. No. 06.0329.000, consists of approximately 1.5 acres owned by Christine Kellstrom Rischette and Steven Joel Rischette and improved with three residential structures used for rental purposes.²⁸ Parcel 6 is accessible via E. Elm Street and Chase Street, both City roads.²⁹ The Petition seeks to annex only approximately 1.5 acres of the 13.58-acre parcel, and leaves within the Township the remaining 12 acres of the parcel currently devoted to agricultural purposes.

25. The six parcels are all located on lots embedded within neighborhoods or commercial/industrial developments in a cohesive fashion, abut other developed properties, are accessed on City streets and/or major highways, and appear to be part of the City in that a visitor driving through the area cannot distinguish between these six tracts and neighboring properties with regard to the location of municipal boundaries.³⁰

26. The evidence at hearing established that the City has no current or identified future plans for further developing the six Properties or altering their existing uses, all of which are consistent with the City's current Comprehensive Plan.³¹

27. The City's 2009 Comprehensive Plan includes the following directive as part of its land use planning strategy: "Annex all lands outside the city which are connected to city utility services or which impede the annexation of other properties in the area or which would end up being islands of unincorporated lands."³²

28. Since at least 2011, the City has been discussing with the Township its plans to annex various tracts of land including the subject Properties.³³

29. The City's reasons for pursuing the present annexation include: (1) pursuit of a greater sense of community fairness, described in terms of requiring everyone who benefits from City services to be included in the City and to contribute toward the cost of providing those services; (b) discontinuance of the past practice of "agreeing to disagree"³⁴ with regard to the lawful identification of the City's borders; and (c) improving the symmetry of the City's borders so they are more easily recognizable.³⁵

30. According to the record at hearing, the six Properties are located in relation to the City boundaries as indicated on the map below.³⁶

²⁸ Exs. 1, 3, 8 at 6-9, 206.

²⁹ Ex. 206.

³⁰ Tour of Properties (Jan. 8, 2016).

³¹ Test. of C. Edwards; Exs. 7, 210, 211.

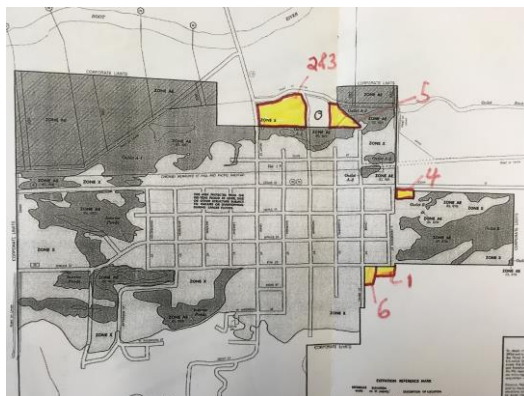
³² Ex. 7 at 24.

³³ Ex. 29.

³⁴ Test. of Larry Jerviss.

³⁵ Test. of C. Edwards.

³⁶ Ex. 2. Note: the shape of Parcel 5 and the boundaries of Parcel 1 are more accurately depicted on Exs. 201, 205.



31. Annexation of Parcels 2, 3, 4 and 5 would improve the symmetry of the City's boundaries; annexation of Parcels 1 and 6 would not have an appreciable effect on the City's symmetry.

E. Historical Boundaries of the City of Houston

32. Before it was even incorporated as the Village of Houston, on June 8, 1854, a surveyed plat of the original location of the village was filed with the county recorder, noting the location of the lots, blocks, streets and alleys of the community – all in the east half (E1/2) of the southeast quarter (SE1/4) of Section 33 in Township 104 North, Range 6 West, in Houston County. In July 1857, Crookston's Addition to Houston was platted as located in the west half (W1/2) of the SE1/4 of the same Section 33.³⁷

33. As originally incorporated as the Village of Houston³⁸ by statute enacted on February 19, 1874,³⁹ the community's boundaries included the following property:

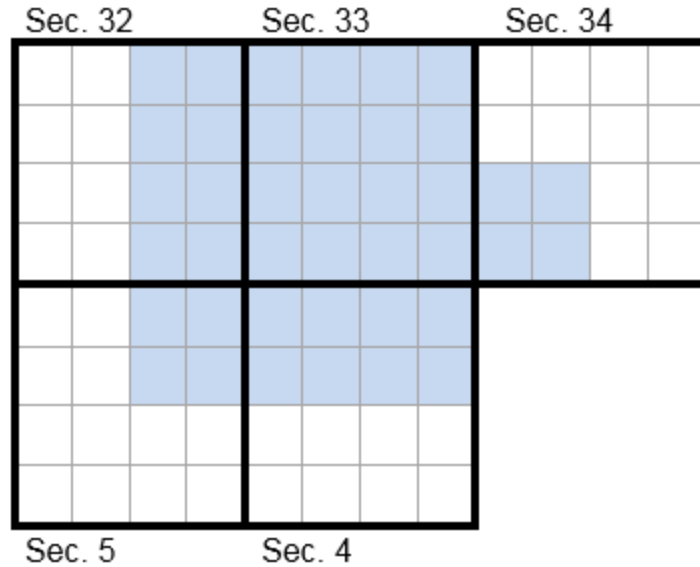
All of section thirty-three, town one hundred and four, range six west; the east half section thirty-two, town one hundred and four, range six west; the south-west quarter section thirty four, range six west; the north half of section four, town one hundred and three, range six west; and the north-east quarter of section five, town one hundred and three, range six west, in the county of Houston and state of Minnesota.

34. As incorporated, the City boundaries were as grossly indicated in blue on the following illustration.

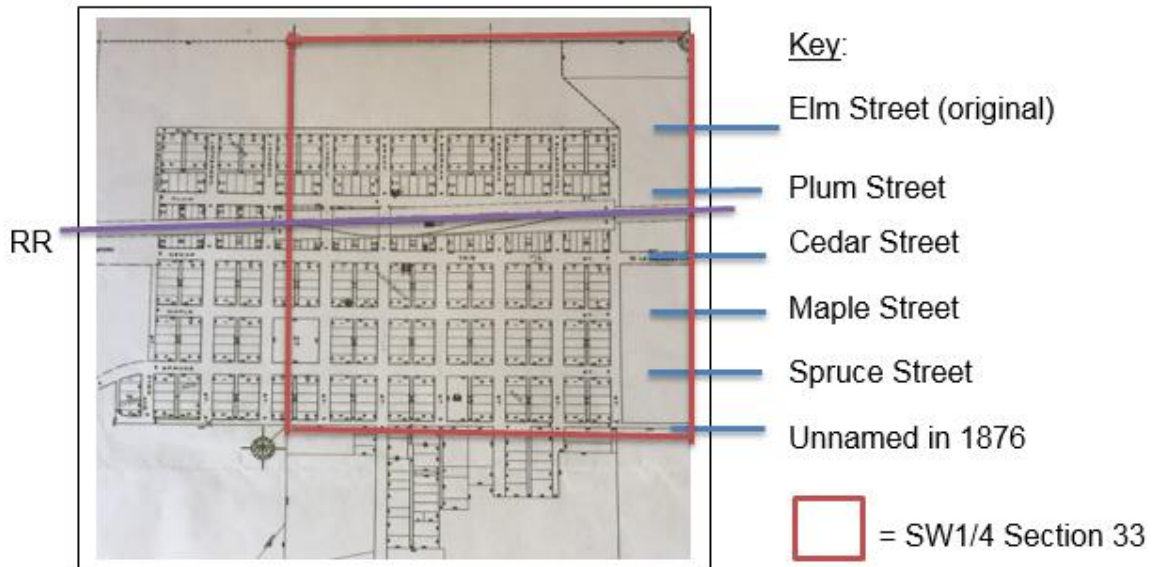
³⁷ See 1879 Minn. Laws Spec. Laws ch. 240, at 364, of which the Chief Administrative Law Judge takes judicial notice pursuant to Minn. R. Evid. 201.

³⁸ For sake of consistency, the incorporated community of Houston will be referenced as "City" regardless of whether the community was legally a village or a city under Minnesota law.

³⁹ 1874 Minn. Laws Spec. Laws ch. 6, § 1, at 167-175.



35. By 1876, the Mons. Anderson's Addition had been platted in the City,⁴⁰ consisting of 39 blocks of platted lots and outlots located primarily within the SW1/4 of Section 33, which is outlined in red below. The Chicago Milwaukee St. Paul & Pacific Railway line (Railway)⁴¹ was located roughly on the east-west line dissecting the southwest quarter (SW1/4) of Section 33: the northern half of the SW1/4 of Section 33 was above the Railway; the southern half of the SW1/4 of Section 33 was below the Railway, all as noted by the purple line below.



⁴⁰ See 1876 Minn. Laws Spec. Laws ch. 9, § 1, at 73-74 (referencing Mons. Anderson Addition to Houston).

⁴¹ The Railway is noted as "vacated" in the City's 2009 Comprehensive Plan. See Ex. 7 at Figure 2.

36. The City's original Elm Street⁴² (1-Elm Street) was located as the northernmost street in the Mons. Anderson Addition, running east-west between Chase Street on the east and Washington Street on the west and located north of the Railway.⁴³

37. Two years following the City's incorporation, the 1876 Minnesota Legislature detached from the City's boundaries the following described property:⁴⁴

The southwest quarter of section thirty-four, town one hundred and four, range six west, the east half of section thirty-three, town one hundred and four, range six west, the northwest quarter of section thirty-three, town one hundred and four, range six west, all that part of the northeast quarter of the southwest quarter of section thirty-three, town one hundred and four, range six west, lying north of Elm street, in Mons. Anderson's addition to the village of Houston, the northeast quarter of section thirty-two, town one hundred and four, range six (6) west, the northeast quarter of section four, town one hundred and three, range 6 west, the east half of the northwest quarter of section four, town one hundred and three, range six west, and seven (7) acres off the east-side of the northwest quarter of the northwest quarter of section four,⁴⁵ town one hundred and three (103), range six west.

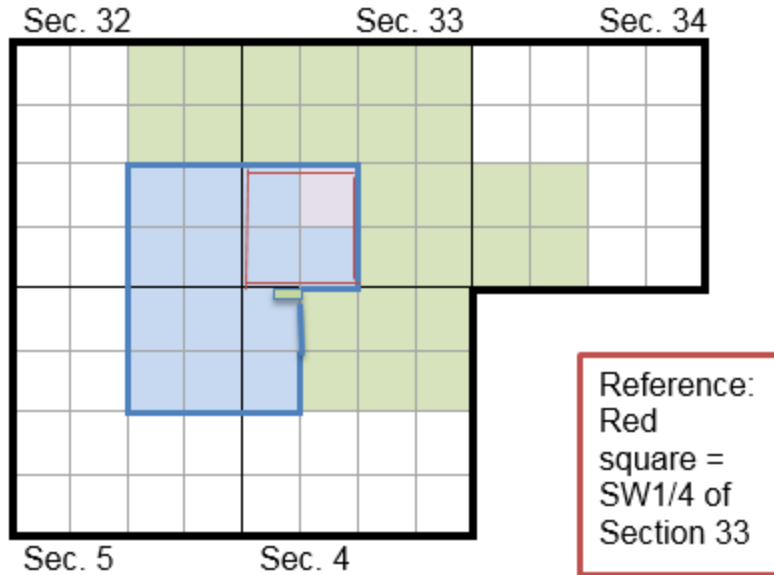
38. The 1876 legislation served to detach from the City the areas highlighted in green below. Following the detachment, the City's boundaries shrunk to the area indicated in blue on the following illustration, plus some portion of the northeast quarter of the SW1/4 of Section 33, colored in purple below.

