

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of Certain
Real Property to the City of Hawley from
Hawley Township (MBA A-8009)

**ORDER APPROVING
ANNEXATION ORDINANCE**

On or about August 12, 2016, this matter came on before Chief Administrative Law Judge Tammy L. Pust upon the request of the City of Hawley (City) for an order approving an annexation ordinance¹ of Property from Hawley Township (Township).

The Property consists of two parcels totaling approximately 8.15 acres, which are legally described as follows:

That part of the Southwest Quarter of Section Two, in Township One Hundred Thirty-nine North of Range Forty-five West of the Fifth Principal Meridian, situate in the County of Clay and the State of Minnesota, described as follows:

Commencing at the South Quarter corner of said Section Two; thence on an assumed bearing of North 00°48'46" East along the East line of said Southwest Quarter, a distance of 1,006.50 feet; thence North 89°11'14" West a distance of 1,178.91 feet to the point of beginning of the land to be described; thence South 89°11'14" East a distance of 199.99 feet; thence South 00°13'57" West a distance of 174.13 feet; thence South 89°20'41" West a distance of 375.79 feet; thence South 00°22'47" East a distance of 213.58 feet; thence North 88°22'02" West a distance of 114.72 feet; thence North 31°1'28" West a distance of 434.84 feet; thence North 05°33'19" East a distance of 211.09 feet; thence North 38°10'57" East a distance of 252.19 feet; thence South 84°52'40" East a distance of 374.79 feet to the intersection with a line which bears North 00°13'57" East from the point of beginning; thence South 00°13'57" West a distance of 354.16 feet to the point of beginning, together with all hereditaments and appurtenances belonging thereto, and subject to all easements, restrictions, and reservations of record, if any.²

The City is represented by Zenas Baer, Zenas Baer Law Office. No other party has filed an appearance in the matter.

¹ Ordinance Number 276 adopted by the City on August 8, 2016, received by the Minn. Office Admin. Hearings on August 12, 2016.

² *Id.*

On September 26, 2016, the Chief Administrative Law Judge issued an Order Regarding Annexation Ordinance, which would annex the Property upon the City's filing proof of compliance with Minn. Stat. § 414.036 (2016).³

On October 28, 2016, the City submitted a copy of their October 28, 2016 letter to the Township along with a copy of the City's check number 070973 in the amount of \$250, payable to Hawley Township.⁴

Based upon a review of the filings submitted by the parties and applicable law, the Chief Administrative Law Judge makes the following:

ORDER

1. Pursuant to Minn. Stat. § 414.033 (2016), the Ordinance is deemed adequate in all legal respects and properly support this Order.

2. Pursuant to the terms of the Ordinance and this Order, the Property is **ANNEXED** to the City.

3. The reimbursement requirement pursuant to Minn. Stat. § 414.036 has been met.

4. The costs of this matter, billed as required by law at the approved hourly rates of the Office of Administrative Hearings, shall be borne by the parties as follows: to the City - 100%; and to the Township - 0%. An itemized invoice for costs will be sent under separate cover.

Dated: October 28, 2016



TAMMY L. PUST
Chief Administrative Law Judge

³ *In the Matter of the Annexation of Certain Real Property to the City of Hawley from Hawley Township (MBA A-8009)* OAH Docket No. 84-0331-33736, ORDER REGARDING ANNEXATION ORDINANCE (Minn. Office Admin. Hearings September 26, 2016).

⁴ Letter from Lisa Jetvig, Clerk Treasurer, to Hawley Township Board, dated October 28, 2016.

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.033, .07, .09, .12 (2016). Minn. Stat. § 414.033, subd. 7 requires that a copy of the annexation ordinance be filed with the township, the appropriate county auditor(s), and the Secretary of State.

Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Clay County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of this Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2015). However, no request for amendment shall extend the time of appeal from this Order.

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Hawley Township (MBA A-8009)

**ORDER REGARDING
ANNEXATION ORDINANCE**

On or about August 12, 2016, this matter came on before Chief Administrative Law Judge Tammy L. Pust upon the request of the City of Hawley (City) for an order approving an annexation ordinance.

The City is represented by Zenas Baer, Zenas Baer Law Office. No other party has filed an appearance in the matter.

Based upon a review of the filings submitted by the parties and applicable law, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On July 5, 2016, Gregory R. Larson and Sarah Larson signed a Petition for Annexation (Petition) of Certain Land into the City of Hawley, Minnesota, as evidenced by the handwritten date superimposed onto the Petition immediately above their signatures.¹

2. The Petition is notarized by Barbara Ann Gilson as of June 5, 2016,² a full month before the Petition was apparently signed.

3. On August 8, 2016, the City adopted Ordinance Number 273 (Ordinance)³ annexing the real property (Property) described in the Petition into the City from Hawley Township (Township).

4. The Ordinance was received by the Office of Administrative Hearings on August 12, 2016.

5. The Property consists of two parcels totaling approximately 8.15 acres, which are legally described as follows:

¹ Petition for Annexation, received by the Office of Administrative Hearings on August 12, 2016.

² *Id.*

³ Ordinance, received by the Office of Administrative Hearings on August 12, 2016.

That part of the Southwest Quarter of Section Two, in Township One Hundred Thirty-nine North of Range Forty-five West of the Fifth Principal Meridian, situate in the County of Clay and the State of Minnesota, described as follows:

Commencing at the South Quarter corner of said Section Two; thence on an assumed bearing of North 00°48'46" East along the East line of said Southwest Quarter, a distance of 1,006.50 feet; thence North 89°11'14" West a distance of 1,178.91 feet to the point of beginning of the land to be described; thence South 89°11'14" East a distance of 199.99 feet; thence South 00°13'57" West a distance of 174.13 feet; thence South 89°20'41" West a distance of 375.79 feet; thence South 00°22'47" East a distance of 213.58 feet; thence North 88°22'02" West a distance of 114.72 feet; thence North 31°1'28" West a distance of 434.84 feet; thence North 05°33'19" East a distance of 211.09 feet; thence North 38°10'57" East a distance of 252.19 feet; thence South 84°52'40" East a distance of 374.79 feet to the intersection with a line which bears North 00°13'57" East from the point of beginning; thence South 00°13'57" West a distance of 354.16 feet to the point of beginning, together with all hereditaments and appurtenances belonging thereto, and subject to all easements, restrictions, and reservations of record, if any.⁴

6. The record owner of the Property is Gregory R. Larson.⁵
7. The Property is not presently served by public wastewater facilities.⁶
8. The Property will be zoned residential upon annexation.⁷
9. The Property generated a total of \$249.24 in property taxes to the Township for the 2016 tax year.⁸
10. In pertinent part, the Ordinance contains the following language:
 - a. The City of Hawley and Hawley Township, pursuant to Minnesota Statutes §414.036, have agreed that in