⁴² The street indicated in the illustration above as "unnamed in 1876" is currently named "Elm Street" or "E(ast) Elm Street" and sometimes "S(outh) Elm Street." This second, non-original Elm Street (2-Elm Street) is located south of and roughly parallel to Spruce Street and runs east-west between Henderson Street on the east and Washington Street on the west.

⁴³ MBAU Records, Docket No. OA639-1, Initiating Documents and Map (Aug. 23, 1999), http://www.mba.state.mn.us/Scans/OA-639-1_Initiating_Docs_and_Map.pdf.

⁴⁴ 1876 Minn. Laws Spec. Laws ch. 9, § 1, at 73-74.

⁴⁵ Though the legal description does not identify the detached 7 acres "off the east-side" of the NW1/4 of the NW1/4 with reference to any beginning or ending points, a 1992 reference to this property by the City's attorney described the property as occupied by residences on South Sherman Street and South Sheridan Street, which would place it in the northern-most corner of the NE1/4 of the NW1/4 of Section 4. See Ex. 17 (Aug. 24, 1992 Correspondence from D. Woodward to Minnesota Municipal Board). This detached area would appear to be a portion of the area annexed by the City in 1918. See Finding No. 48 above.



39. The 1876 legislation directed specifically that “all that part of the [NE1/4] of the [SW1/4] of section [33] ... lying north of Elm street, in Mons. Anderson’s addition” was detached. The identified detachment would appear to encompass the below illustrated blue rectangle of property bounded by 1-Elm Street on the south, the western boundary of the NE1/4 of the SW1/4, the northern boundary of the NE1/4 of the SW1/4, and a line drawn from the endpoint of 1-Elm Street, marked with a blue star, to the northern boundary of the quarter section.



40. Notwithstanding the language of the 1876 detachment legislation, the City’s boundary maps have drawn its northern boundary in the NE1/4 of the SW1/4 of Section 33 with reference to a trapezoid consisting of a line starting at the endpoint of 1-Elm Street, noted with the blue star above, and commencing north at an angle to a point at which the line then runs perpendicular to the northern boundary of the quarter section, all

as visible with reference to the black dotted line within the blue rectangle above.⁴⁶

41. Other than the maps, nothing in the record of this proceeding provides any specific evidentiary support for this section of the City boundary line depicted as a trapezoid as described above.

42. The 1876 legislation did not address the northwest quarter (NW1/4) of the SW1/4 of Section 33, and therefore did not detach any property located within the NW1/4 of the SW1/4 of Section 33. As such, as of 1876 all of the NW1/4 of the SW1/4 of Section 33 remained within the City's northern boundary.

43. All historical City maps admitted into evidence in this proceeding, as well as other maps included in the public records and of which the Chief Administrative Law Judge has taken judicial notice, indicate that all property lying north of the original 1-Elm Street within both the NW1/4 and the NE1/4 (subject to the angled line described in Finding 40 above) of the SW1/4 of Section 33 is not included within the City boundaries.⁴⁷

44. Other than the historical maps, all of which seem to conflict with the language of the 1876 legislation, there is no evidence in the record to establish that the NW1/4 of the SW1/4 lying north of the original 1-Elm Street is outside the City's boundary.⁴⁸

45. On May 8, 1879, the Minnesota District Court for Houston County issued a Decree⁴⁹ declaring the following property detached from the City:

all of Block number Nine (9) lying south of the Southern Minnesota Railway track, all of Blocks Twenty Four (24) Twenty five (25) and forty (40) & all of Washington Street lying and being South of the southern Minnesota Railway track and all of Cedar, Maple, & Spruce Streets lying west of the west line of Jefferson Street and between the Blocks aforesaid.⁵⁰

46. The 1879 court decree removed from the City's boundaries the property outlined in blue below.⁵¹

⁴⁶ See Exs. 2, 4-6; see also MBAU Records, Docket No. OA-475-1, Initiating Documents and Map (Feb. 24, 1997), http://www.mba.state.mn.us/Scans/OA-475-1_Initiating_Docs_and_Map.pdf.

⁴⁷ See Exs. 2, 4-6; see also MBAU Records, Docket No. OA-475-1, Initiating Documents and Map (Feb. 24, 1997), http://www.mba.state.mn.us/Scans/OA-475-1_Initiating_Docs_and_Map.pdf.

⁴⁸ At hearing, City Administrator Christina Peterson testified that the City now believes that Parcels 2 and 3 are located within the City's boundaries, which testimony contradicts the City's position as noted in the Petition for Annexation. By implication, the City now acknowledges that its maps are inaccurate on this point.

⁴⁹ The actual Decree is an exquisite example of how court orders were issued, in impeccable handwriting, in days gone by. An image of the Decree is attached as Attachment (Att.) A.

⁵⁰ Att. A.

⁵¹ Ex. 7 at Figure 2.



47. This detachment has no directly relevant impact on the Properties that form the basis for the current annexation proceeding. As it is not reflected in any of the City's boundary maps, it does have relevance with respect to the inaccuracy of the City's historical boundary maps and records, including the maps submitted in support of this proceeding.⁵²

48. In 1918, the Village of Houston enacted Ordinance No. 29⁵³ whereby it sought to extend its boundaries to include certain property, outlined in green above and legally described as follows:

Commencing at a point thirty-eight feet South and twenty feet East of the Southeast corner of Lot 6, Block 33 Mons Anderson's Addition to the Village of Houston, Minnesota, thence South thirty six rods,⁵⁴ thence West one thousand sixty feet, thence north thirty six rods to the South side of the street of said Mons Anderson's Addition thence East on the South side of said street one thousand sixty feet to place of beginning.

49. Block 33 of Mons. Anderson's Addition is the block bounded by Spruce Street on the north, Ellsworth Street on the west, the street that was unnamed in 1876 and later renamed E. Elm Street (2-Elm Street) on the south, and Chase Street on the east.⁵⁵ It is marked with a red star in the illustration above.

50. The property added, grossly outlined in green above, is located in the NE1/4 of the NW1/4 of Section 4, all of which had been earlier detached from the City in 1876.

⁵² Ex. 3.

⁵³ Ex. 13. This ordinance was passed on December 4, 1918. *Id.* It was filed with the Minnesota Secretary of State as File No. 1949 on December 17, 1918. Secretary of State Documents (Dec. 17, 1918), <https://www.leg.state.mn.us/lrl/sos/file?fileno=1949>.

⁵⁴ 36 rods equals 594 feet.

⁵⁵ MBAU Records, Docket No. OA639-1, Initiating Documents and Map (Aug. 23, 1999), http://www.mba.state.mn.us/Scans/OA-639-1_Initiating_Docs_and_Map.pdf.

51. In 1966, in relation to a condemnation proceeding the City obtained a dedication and deed for the extension of Chase Street such that the street ran in a north-south direction from the north line of the NW1/4 of Section 4 and then “594 feet more or less to the Village limits.”⁵⁶

52. On July 18, 1979, the City adopted Ordinance 127⁵⁷ and thereby annexed into its boundaries property located primarily in the SE1/4 of Section 33 and described as follows:

All of Lots 8 through 13, Block 2, Crookston’s Addition to Houston, Minnesota, as of record and on file in the Office of the County Recorder for Houston County, Minnesota.

Together with that part of the Southeast Quarter of the Southwest Quarter and that part of the Southwest Quarter of the Southeast Quarter of Section 33, Township 104 North, Range 6 West, Houston County, Minnesota, described as follows:

Beginning at the Northwest Corner of said Block 2 of Crookston’s Addition to Houston; thence Southerly along the West line of said Block 2, a distance of 300.00 feet to the Southwest Corner of said Block 2; thence Southwesterly deflecting to the right 80°02’ a distance of 65.10 feet to the East line of Erickson Street; thence Northerly deflecting to the right 99°08’ and along said East line of Erickson Street, a distance of 302.20 feet to its intersection with the South line of Maple Street; thence Easterly deflecting to the right 89°52’ and along said South line of Maple Street, a distance of 66.20 feet to its intersection with the East line of Henderson Street; thence Northeasterly to the point of beginning.

All of Lots 14, 15, and 16 of Block 3, Crookston’s Addition to Houston, Minnesota, as of record and on file in the Office of the County Recorder for Houston County, Minnesota.

Together with that part of the Southwest Quarter of the Southeast Quarter of Section 33, Township 104 North, Range 6 West, Houston County, Minnesota, described as follows:

⁵⁶ Ex. 18. Contrary to the City’s assertion in its post-hearing submission dated February 12, 2016, Ex. 13 and Ex. 18 are not inconsistent with regard to the length of Chase Street included in the City’s boundaries. Ex. 13 references the area as commencing at a point “thirty-eight feet South and twenty feet East of the Southeast corner of Lot 6, Block 33 Mons Anderson’s Addition” – which is a point roughly in the middle of the intersection of E. Elm Street and Erickson Street. From there, the description runs “36 rods” [594 feet] south, then west 1060 feet, and continues. Within that area, the description captures the full 594 of Chase Street. Therefore, Ex. 18’s description of the street’s dedication as beginning at the north line of the NW1/4 of Section 4, which roughly correlates to E. Elm Street, and then running south 594 feet, then 80 feet east and then north 594 feet, appears to capture the same 594-foot length of Chase Street.

⁵⁷ Ordinance 127 (July 18, 1979), <https://www.leg.state.mn.us/lrl/sos/file?fileno=32301>. This ordinance was filed with the Minnesota Secretary of State as File No. 32301 on August 16, 1979. Secretary of State Documents (Aug. 16, 1979), <https://www.leg.state.mn.us/lrl/sos/file?fileno=32301>.

Beginning at the Northwest Corner of Block 2 of said Crookston's Addition to Houston; thence Northerly a distance of 66.00 feet to the Southwest Corner of said Block 3 of Crookston's Addition to Houston; thence continuing Northerly along the West line of said Block 3, a distance of 150.00 feet to the Northwest Corner of Lot 16 of said Block 3; thence Westerly deflecting to the left 90°12' along the Westerly extension of the North line of said Lot 16 of Block 3, a distance of 7.55 feet to its intersection with the East line of Henderson Street; thence Southerly deflecting to the left 90°50' and along said East line of Henderson Street, a distance of 224.20 feet to its intersection with the South line of Maple Street; thence Northeasterly to the point of beginning.

That part of Fifth (5th) Street in Crookston's Addition, being sixty-six feet (66) in width, extending from the East terminus of Maple Street of the City of Houston East to a line drawn from the Southeast Corner of Lot Fourteen (14) of Block Three (3) to the Northeast Corner of Lot Thirteen (13) of Block Two (2) of Crookston's Addition to Houston.

53. The illustrated location of the 1979 annexation is denoted in blue in Finding No. 65 below.

54. On or about May 9, 1990, the owner of Parcels 1 and 6 appeared at the City's Board of Review meeting to file a formal objection to being assessed by the City rather than the Township, which practice represented a change from the previous tax year.⁵⁸ This change in taxing jurisdiction assignment was based on the City's determination that the parcels were included in the City's boundaries as originally incorporated in 1874. The record makes no mention of the 1876 detachment legislation, an indication that the City was apparently ignorant of this relevant fact.⁵⁹

55. On May 28, 1991, 62 property owners filed a petition proposing detachment from the City of approximately 881.36 acres of property, and commenced a detachment proceeding before the Minnesota Municipal Board.⁶⁰ The petitioning properties were all located on the northern or eastern boundaries of the City and included over 15 houses, two cemeteries, a few small commercial enterprises, and the town hall.⁶¹ The City opposed the detachment.⁶²

56. A rough depiction of the 1991 petitioning properties are outlined in yellow in

⁵⁸ Ex. 20 (May 2, 1990 Board of Review Minutes).

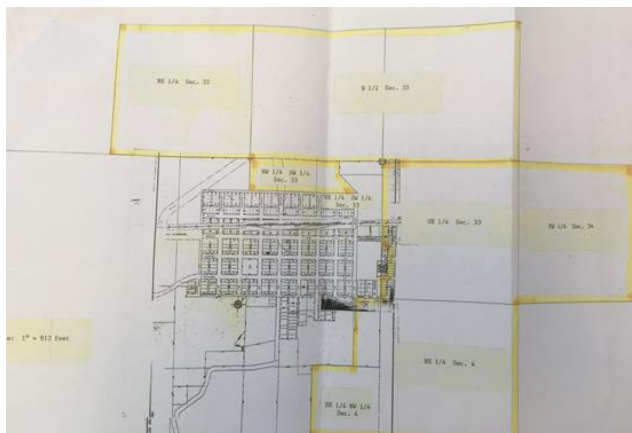
⁵⁹ *Id.* (June 11, 1990 City Council Minutes).

⁶⁰ MBAU Records, Docket No. D-275, Initiating Documents and Map (May 24, 1991), http://www.mba.state.mn.us/Scans/D-275_Initiating_Docs_and_Map.pdf.

⁶¹ Ex. 16 at 4.

⁶² Ex. 21 (May 13, 1991 City Council Minutes).

the map below.⁶³



57. As part of the 1991 proceeding, the City requested⁶⁴ that the Municipal Board as a matter of law declare its boundaries to be as follows:

Commencing at the Southwest corner of the Northeast Quarter of Section 32, Township 104 North, Range 6 West, thence North to the South bank of the Root River, a/k/a Judicial Ditch #1, thence Easterly along said South bank to the Easterly right of way of STH #76, thence South along said Easterly right of way 650 feet more or less to the Northerly boundary of the existing Flood Control Dike, thence Easterly along said Northerly boundary to the East line of the Northeast Quarter of the Southwest Quarter of Section 33, Township 104 North, Range 6 West, thence continuing East 70 feet more or less to the Easterly right of way of a dike to be constructed, thence South along said Easterly right of way line 400 feet more or less to a point on the Northerly right of way line of a dike to be constructed, thence South 45 degrees East along the Northerly right of way line of a dike to be constructed 600 feet more or less to the Northerly boundary of the now abandoned railroad right of way, thence East along said Northerly right of way to the Easterly right of way of STH #76 as extended, thence South along said Easterly right of way to the South line of the Northeast Quarter Northeast Quarter of Section 4, Township 103 North, Range 6 West, thence West along said South line as extended to the Northwest corner of the Southeast Quarter of the Northwest Quarter, of Section 4, Township 103 North, Range 6 West, thence South along the Quarter line to the Southwest corner of said Quarter Quarter, thence West along the South Quarter line as extended to the Southwest corner of the Southwest Quarter Northeast Quarter Section 5, Township 103 North, Range 6 West, thence North along the Quarter section line to the point of beginning.

⁶³ MBAU Records, Docket No. D-275, Initiating Documents and Map (May 24, 1991), http://www.mba.state.mn.us/Scans/D-275_Initiating_Docs_and_Map.pdf.

⁶⁴ Ex. 17 (Aug. 24, 1992 Correspondence from D. Woodward to Minnesota Municipal Board).

58. The Municipal Board did not act on that request.

59. During the pendency of the 1991 proceedings, counsel for the petitioners discovered the 1876 legislation and concluded that it had the effect of excluding from the City's boundaries all of the petitioning properties, with one exception: "The only parcel described in the petition that was not excluded by the 1876 act is that part of the Northwest Quarter of the Southwest Quarter of Section 33-104-6 which lies North of Mons Anderson's Addition to Houston."⁶⁵

60. On January 12, 1993, the Municipal Board issued its Findings of Fact, Conclusions of Law and Order and Memorandum in which it found, in pertinent part:

- a. "The City over the past 90 years has annexed several portions of the subject area which was part of the original City incorporation, but had not been considered part of the City for over 80 years."⁶⁶
- b. Based specifically and solely upon the 1876 detachment legislation, the Municipal Board found that all of the property which was included in the 1991 detachment petition, both originally and as reduced by the Municipal Board pursuant to an earlier order, had not been located within the City's boundaries since 1876. Accordingly, the Municipal Board dismissed the petition for detachment in its entirety. The Municipal Board did not order any detachment or annexation; it merely dismissed the proceeding.⁶⁷

61. There does not appear to be any sufficient legal or factual finding in support of the Municipal Board's dismissal of the detachment petition with regard to the property located in the NW1/4 of the SW1/4 of Section 33, as that area is not addressed by the 1876 legislation upon which the Municipal Board specifically relied for its order of dismissal.

62. Based at least in part on the dismissal of the 1991 detachment petition, on August 2, 1993, the District Court for the Third Judicial District in Houston County granted summary judgment in favor of the owners of Parcels 1 and 6, finding that the City could not levy special assessments against those properties given the lack of an annexation order from the Municipal Board:

The petition before the board was to detach from the City of Houston, and the municipal Board decided that the area was not within the boundary of the City of Houston, and, therefore, dismissed the petition.

What we have here is an area that has never been in the City of Houston and for which no annexation has been accomplished. The mere fact that

⁶⁵ *Id.* (July 7, 1992 Correspondence from D. DeVaughn to D. Woodworth).

⁶⁶ Ex. 16 at 4

⁶⁷ *Id.*

some of the people involved in this controversy were confused about whether the area was in fact within the city's boundaries, does not have the effect of annexing the territory as could be done by the Municipal Board.⁶⁸

63. The City Council and the Township Board met jointly in 1996 to discuss future annexation plans, and held a joint public meeting on July 18, 1996 to discuss orderly annexation of certain identified property.⁶⁹

64. On February 24, 1997, the City and the Township adopted a Joint Resolution for Orderly Annexation whereby the City and the Township jointly agreed that approximately 39.5 acres of property located adjacent to the City's eastern border and legally described as follows, would be annexed into the City:⁷⁰

All of the following described land in the SE ¼ Section 33, Township 104 N, Range 6 W in Houston County, lying and being South of the south boundary of State Trunk Highway 16; East of the city limits of the city of Houston; North of the north boundary of the Seventh Street; and West of the west boundary of LaCrosse Street.

Those portions of Lots 8, 9, 10, 11, 12 and 13 not currently within the city of Houston, and Lots 61, 62, 63, 64, 65 and 66 in Block 2; those portions of Lots 14, 15 and 16 not currently within the city of Houston and Lots 58, 59 and 60 in Block 3; and all of Blocks 1, 11, 12, 13, 14, 15, 16, 23, 24 and 25 all in Crookston's Addition to Houston.

Also all of Blocks 3, 4, 5, 6, 11 and 12 of the original plat of Houston.

Also all dedicated streets and alleys, and all vacated streets and alleys adjacent thereto, within the area designated.

65. The Municipal Board approved this orderly annexation proceeding by Order dated March 13, 1997,⁷¹ and thereby annexed the property highlighted in black (including the blue rectangle) on the following map into the City's boundaries.

⁶⁸ *Kellstrom by Rischette v. City of Houston*, No. C4-91-0580 (Minn. Dist. Ct. Aug. 2, 1993).

⁶⁹ Ex. 25 (June 24, 1996 City Council Minutes).

⁷⁰ Ex. 14 (Joint Resolution for Orderly Annexation).

⁷¹ *Id.* (Order).



66. The 1997 annexation included a portion of property, noted in blue above, which had already been annexed into the City via the 1979 proceeding described in Finding Nos. 52 and 53 above.

67. On August 17 and 23, 1999, the City and the Township adopted a Joint Resolution for Orderly Annexation through which the municipalities sought to annex two areas of property into the City.

68. The first included area is the exact property which was the subject of annexation Ordinance No 29 passed in 1918, described in Finding No. 48 and illustrated in Finding No. 46, both above.⁷²

69. The second area included in the 1999 Joint Resolution is described as follows:

Commencing at the southwest corner of Chase Street in the Northeast Quarter of the Northwest Quarter, Section 4, Township 103 North, Range 6 West, thence south 525 feet to the south line of said Quarter Section, thence west along said line 760 feet, thence north 475 feet to the southwest corner of Sheridan Street, thence east 80 feet, thence north 12.5 feet, thence east 140 feet, then north 163 feet, thence east 540 feet to the west right-of-way of Chase Street, thence south to the point of beginning. Containing 15 acres, more or less.⁷³

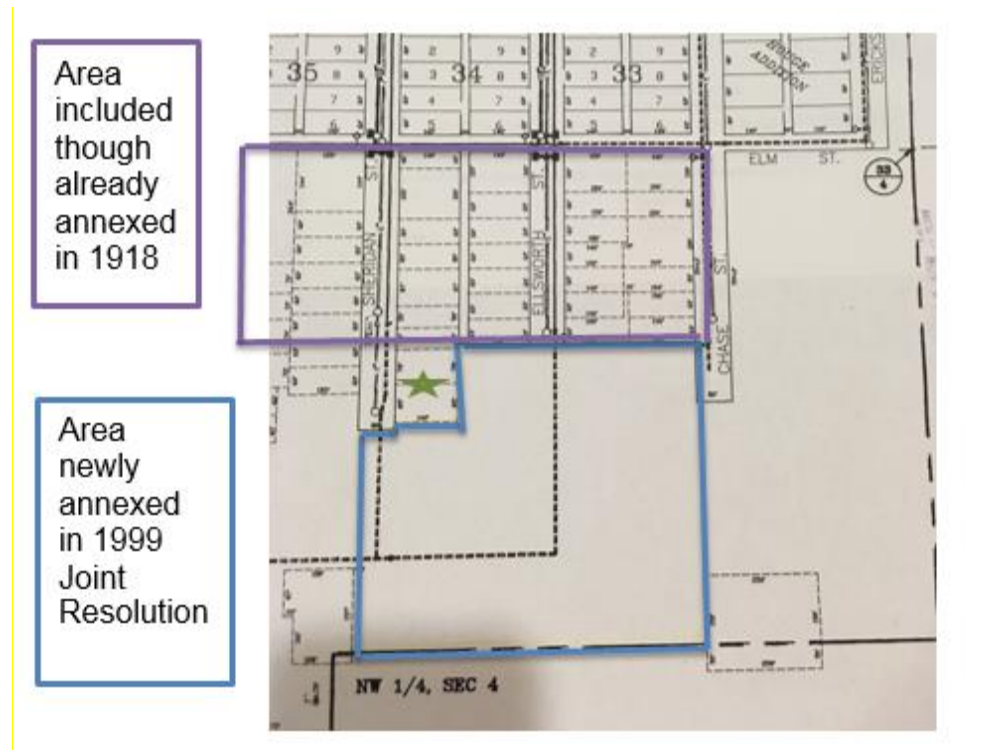
70. The orderly annexation was approved by Order of the Office of Strategic and Long Range Planning, Municipal Boundary Adjustment Unit, dated January 10, 2000,

⁷² Ex. 12 at 2 (“AND also including those lands described in Ordinance No. 29 of the City of Houston dated December 4, 1918 as follows: Commencing at a point thirty-eight feet south . . .”).

⁷³ *Id.*

made effective on December 3, 1999.⁷⁴

71. The 1999 filings included an illustration of the property intended to be annexed, as follows:⁷⁵



72. On July 13, 2015, the City enacted Ordinance No. 222⁷⁶ for the purpose of annexing 205 acres of property legally described as follows:

Tax Parcel ID 06.0244.001 [Parcel A]

Tract 110P-F: That part of the property described in Record Document Book 411, Page 90, all in Houston County, Minnesota, being part of the Northwest Quarter Southwest Quarter of Section 33, Township 104 North, Range 6 West, said Houston County, bounded and described as follows: Commencing at the West Quarter Corner of Section 33, Township 104 North, Range 6 West, Houston County, Minnesota; thence South 02 degrees 43 minutes 38 seconds East; 481.79 feet along the West line of the Southwest Quarter of said Section 33; to the point of beginning of the easement to be described; thence continuing South 02 degrees 43 minutes, 38 seconds East, 502.92 feet; thence North 87 degrees 22 minutes 52 seconds East, 203.25 feet; thence North 02 degrees 28 minutes 17 seconds

⁷⁴ *Id.*

⁷⁵ MBAU Records, Docket No. OA639-1, Initiating Documents and Map (Aug. 17 and 23, 1999), http://www.mba.state.mn.us/Scans/OA-639-1_Initiating_Docs_and_Map.pdf. Note: This annexation apparently left a small square of unannexed property as an island, visible in the illustration as the area marked with a green star and bounded by the purple line on the north, blue lines on the east and south, and Sheridan Street on the west.

⁷⁶ MBAU Records, No. A-7947, Initiating Documents and Map (July 13, 2015), http://www.mba.state.mn.us/Scans/A-7947_Initiating_Docs_and_Map.pdf.

West 20.00 feet; thence North 87 degrees 22 minutes 52 seconds East 140.34 feet; thence North 02 degrees 28 minutes 17 seconds West, 120.00 feet; thence North 87 degrees 22 minutes 52 seconds East, 206.08 feet; to the Westerly line of Minnesota T.H. No. 76, being the arc of a curve concave to the West, having a radius of 2,907.21 feet, and chord bearing North 07 degrees 16 minutes 00 seconds West, 423.79 feet; thence along the arc of said curve 424.17 feet; thence South 80 degrees 48 minutes 50 seconds West, 520.06 feet to the point of the beginning. Said described tract contains 255,355.22 square feet or 5.86 acres, more or less.

Tract 110R-L: That part of the property described in Record Document Book 358, Page 435, all in Houston County, Minnesota, being part of the Northwest Quarter Southwest Quarter of Section 33, Township 104 North, Range 6 West, said Houston County, bounded and described as follows: Commencing at the West Quarter Corner of Section 33 Township 104 North, Range 6 West, Houston County, Minnesota; thence South 02 degrees 43 minutes 38 seconds East, 323.19 feet along the West line of the Southwest Quarter of said Section 33 to the point of beginning of the easement to be described; thence continuing South 02 degrees 43 minutes 38 seconds East, 158.60 feet; thence North 80 degrees 48 minutes 50 seconds East, 520.67 feet to the Westerly line of Minnesota T.H. No. 76 being the arc of a curve concave to the West, having a radius of 2,907.21 feet and chord bearing North 12 degrees 53 minutes 28 seconds West, 155.00 feet; thence Northwesterly 155.01 feet along the arc of said curve; thence South 81 degrees 09 minutes 09 seconds West, 492.83 feet to the point of beginning. Said described tract contains 79,125.07 feet or 1.81 acres, more or less.

Tax Parcel ID 06.0243.000 [Parcel B]

A parcel of land with the Southwest corner lying 1105 feet East and 2213.5 feet North from the Section Corners 5, 4, 32 and 33 of Township 103 and 104 North of Range 6 West described as follows: Starting at the Southwest Corner thereof, thence North 284.76 feet, thence right 86 degrees 30 minutes for a distance of 77.88 feet, thence right 28 degrees 42 minutes for a distance of 254 feet to East Property line fence, thence right 77 degrees 33 minutes for distance of 190 feet, thence right 77 degrees 19 minutes to commencing point of Southwest corner. The above described property lying and being upon the land of L.P. Johnson all in Section 33, Township 104 North, of Range 6 West of the Fifth Principal Meridian and containing 1.665 acres more or less. The testimony of L.P. Johnson, owner, being that the East Fence Line was established by the adjoining property owner as a fence line over 30 years ago. Also a strip of land three feet wide and 80 rods long, more or less, running from the North side of the above described 1.665 acre plat to the South Bank of Root River, Present Channel, Also a strip of land three feet wide and 300 feet long more or less running from the South side of the above described 1.665 acre plat to the point where the center line of Sheridan Street in the Village of Houston, Minnesota, prolonged North, intersects the South line of the Northwest Quarter of Section 33, Township 104 North, Range 6 West. All of the above described lands lying and being in Section 33, Township 104 North, Range 6 West, and containing in all 1.776 acres, more or less.

Tax Parcel ID 06.0331.000 [Parcel C]

The Southeast Quarter of the Northwest Quarter of Section 4, Township 103 North of Range 6 West of the Fifth Principal Meridian, Houston County, Minnesota. Together with an Easement described as follows: A 40 foot wide Easement for access purposes over and across that part of the Northeast Quarter of the Northwest Quarter of Section 4, Township 103 North, Range 6 West, City of Houston, Houston County, Minnesota the Centerline being described as follows: Commencing at the Northeast Corner of said Northeast Quarter Northwest Quarter; thence South 89 degrees 26 minutes 15 seconds West (assumed bearing) along the North line of said Northeast Quarter Northwest Quarter 841.81 feet to its intersection with the Easterly Right-of-Way line of Ellsworth Street in said City of Houston; thence South 00 degrees 36 minutes 50 seconds East along said Easterly R.O.W. line, 460.00 feet to the Southeasterly Corner of said Ellsworth Street; thence South 89 degrees 26 minutes 15 seconds West along the Southerly line of said Ellsworth Street, 40.00 feet to the centerline of said Ellsworth Street and to the point of beginning of said Easement Centerline; thence South 00 degrees 36 minutes 50 seconds East along the Southerly Extension of said Centerline of said Ellsworth Street and along said Easement Centerline 648.12 feet to the South line of said Northeast Quarter Northwest Quarter and there terminating. The sidelines are longer or shorter to meet existing property lines. EXCEPT: That part of the Southeast Quarter of the Northwest Quarter of Section 4, in Township 103 North of Range 6 West, described as commencing at a point 31 rods West and 1122 Feet South of the Northeast Corner of the Northeast Quarter of the Northwest Quarter of Section 4, Township 103, North of Range 6 West, said point on South Forty line, thence South 50 feet, thence East 250 feet, thence North 50 feet, thence West 250 feet to place of beginning. ALSO EXCEPTING: Commencing at the Southwest Corner of Block 34, Mons Anderson's Addition to the City (formerly village) of Houston, thence South along the East line of Sheridan Street, if Sheridan Street were extended South a distance of 977.50 feet; thence at a deflection angle to the right of 90 degrees, a distance of 80 feet to the point of beginning of the parcel to be described; thence continuing Westerly along the last described line a distance of 150 feet; thence at a deflection angle to the Left of 90 degrees a distance of 97 feet; thence at a deflection angle to the Left of 90 degrees, a distance of 22 feet; thence at a deflection angle to the Right of 90 degrees, a distance of 100 feet; thence at a deflection angle to the Left of 90 degrees, a distance of 128 feet; thence at a deflection angle to the Left of 90 degrees, a distance of 197 feet to the point of beginning.

Tax Parcel ID 06.0332.000 [Parcel D]

The North 70 acres of the East Half of the Southeast Quarter of Section 5, Township 103 North of Range 6 West of the Fifth Principal Meridian.

Tax Parcel ID 06.0322.000 [Parcel E]

The West Half of the Southwest Quarter of Section 4 in Township 103 North of Range 6 West of the Fifth Principal Meridian.

The Southwest Quarter of the Northwest quarter of Section 4, in Township 103

north of Range 6 West of the Fifth Principal Meridian, Excepting therefrom the following parcels described as:

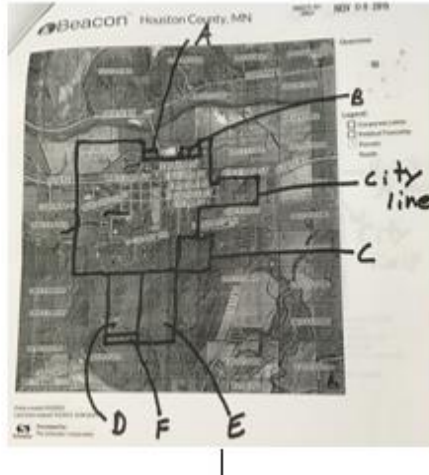
- (A) Commencing at the Northeast Corner of said Southwest Quarter of the Northwest Quarter running thence West on the North line 17.5 rods, thence south 9.05 rods, thence East 17.5 rods to the East line of said 40 acre subdivision, thence North on said line to the point of beginning.
- (B) Commencing at a point 21.08 chains South (Variation 4 degrees East) from the Northwest Corner of said Section 4, said Point being 2 rods South of the center of the Public Highway, running thence South (Variation 4 degrees East) 19-2/27ths rods, thence East (variation 5 degrees North) 29 rods, thence North 25-2/27ths rods thence South 77 degrees West 13 rods, thence South 88.5 degrees West 16 rods to the place of beginning, containing 4 acres more or less.
- (C) All that property lying Northerly and Northwesterly of the Southerly line of Grant Street extended Westerly, also known as Grant Drive.
- (D) Convey 2 acres of land for Public use of said Village beginning at the South end of the new road, from the South Terminus of Grant Street in Mons Anderson's to the Village of Houston to the said two acres, and at the terminus of the 19 chains South from the beginning point of said road and at the Southeast corner thereof where it turns West, then running Southeast 26 2/3 rods, thence Southwest 12 rods, thence Northwest 26 2/3 rods, thence fronting along the South side of said road from West to East 12 rods to the place of beginning.

Tax Parcel ID 06.0333.000 [Parcel F]

The South one-fourth of the Southeast Quarter of the Southeast Quarter of Section 5, Township 103 North, of Range 6 West.

73. The City illustrated the location of the properties addressed by Ordinance 222 as follows:⁷⁷

⁷⁷ MBAU Records, No. A-7947, Initiating Documents and Map (July 13, 2015), http://www.mba.state.mn.us/Scans/A-7947_Initiating_Docs_and_Map.pdf.



74. The ordinance was approved, and the annexation ordered, pursuant to an Order Approving Annexation Ordinance issued by the Chief Administrative Law Judge on November 16, 2015.⁷⁸

75. Though it was included in Ordinance 222 and annexed as part of the proceeding, Parcel A (above) is located within the NW1/4 of the SW1/4 of Section 33 and therefore was already part of the City's boundaries, having not been detached pursuant to the 1876 legislation as discussed in Finding No. 42 above.

76. Since at least 2011, the City has been discussing with the Township its plans to annex properties protected by the City's flood levee, including the Properties subject to this proceeding.⁷⁹

77. The City's reasons for pursuing the present annexation include the following: (a) a sense of fairness, described in terms that convey the sense that everyone who benefits from City services should be a part of the City and help pay for those services;⁸⁰ (b) a desire to "continue to provide essential services to the annexation area as such land already receives city utilities and services;"⁸¹ and (c) providing the City with "stable borders within which to efficiently plan for and deliver municipal services."⁸²

F. City Boundaries In Relation to Subject Properties

78. As evidenced by their legal descriptions and summarized below, all of the Properties that are the subjects of the present annexation proceeding are located within either Section 33 of Township 104 North, Range 6 West, or in Section 4 of Township 103 North, Range 6 West, as follows:

⁷⁸ MBAU Records, No. A-7947, Order (Nov. 16, 2015), http://www.mba.state.mn.us/Scans/A-7947_Initiating_Docs_and_Map.pdf.

⁷⁹ Exs. 29, 209.

⁸⁰ Test. of C. Edwards.

⁸¹ City's Petition at 2.

⁸² *Id.* at 3.

- A. Parcel 1 – in the NE1/4 of the NW 1/4 of Section 4.⁸³
- B. Parcel 2 – in both the NE1/4 and the NW1/4 of the SW1/4 of Section 33.⁸⁴
- C. Parcel 3 – in the NW1/4 of the SW1/4 of Section 33.⁸⁵
- D. Parcel 4 – in the SE1/4 of Section 33.⁸⁶
- E. Parcel 5 – in the NE1/4 of the SW1/4 of Section 33.⁸⁷
- F. Parcel 6 – in the NE1/4 of the NW1/4 of Section 4.⁸⁸

79. The records admitted into evidence at hearing are incomplete and/or inconsistent with regard to the lawfully established boundaries of the City.

80. As identified in the record as cited above, Parcels 1 and 6 are located to the east of Chase Street and to the south of 2-Elm Street within the NE1/4 of the NW1/4 of Section 4. Parcels 1 and 6 are not currently within the City's boundaries, having not been annexed in after they were detached as part of the 1876 legislation. Parcels 1 and 6 are each located adjacent to the City's current boundaries.

81. As identified in the record as cited above, Parcel 2 is located in both the NE1/4 and the NW1/4 of the SW1/4 of Section 33. To the extent that it is located within the NE1/4 of the SW1/4 of Section 33, it was detached as part of the 1876 proceeding. That portion having never been re-annexed into the City, it is currently located adjacent to the City's current boundaries. The portion of Parcel 2 that is located in the NW1/4 of the SW1/4 of Section 33 was part of the original City and was not detached in 1876. Therefore, it is currently located within the City's boundaries.

82. Parcel 3 is located in the NW1/4 of the SW1/4 of Section 33. Because that area was never detached from the City's original boundaries as discussed in Finding No. 42 above, Parcel 3 is located within the current boundaries of the City.

83. As identified in the record as cited above and as most conveniently illustrated as the area immediately above the blue rectangle in Finding No. 65 above, Parcel 4 is located outside and adjacent to the City's current boundaries.

84. As identified in the record as cited above, Parcel 5 was part of the area detached from the City's original boundaries as discussed in Finding No. 39. It remains outside and adjacent to the City's current boundaries.

⁸³ Ex. 1.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

G. Governmental Services

85. The City provides the residents of the area, including the subject Properties, with law enforcement protection and with fire protection services through the Houston Fire Department located within the City's industrial park.⁸⁹

86. The City operates a municipal water and sewer service and necessary infrastructure.

87. Parcel 1 is connected to and uses City water and sewer services. Parcels 2 and 3 have been connected to and have utilized the municipal water and sewer infrastructure since approximately 1992.⁹⁰ Parcel 4, the location of a former residence, is improved with a connection to the City's sewer and water system which is not presently used as the property is vacant land. Parcel 5 is also vacant land unserved by City water and sewer, but located adjacent to property that is served such that connection would be conveniently available. The three residences built on Parcel 6 are connected to and use the City's sewer system; they are not directly connected to the City's water system, though connection is located in Chase Street immediately adjacent to the property.⁹¹

88. The City charges Parcels 1, 2, 3 and 6 for use of water and/or sewer services at double the rate paid by properties located within the City boundaries.⁹²

89. The City provides land use planning services to its residents through its adopted zoning code, Comprehensive Plan and enforcement of the state's building code.⁹³

90. The City improves and maintains a system of municipal streets through paving, snowplowing and mowing various rights-of-way.

91. All of the Properties are accessed only by City streets and state highways; the Township does not provide or maintain any roadway access to the Properties. The City plows Chase Street and 2-Elm Street immediately adjacent to Parcels 1 and 6, and has improved Chase Street and 2-Elm Street with blacktop, curb and gutter.⁹⁴

92. The City also provides its residents with administrative services, including election-related services.

93. The City's additional amenities include a public library, the Root River Trail and Nature Center, dedicated parkland, local churches, the Valley View Nursing Home, a recycling center and various social services for eligible individuals,⁹⁵ all of which are made available to members of the public irrespective of whether they reside within the

⁸⁹ Ex. 7 at 33; Test. of C. Peterson.

⁹⁰ Ex. 6; Test. of J. Beckman; Test. of C. Peterson.

⁹¹ Ex. 6; Test. of C. Peterson.

⁹² Test. of C. Peterson.

⁹³ *Id.*; Ex. 7.

⁹⁴ Test. of C. Peterson; Ex. 23 (Feb. 8 1993 City Council Minutes).

⁹⁵ Test. of C. Peterson; Ex. 7 at 33-34.

City's borders.⁹⁶

94. The City operates a wastewater treatment plant built in 1975 and, in 2009, targeted for improvement within the next 20 years.⁹⁷ A 2014 preliminary cost estimate for these improvements totaled \$228,200.⁹⁸

95. The City has no plans to provide any enhanced governmental services to the Properties upon annexation.

96. No boundary adjustment is required to provide needed government services at this time.

97. The City testified that it may take action to discontinue its past practice of providing sewer and water services to properties outside its borders, and noted that it would comply with all applicable law should it choose to do so.⁹⁹

H. Environmental Issues: Flood Plain Protection

98. The City sits between the Root River to its north and the mouth of the South Fork of the Root River to its east.¹⁰⁰

99. The major environmental problem for the entire area is the risk of flooding of the Root River.

100. Given its location and the requirements of Minnesota law,¹⁰¹ the City has been involved with flood plain management for decades.¹⁰²

101. In its December 1989 discussions regarding a new levee¹⁰³ project proposed for the region in 1992, the City Council discussed publicly the view that all area properties protected by the levee should be annexed into the City and that annexation should commence as soon as possible.¹⁰⁴

102. The Township expressed its annexation opposition to the City as early as February 1990, and indicated that it "would rather work out some type of alternative to help pay rather than being annexed."¹⁰⁵

103. By October 1990, the City had received a commitment of state funds in

⁹⁶ Test. of C. Peterson.

⁹⁷ *Id.*; Ex. 7 at 30.

⁹⁸ Ex. 28.

⁹⁹ Test. of C. Edwards; Test. of C. Peterson.

¹⁰⁰ Ex. 7 at 11.

¹⁰¹ 1973 Minn. Laws ch. 351, at 703-06

¹⁰² Ex. 21 at 1.

¹⁰³ Prior to 1998, a less extensive levee existed in the area of Highway 76. Test. of L. Jerviss.

¹⁰⁴ Ex. 19 at 2.

¹⁰⁵ Ex. 20 (Feb. 12, 1990 City Council Minutes).

support of the levee project.¹⁰⁶

104. The levee project was funded by federal and state grants and by the City's issuing \$670,000 in bonded indebtedness.¹⁰⁷

105. In March 1995, the City Council discussed its plans to annex all Township property to be protected by the levee and directed its leaders to meet with the Township Board of Supervisors to discuss whether to proceed via an orderly annexation proceeding or the contested annexation process.¹⁰⁸

106. In or around 1998, the U.S. Army Corps of Engineers completed construction of a levee system designed to protect the City against 100-year flood levels.¹⁰⁹ The system consists of two miles of earthen levee, plus associated drainage components and flood warning functionality.¹¹⁰

107. The City continued to discuss annexation of up to 21 properties protected by the levee through at least 2005.¹¹¹

108. Residents within the levee protection area are exempt from being required to buy flood insurance.¹¹²

109. All six parcels of the Property are protected by the City's flood levee system.¹¹³

110. Other properties outside the City's borders are also protected by the flood levee, in addition to the six parcels subject to this proceeding.¹¹⁴

111. As required by federal law,¹¹⁵ the City is in the process of recertifying the levee. The City must complete this process by January 2017 in order to continue the levee's designation as a Provisionally Accredited Levee for purposes of the United States Department of Homeland Security, Federal Emergency Management Agency's (FEMA) Digital Flood Insurance Rate Map,¹¹⁶ which designation is required in order to participate in the National Flood Insurance Program.¹¹⁷

112. Initial cost estimates for the recertification process include \$25,249.50 for

¹⁰⁶ *Id.* (Oct. 22, 1990 City Council Minutes).

¹⁰⁷ Test. of L. Jerviss; Ex. 20 (Oct. 22, 1999 City Council Minutes); Ex. 24 (Oct. 9 and 23, 1995 City Council Minutes).

¹⁰⁸ Ex. 24 (Mar. 13, 1995 City Council Minutes).

¹⁰⁹ Ex. 7 at 11.

¹¹⁰ Ex. 10 at 1.

¹¹¹ Ex. 27 (June 13, 2005 City Council Minutes).

¹¹² Test. of C. Peterson.

¹¹³ Ex. 4.

¹¹⁴ Test. of C. Edwards; Ex. 211.

¹¹⁵ 44 C.F.R. § 65.10 (2015).

¹¹⁶ Ex. 9.

¹¹⁷ Ex. 10 at 1; see also THE NATIONAL FLOOD INSURANCE PROGRAM, available at <http://www.fema.gov/media-library-data/20130726-1535-20490-8602/unit2.pdf>.

phase 1; \$107,280 for phase 2; and \$44,400 for phase 3.¹¹⁸

113. Annexation of the subject area will not impact the recertification of the levee, nor will it provide additional flood protection to the subject area beyond what exists currently.¹¹⁹

I. Fiscal Impact

114. In 2014, the Township's revenue totaled \$281,369, just under half of which (\$135,072) came from property taxes.¹²⁰

115. The owners of the subject Properties were assessed by the Township for 2014 property taxes in the amount of \$3,211.79, constituting approximately 2.5% of the Township's annual tax levy and accounting for approximately 1.1% of the Township's total annual revenue.¹²¹ This amount would have to be borne by the remaining Township taxpayers if the annexation is granted.

116. In December 2014, the City adopted a final 2014 Tax City Budget and Tax Levy, collectible in 2015, in the amount of \$437,126.¹²²

117. For tax year 2015, the City assessed properties at a tax rate of 124.1470%.¹²³

118. For tax year 2015, the Township assessed properties at a tax rate of 20.7640%.¹²⁴

119. For tax year 2015, Houston County assessed taxes against properties located in the City at a rate of 62.0190% and against properties located in the Township at a rate of 64.2040%.¹²⁵

120. For tax year 2015, Independent School District No. 294 assessed taxes against properties located in the City at a rate of 10.3560% and against properties located in the Township at a rate of 11.4190%.¹²⁶

121. Based on 2015 tax rates, if annexation is granted the subject parcels will experience the following tax increases:¹²⁷

¹¹⁸ Ex. 10.

¹¹⁹ Test. of C. Edwards.

¹²⁰ Ex. 208.

¹²¹ Exs. 201-206.

¹²² City Council Minutes (Dec. 8, 2014), http://www.houston.govoffice.com/vertical/sites/%7BEEB7ECBB-1BF8-4E19-89D7-8D6A47AC32AE%7D/uploads/Minutes_December_8_2014.pdf. The Chief Administrative Law Judge takes judicial notice of these minutes as public record pursuant to Minn. R. Evid. 201.

¹²³ Ex. 11.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

- a. Parcel 1: \$1,696.29
- b. Parcel 2: \$108.15
- c. Parcel 3: \$10,652.36
- d. Parcel 4: \$0
- e. Parcel 5: \$127.17
- f. Parcel 6: \$3,701.99

122. Parcel 4 is tax-exempt property, and so its annexation will not alter the tax rate or collections of either the City or the Township.¹²⁸

123. The City testified that its total tax levy will remain unchanged if annexation is approved, but noted that the distribution of the levied taxes will change between taxpayers upon the inclusion of the subject Properties in the City's boundaries.¹²⁹

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

CONCLUSIONS OF LAW

1. The Chief Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. §§ 414.01, .031, .12 (2016).

2. 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."¹³⁰

3. The Township's motion for summary disposition is denied based upon the findings of fact and conclusions of law stated herein.

4. To the extent that the City's post-hearing submissions contain a directive, which more properly should have been presented as a motion, to include within the Petition any length of Chase Street not currently included in the City's boundaries for the purpose of annexing same, the motion is denied as procedurally untimely, statutorily unauthorized and substantively unnecessary.

5. Minn. Stat. § 414.012 requires a municipality seeking a boundary adjustment to file a corporate boundary map on which the proposed boundary alteration is delineated. A corporate boundary map must accurately describe the boundaries of the

¹²⁸ Ex. 204.

¹²⁹ Test. of C. Edwards.

¹³⁰ Minn. Stat. § 414.01, subd. 1b(3).

municipality.¹³¹

6. The maps filed by the City do not constitute sufficient corporate boundary maps in that they do not accurately describe the current boundaries of the City. As both parties were fully advised as to which parcels were proposed for annexation as part of this proceeding, the insufficiency of the City's maps can be corrected as directed in this Order without abridging any due process or other substantial rights of the parties.¹³²

7. Minn. Stat. § 414.031 sets forth a process whereby a municipality may seek to annex "unincorporated property abutting a municipality."¹³³

8. Minn. Stat. § 414.031 sets forth 17 factors that must be considered in deciding whether an annexation is appropriate under law.¹³⁴ The Chief Administrative Law Judge has considered all 17 factors as germane to this proceeding and as noted in the above findings.

9. Minn. Stat. § 414.031 requires the Chief Administrative Law Judge to consider, among other factors, the "degree of contiguity of the boundaries between the annexing municipality and the subject area" as well as "the implementation of previous annexation agreements and orders."¹³⁵

10. The present record sufficiently establishes that Parcels 1, 4, 5, 6, plus the portion of Parcel 2 that is located within the NE1/4 of the SW1/4 of Section 33, are all located outside of and adjacent to the City's current, legal boundaries, and so constitute "unincorporated properties"¹³⁶ appropriate for annexation as part of this proceeding.

11. The present record establishes that Parcel 3, plus the portion of Parcel 2 that is located within the NW1/4 of the SW1/4 of Section 33, are both located inside the City's current, legal boundaries and, as such, are not "unincorporated property" appropriate for annexation pursuant to the City's Petition.

12. Parcels 1, 2, 3, 4 and 6 are urban or suburban in character.

13. Parcel 5 is rural in character and there was no evidence presented to establish that annexation of this parcel is required to protect the public's health, safety or welfare, or that annexation would be in the best interest of this property.

14. Annexation and alteration of the City's boundaries to include Parcels 1, 2, 3, 4 and 6 will not result in an undue hardship on the Township.

¹³¹ Minn. Stat. § 414.011, subd. 9 (2016); see also Minn. R. 6000.0800, subp. C (2015).

¹³² Rule 61, Minn. R. Civ. P.; See also *Roehrs v. Thompson*, 185 Minn. 154, 160, 240 N.W. 111, 114 (1932) ("But the point presents no more than an irregularity which doubtless would have been corrected below had it been properly presented there.")

¹³³ Minn. Stat. § 414.031, subd. 1.

¹³⁴ *Id.*, subd. 4(a)(1)-(17).

¹³⁵ *Id.*, subd. 4(a)(4), (9).

¹³⁶ Minn. Stat. § 414.011, subd. 3.

15. Minn. Stat. § 414.036 (2016) sets forth the following with regard to the legislatively-approved reimbursement of townships 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.

16. Any order approving annexation must reflect the requirements of Minn. Stat. § 414.036 with respect to the provision for reimbursement from the City to the Township “for all or part of the taxable property annexed.”

17. Pursuant to Minn. Stat. § 414.12, subd. 3, the Chief Administrative Law Judge must apportion the Office of Administrative Hearings’ costs of contested case proceedings in boundary adjustment matters to the parties in an equitable manner if the parties have not otherwise agreed to a division of the costs.

18. A municipality’s attempt to annex property is final on the date specified by the Chief Administrative Law Judge.¹³⁷

Based upon these Findings of Fact and Conclusions of Law, and for the reasons set forth in the accompanying Memorandum, which is incorporated herein by reference, the Chief Administrative Law Judge issues the following:

ORDER

1. On or before November 1, 2016, the City is directed to serve upon the Township and file with the Office of Administrative Hearings:

- a. An accurate, complete and certified corporate boundary map which complies with all applicable law and rule and which delineates the actual, legal boundaries of the City, including any islands of property within the main borders of the City which remain outside the municipal boundaries and remain in the boundaries of any adjoining

¹³⁷ Minn. Stat. § 414.031, subd. 6.

township; and

- b. Proof of compliance with Minn. Stat. § 414.036 with respect to the provision for reimbursement from the City to the Township “for all or part of the taxable property annexed” in light of the taxable value of the Properties, noted herein to be \$3,211.79 on an annualized basis.

2. On or before November 14, 2016, the Township is directed to serve upon the City and file with the Office of Administrative Hearings any objections it has to the City’s supplemental filings with respect to inaccuracy, incompleteness, lack of certification or other indicia of unreliability.

3. Provided that the City’s supplemental filing of an accurate and complete corporate boundary map supports the factual findings set forth herein, upon receipt and review of the supplemented filings the Chief Administrative Law Judge will issue a final Order of Annexation containing the following directives:

- a. Parcels 1, 4, and 6 will be annexed into and included within the City’s boundaries.
- b. That portion of Parcel 2 located within the NE1/4 the SW1/4 of Section 33 will be annexed into and included within the City’s boundaries.
- c. Parcel 3 and that portion of Parcel 2 that lies in the NW1/4 of the SW1/4 of Section 33 will be ordered included in the City’s boundaries in accordance with the 1874 enactment of the Minnesota Legislature. Pursuant to each of the independently sufficient authorities of Minn. Stat. §§ 414.01, subd. 1, .031, the Chief Administrative Law Judge will order that the boundaries of the City of Houston be altered to include Parcel 3 and the portion of Parcel 2 described in this paragraph based upon the 1874 legislation defining same as part of the City’s original boundaries.
- d. Parcel 5 will not be annexed into the City’s boundaries unless the supplemental filings establish any new and sufficient facts relevant to the location of Parcel 5 in relation to the City’s current, accurate boundaries.
- e. The order will reflect the requirements of Minn. Stat. § 414.036 with respect to the provision for reimbursement from the City to the Township “for all or part of the taxable property annexed.”
- f. Pursuant to Minn. Stat. § 414.12, subd. 3, the order will apportion the Office of Administrative Hearings’ costs of this contested case proceeding to the parties in an equitable manner if the parties have not otherwise agreed to a division of the costs.

- g. The order will contain the Memorandum attached hereto, as modified if necessary, as a means of detailing the court's analysis.

4. The record in this proceeding is hereby reopened until no later than November 14, 2016, but only for the purposes set forth herein.

Dated: October 6, 2016



TAMMY L. PUST
Chief Administrative Law Judge

MEMORANDUM

The Township argues that the Municipal Boundary Adjustment Act (Act) requires the denial of the Petition because the Properties will not receive any “enhanced governmental services” and therefore “the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area.”¹³⁸ The Township also asserts that the City has failed to establish any of the three required statutory factors in support of annexation and that annexation would constitute an undue hardship for the Township. With respect to two of the six parcels subject to the Petition, the Township suggests that the Chief Administrative Law Judge lacks jurisdiction to order their inclusion within the City's boundaries as part of this proceeding.

The Township's positions are not supported by the relevant facts or mandated by applicable law. As explained below, both the facts and the law support the Chief Administrative Law Judge's conclusion that annexation should be granted and the City's boundaries altered to include five of the six parcels of the subject Properties within its borders.¹³⁹

Enhanced Services and Monetary Value of Benefit

The Act requires the Chief Administrative Law Judge to consider 17 factors when determining whether to grant annexation. One of the factors that must be considered is “[p]lans and programs by the annexing municipality for providing needed and enhanced governmental services to the subject area in a cost-effective and feasible manner within a reasonable time from the date of the annexation.”¹⁴⁰ The Township argues that annexation should be denied because none of the six Properties will receive any new “enhanced” services once they are annexed into the City's boundaries.

The Township reads the statute's reference to “enhanced governmental services” to require the City to provide “something more than” the services provided at present.

¹³⁸ *Id.*, subd. 4(a)(11), (d).

¹³⁹ *Id.*, subd. 4(b).

¹⁴⁰ *Id.*, subd. 4(a)(11).

That reading makes sense in typical situations when the provision of services is dependent on the annexation. The present proceeding is not that typical case. In a case such as this wherein the City's services have already been extended, the reference to "enhanced" services can be read to include those services generally provided by a City and not provided by a Township. In this case, those "enhanced" governmental services include the flood protection and the municipal utility services the City already provides. These services are "enhanced" over and above what the Township provides to its residents, all of whom use private septic systems and wells and must purchase flood insurance if located within a floodplain. Under this reading, the criterion weighs in favor of granting annexation.

Even reading the criterion as the Township does and as it generally applies in a typical case, the result is the same. The Township's reliance on this statutory factor as a basis for denial of the Petition appears to be premised on the assumption that each statutory factor is sufficiently determinative to prevent annexation in any specific case. This assumption is inaccurate. Several of the statute's 17 required considerations can, and often do, prove immaterial or inapplicable to the facts of any individual case. In the present case for example, the proposed annexation raises no issues pertinent to "the present transportation network ... [or] potential transportation issues, including proposed highway development."¹⁴¹ Annexation would have no effect "on affected and adjacent school districts and communities."¹⁴² Likewise, the "general topography, major watersheds, [and] soil conditions" are not important or determinative. Therefore, the fact that there may, or may not, be specific plans for providing additional "needed and enhanced governmental services" to the area in the future following its annexation does not require a finding that annexation is unwarranted.¹⁴³

The statute does require a denial of an annexation petition "on finding that the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area."¹⁴⁴ Relying upon this directive, the Township insists that because the City failed to produce any evidence of plans for "enhanced governmental services" that would confer benefits with monetary value upon the subject Properties, the statute mandates that the annexation be denied.

The Township's argument conflates the "enhanced governmental services" referenced in subdivision 4(1)(11) with the "monetary value of benefits" referenced in subdivision 4(d). As the statute contains no such link, the Township is incorrect in its understanding of the law. It is also inaccurate in its characterization of the facts in the

¹⁴¹ *Id.*, subd. 4(a)(6).

¹⁴² *Id.*, subd. 4(a)(13).

¹⁴³ The City seeks to avoid the Township's argument altogether by asserting that the new residents will benefit from enhanced services by being able to vote in City elections and enjoy the protections of enhanced zoning regulations. The City is correct that the Properties will experience the consequences of zoning code enforcement. Whether that constitutes a benefit is in the eye of the beholder: a resident required to remove junked vehicles from his front yard may not characterize this change as a benefit; that resident's neighbors likely would. Likewise, it is true that the Property owners will be allowed to vote in City elections, but it is also true that they will lose their ability to vote in Township elections.

¹⁴⁴ Minn. Stat. § 414.031, subd. 4(d).

record.

The Township's confusion likely arises from the fact that the present case differs from a typical case, in which annexation is sought before a city provides municipal services to non-residents located in an adjoining township. In these typical cases, the language referencing plans for "enhanced governmental services" generally refers to a city's plans to extend sewer and water services to an area in support of planned development. As the Township suggests, in the more typical case this language could also relate to a city's future plans to construct a levee for flood protection.¹⁴⁵ When conducting the income/benefit comparison in these typical cases, often it is the value of the planned benefits that are compared to the expected increase in revenues, because those are the only benefits evident in the factual record in those cases.

The present case is atypical and presents a different question: whether the fact that municipal services were provided prior to annexation negates the City's ability to claim the value of those services in support of a later-instituted annexation proceeding. Here, the City already extended flood protection and municipal utility services to the subject Properties decades ago and in response to the present owners' requests.

The Township insists that the statute means the same thing no matter what the circumstances: that "enhancement" of City services is required no matter what City services the subject properties receive without any residential right to do so, and that only those "enhanced" services can be valued in comparison to the post-annexation increase in income a city would enjoy. In effect, the Township wants it both ways: they want their residents to enjoy the benefits of City services, in the form of flood protection and municipal utilities, but they want to avoid the value of these services counting in favor of annexation because the services were extended in the past and are not dependent on the annexation determination.

This argument appears to circumvent the statute's intent to facilitate "annexation to existing municipalities of unincorporated areas unable to supply municipal service."¹⁴⁶ The Township's overly restrictive reading of the statutory criteria penalizes cities that extend services to non-residents when they can without overly burdening their own taxpaying residents and without insisting on annexation. In effect, the Township's reading of the statute would require a city to quash any instinct to accommodate service requests lest that generosity be held against them in a future annexation proceeding. Nothing in the statute suggests that the legislature intended such a result.

The Chief Administrative Law Judge finds that the statute does not require evidence of the monetary value of the "enhanced governmental services" planned to be provided after annexation. It merely requires evidence of the monetary value of "benefits conferred upon the annexed area," and a comparison of that value with the revenue increase that will inure to a city as the result of annexation for the purpose of establishing whether the two values bear a reasonable relationship to each other. The statute does

¹⁴⁵ Township's Proposed Findings of Fact, Conclusions of Law and Memorandum at 18 (Feb. 12, 2016).

¹⁴⁶ Minn. Stat. § 414.01, subd. 1a(4).

not restrict the required valuation of benefits to those that are “enhanced” beyond present services or will come to pass only in the future.

In the present case, the City has established sufficient evidence of the benefits it has, and will, confer upon the subject Properties. The benefits already conferred include the connections to and allowed use of the City’s sanitary sewer and water utilities, as well as the protection provided by the City’s levee. The benefits to be conferred in the immediate future include the reduction, by half, of the Properties’ utility bills.

With respect to increased income the City will receive, the record clearly states that the City as a whole will not receive an increased tax levy; it will receive the same levied amount but that total will be paid in differing percentages by the City’s taxpayers.¹⁴⁷ In effect, the pie will remain the same size but will be cut into more pieces. The annexation will result in a decrease in revenues for the City to the same extent that it confers a specific monetary benefit upon the Properties to be annexed. Considered together, it is clear that the level of income the City will receive is reasonable in relationship to the value of the benefits the Property owners will continue to receive from the City in municipal utility service and flood protection.

Still seeking to avoid annexation, the Township asserts that it will suffer an undue hardship if the six Properties are removed from its tax rolls and included in those of the City. The Township is correct that its taxpayers will see an increase in taxes: the approximated value of \$3211.79, paid by the six parcels would be split between the remaining property owners in the Township. While it is fair to assume that these taxpayers may not appreciate the tax increase, the Township has failed to establish that the taxes would not be collectible or that, even if they were, such would result in the Township being unable to carry on the functions of government.¹⁴⁸ Therefore, the annexation will not result in undue hardship to the Township.

Urban or Suburban in Character

Chapter 414 authorizes the Chief Administrative Law Judge to grant annexation only upon finding:

- (1) that the subject area is now, or is about to become, urban or suburban in character;
- (2) that municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare; or
- (3) that the annexation would be in the best interest of the subject.¹⁴⁹

Any one of the above findings is sufficient to support a grant of annexation.

¹⁴⁷ Test. of C. Edwards.

¹⁴⁸ Minn. Stat. § 414.031, subd. 4(c).

¹⁴⁹ *Id.*, subd. 4(b).

The Chief Administrative Law Judge finds that five of the six properties are now “urban or suburban in character” and one is “rural in character.” Although these terms are not defined in the Act, the legislature’s explicit findings and policy goals embedded in Chapter 414 shed light on how the terms are to be understood.¹⁵⁰ In relevant part, the Municipal Boundary Adjustment Act provides that city government is the most efficient form for “areas intensively developed for residential, commercial, industrial, and governmental purposes.”¹⁵¹ For this reason, the statute allows cities to annex such properties, statutorily identified as those that are or about to become “urban or suburban in character.”¹⁵² Correspondingly, the Act provides that townships are the most efficient form of government for “areas used or developed for agricultural, open space, and rural residential purposes,”¹⁵³ and so allows these properties – identified as those that are “rural in character”¹⁵⁴ - to remain part of a township.

Judicial and administrative courts have examined factual circumstances in various statutory contexts to determine whether specific property is urban or rural in character.¹⁵⁵ Under Chapter 414, these same courts have examined the subject properties’ use, zoning restrictions, proximity to other uses as a harbinger of impending development, density and access to or use of city services to determine whether a specific property should be considered to be urban or rural.¹⁵⁶

As established in all cited cases, the necessary determinations turn on the specific

¹⁵⁰ Minn. Stat. § 645.16 (2016); *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 385-86 (Minn. 1999).

¹⁵¹ Minn. Stat. § 414.01, subd. 1a(2).

¹⁵² Minn. Stat. § 414.031, subd. 4(b)(1).

¹⁵³ Minn. Stat. § 414.01, subd. 1a(2).

¹⁵⁴ Minn. Stat. § 414.06, subd. 1.

¹⁵⁵ Outside Chapter 414, courts generally consider the agricultural versus other uses of the property, the low density of development in the area, and the lack of improvements or access to municipal services in determining whether property is rural or urban for statutory purposes. See *In re Engstrom*, 370 B.R. 205, 213 (Bankr. D. Minn. 2007); *In re Kyllonen*, 264 B.R. 17, 30-31 (Bankr. D. Minn. 2001); *Minn. Power & Light Co. v. Carlton Cnty.*, 145 N.W.2d 68, 70 (Minn. 1966); *Staples v. State*, 46 N.W.2d 651, 653-54 (Minn. 1951); *Stees v. Bergmeier*, 91 Minn. 513, 516-17, 98 N.W. 648, 650 (1904); *Kiewert v. Anderson*, 65 Minn. 491, 492, 67 N.W. 1031, 1032 (1896).

¹⁵⁶ *City of Lake Elmo v. Nass*, No. A12-2008, 2013 WL 3491161, at *1, *8 (Minn. Ct. App. Sept. 25, 2013); see also *State ex rel. Town of White Bear v. City of White Bear Lake*, 255 Minn. 28, 36-38, 95 N.W.2d 294, 300-01 (1959); *State ex rel Copley Twp. v. Village of Webb*, 250 Minn. 22, 25-30, 83 N.W.2d 788, 793-94 (1957); *In re Exsted v. City of Hutchinson*, No. 43-CV-15-1048 (Minn. Dist. Ct. June 13, 2016); *In re the Detachment of Certain Real Property from the City of Cambridge to Isanti Twp.*, OAH Docket No. 84-0330-32927, FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER DENYING DETACHMENT (May 11, 2016); *In re the Petition for the Detachment of Certain Land from the City of Wabasha*, OAH Docket No. 68-0330-32004, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Aug. 20, 2015); *In re the Detachment of Certain Real Property from the City of Hutchinson*, OAH Docket No. 84-0330-32284, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DETACHMENT (June 18, 2015); *In re the Petition for Annexation to the City of Oslo A-7886*, OAH Docket No. 82-0330-31515, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Mar. 16, 2015); *In re the Petition of the City of Pine River*, OAH Docket No. 2-0330-19393-BA, FINDINGS OF FACT, CONCLUSIONS AND ORDER at 10, 26 (Jan. 13, 2009); *In re the Petition of the City of Bovey*, OAH Docket No. 2-0330-18032-BA, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 5 (July 5, 2007); *In re the Petition of Dawson Grain Coop., Inc.*, OAH Docket No. 12-2900-15004-2, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER at 8 (Feb. 12, 2003).

facts of each case. Those facts always include consideration of the overall structure and economy of the relevant community or communities. Properties are deemed “urban” and even “suburban” even in the smallest cities in Minnesota, as these communities contain “areas intensively developed for residential, commercial, industrial, and governmental purposes.”¹⁵⁷ The intensity of development is scrutinized relative to the community at issue and, as such, the categorizations of “urban” and “suburban” are not limited to large metropolitan areas within the state.

The Chief Administrative Law Judge finds five of the six parcels of Property to be, at present, urban or suburban in character. Given this finding, as discussed below, it is unnecessary to address the Township’s further arguments that annexation is not “required to protect the public health, safety and welfare” or “in the best interest” of the Properties.

Parcels 1, 4 and 6

Parcel 1 is a parcel bounded on two sides by City streets and improved with three residential structures served with City sanitary sewer. Connections to City water are located adjacent to the parcel, but unused at the owner’s choice. The City plows the streets in the winter and maintains the street, improved with curb and gutter, for convenient access throughout the year. The tracts are protected by the levee. There is no evidence that the properties will be further developed in the future, as there was no evidence of any planned development elsewhere in the City. These parcels are part of the urban landscape of the City of Houston; there is no relevant distinction between these residential properties and those located across the adjacent streets, except that the property owner has chosen not to hook up to City water in favor of continuing to utilize a private well. The tract is not used for any type of agricultural purposes, and instead functions as a commercial enterprise in that it is used as rental property.

Parcel 4 is a small platted area that at one time was improved with a residential structure connected to City sewer and water services. The structure has been removed and the property is now a vacant lot located immediately adjacent to the Valley View Nursing Home, which covers the remainder of the block and which, common sense would dictate, will most likely relate to any future use of this parcel. It is served by City streets and surrounded on all sides by developed residential structures. Given its location and amenities, it is urban or suburban in nature and is appropriate for annexation.

Parcel 6, as defined in this proceeding, consists of one residential structure that fronts on a City street. The residents of the parcel are served by City water and sanitary sewer facilities. The City plows the road and maintains the street. Again, there is no distinction between this property and those located directly across 2-Elm Street; all appear to developed and used for urban residential purposes within a community of just under 1,000 people.

The City’s Petition seeks annexation of only approximately 1.5 acres of this 13.58-

¹⁵⁷ Minn. Stat. § 414.01, subd. 1a(2).

acre tract. The remaining 12 acres is used for agricultural purposes. As it is not included within the Petition, it is unnecessary for the Chief Administrative Law Judge to address the character of this portion of the tract. However, given that the annexation of Parcel 6 will result in this tract being split for taxing purposes, the parties are advised to consider whether they prefer to request the Chief Administrative Law Judge to enlarge the area to be annexed to include the entire tract as a means of improving the symmetry of the City pursuant to the authority of Minn. Stat. § 414.031, subd. 4(f).

Parcels 2 and 3

These parcels are already located within the City and are zoned and used for industrial purposes. Under a similar analysis as set forth in *In the Matter of the Petition of Dawson Grain Coop., Inc.*,¹⁵⁸ they are urban or suburban in character.

Parcel 5

Parcel 5 is located adjacent to the City's wastewater treatment facility and the grain elevator operation located on Parcels 2 and 3. It is not served by City water and sewer utilities, but has access to service in the general area. The parcel does not and has never utilized these services. Parcel 5 is surrounded on two sides by property dedicated to agricultural purposes, and has itself been under cultivation and is improved with structures generally associated with agricultural use. While its owner has at times planned to develop the property into senior-related housing, none of those plans have yet been implemented. The City has identified no plans for development of this generally unimproved property. For these reasons, the Chief Administrative Law Judge finds Parcel 5 to be rural in character and not in the process of becoming urban or suburban in character in the foreseeable future. No evidence having been presented to establish that annexation is necessary to protect the public's health, safety or welfare, or that annexation would be in the best interest of this property, annexation is not appropriate on the present record.

Jurisdiction

The Township questions the authority of the Chief Administrative Law Judge to issue an order affecting Parcels 2 and 3 in this proceeding. As an administrative court, this tribunal's jurisdiction is statutorily defined¹⁵⁹ Chapter 414 of Minnesota Statutes defines that authority to "conduct proceedings, make determinations and issue orders regarding ...the alteration of municipal boundaries."¹⁶⁰ One of the clear directions from

¹⁵⁸ OAH Docket No. 12-2900-15004-2, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER at 8 (property not rural in character where it is zoned "industrial," developed with a grain coop and surrounded by industrial structures.)

¹⁵⁹ *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010) ("Administrative agencies are creatures of statute and they have only those powers given to them by the legislature."); *see also* Minn. Stat. § 14.48 (2016) ("A state Office of Administrative Hearings is created."); *In re Excess Surplus Status of Blue Cross and Blue Shield of Minnesota*, 624 N.W.2d 264, 269 n. 4 (describing the Office of Administrative Hearings as "an office of the executive branch empowered to hold adversary hearings, take testimony, view exhibits and make findings of fact and conclusions of law").

¹⁶⁰ Minn. Stat. § 414.01, subd. 1.

the Legislature is that the issued orders should be designed 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.”¹⁶¹

It is hard to imagine how the public interest in efficient local government can be realized in a community that is unsure of the extent of its jurisdictional authority. The determination of whether specific property is inside or outside the City’s borders affects the services a property owner is lawfully entitled to demand from its government and the cost it is required to bear for the use of those services.

In 1993, the Municipal Board ordered that the property in which Parcels 2 and 3 are located was outside the City’s borders. That order was not well-informed by the 1876 legislation. Neither the Municipal Board, acting as an administrative agency, nor this administrative court have the statutory authority to disregard a specific enactment duly passed by the Minnesota Legislature. Instead, both are required to enforce and implement the laws of this state. In accord with that requirement, the Chief Administrative Law Judge has ordered the alteration of the City’s municipal boundaries to include Parcels 2 and 3 to the extent they are located within the NW1/4 of the SW1/4 of Section 33. The tribunal is fully within its jurisdictional authority in so doing.

Required Verification of City Boundaries

Under the authority of Minn. Stat. § 414.031, a municipality may annex “unincorporated property” if certain statutory criteria are met. The City of Houston seeks annexation of six parcels of property, all of which it originally asserted are located outside of and adjacent to the City’s current boundaries. The Township did not contest this assertion at hearing. Surprisingly, the City did – by asserting that Parcels 2 and 3 are actually located inside the City’s boundaries notwithstanding the City’s inclusion of them in the Petition for Annexation.

As a result, the Chief Administrative Law Judge has been required to reconstruct the changing boundaries of the City of Houston over the past 142 years of its existence. The current record, as detailed in the findings above, reveals that the City was: (1) originally platted in 16 quarter-sections, all within one section; (2) incorporated to include 40 quarter-sections located in five sections; and then (3) subjected to a legislative detachment that reduced the City’s boundaries to 14 quarter-sections located in four sections. Every change in the City’s boundaries resulted in a corresponding change in the Township’s boundaries, yet it does not appear from the record that either the City or the Township has maintained reliable evidence of their own municipal boundaries. In fact, the record is quite clear that for over 100 years both the Township and the City lost track or remained unaware of the 1876 detachment which moved significant amounts of property out of the City and back into the Township. Just as clearly, none of the maps and illustrations and annotated photographs of the City’s boundaries introduced into evidence in this proceeding contain a completely accurate representation of the City’s boundaries in that none made any provision for the 1879 detachment of several blocks of

¹⁶¹ *Id.*, subd. 1b(3).

property and all included a northern boundary line nowhere referenced in the submitted legal descriptions. Perhaps just as confounding, neither party addressed the record's accuracy or inaccuracy with respect to the City's 1997 and 1999 re-annexations of already annexed property or the Township's attempts to detach property that had already been deemed outside the City's boundaries for over a century.

Contrary to the City's post-hearing assertions, the inaccuracies in its records can not be simply disregarded and the proceeding allowed to somehow morph around the record as submitted. Instead, in accordance with Rule 201, Minn. R. Evidence, the Chief Administrative Law Judge has supplemented the proceeding record with public records relating to the community's history and attempted to disentangle decades of inaccurate maps, recorded plats and other reference sources. The extent of the necessary effort explains why the order in this matter was not issued months ago.

It is in this context that the Chief Administrative Law Judge requires the City to pause and reconsider the state of the record upon which it has requested a municipal boundary adjustment ruling. In this case, that record is full of contradictions and omissions, at least with respect to the location of Parcels 2 and 3 in relation to the City's boundaries. Given that fact, the record with respect to the boundary-related locations of the other four parcels bears reexamination as well.

In the interests of accuracy, and therefore justice with respect to any one who now or in the future relies upon the order(s) in this proceeding as affecting their property rights, the City is required to obtain a verified identification of its municipal boundaries, and to submit such as required by Minn. Stat. § 414.012. If it fails to do so, an order will be issued dismissing the matter for noncompliance with the requirements of the Municipal Boundary Adjustment Act.

Tax Reimbursement

Minn. Stat. § 414.036 defines the parameters of statutorily authorized compensation attributable to the loss 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.¹⁶²

¹⁶² Minn. Stat. § 414.036 (emphasis added).

By its terms, the statute directs that a town which loses property through annexation is entitled to “reimbursement ... for all or part of the taxable property annexed”¹⁶³ and to be paid that reimbursement “in substantially equal payments over not less than two nor more than eight years.”¹⁶⁴

Under the statute, the Township is entitled to recover from the City a tax reimbursement charge for “all or part of the taxable property annexed.”¹⁶⁵ The Properties generate taxes of approximately \$3,211.79 per year. Thus, the statute allows the Township to recover this value “in substantially equal payments over not less than two nor more than eight years.”¹⁶⁶ In its supplemental filings, the City is directed to provide adequate evidence of the required exchange of value in satisfaction of Minn. Stat. § 414.036.

Apportionment of Costs

Minn. Stat. § 414.12, subd. 3, requires the Chief Administrative Law Judge to allocate equitably between the parties the costs of administrative law judge time spent on boundary adjustment matters. This legislative directive is mandated by the fact that the Office of Administrative Hearings operates primarily¹⁶⁷ as an “enterprise fund” within the executive branch of Minnesota state government. As such, Minn. Stat. §§ 14.53 and 14.55 (2016) direct the Office of Administrative Hearings to assess its costs to the state agencies and other political subdivisions to which it provides the services of administrative law judges. Each fiscal year, Minnesota Management & Budget approves a billable rate for the agency’s services, and the agency then charges for its services pursuant to this approved hourly rate.¹⁶⁸

Some history is instructive.¹⁶⁹ Legislatively created in 1959, the Minnesota Municipal Board operated until 1999 when it was legislatively dissolved. During the Board’s 40-year tenure, the appointed board members issued final decisions and the costs of the agency were legislatively funded. In 1999, the functions of the Board were transferred to the Office of Strategic and Long Range Planning, commonly referred to as Minnesota Planning, and in 2003 the functions were again transferred, this time to the Minnesota Department of Administration. Since 1999, administrative law judges at the Office of Administrative Hearings have presided over all contested case proceedings related to municipal boundary adjustment matters. In accord with Minn. Stat. § 14.53 and 14.55, the costs of the services provided by administrative law judges¹⁷⁰ have been equitably apportioned to the parties to boundary adjustment matters under the authority of Minn. Stat. § 414.12.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Minn. Stat. § 414.036.

¹⁶⁶ *Id.*

¹⁶⁷ The Office of Administrative Hearings receives different funding for the work of its Workers’ Compensation Division and for contested cases related to data privacy matters.

¹⁶⁸ See Minn. Stat. §§ 14.53; .55.

¹⁶⁹ See Office of Administrative Hearings’ website at <http://www.mba.state.mn.us/History.html>.

¹⁷⁰ Parties are not and have not been billed for the costs of the administrative staff in the Municipal Boundary Adjustment Unit, which remain funded through a general fund appropriation from the legislature.

In recognition of the legislature’s funding scheme pertinent to the state agency, Chapter 414 specifically provides that the Office of Administrative Hearings “is not liable for [its] costs.”¹⁷¹ Instead “the costs must be allocated on an equitable basis” by the Chief Administrative Law Judge unless the parties have agreed to a division of costs.¹⁷² If the parties’ supplemental filings do not establish an agreement with respect to the division of costs, the Chief Administrative Law Judge will order an equitable division upon issuance of the final order in this matter.

T. L. P.

¹⁷¹ Minn. Stat. § 414.12, subd. 3(b).

¹⁷² Minn. Stat. § 414.12, subd. 3(a), (c).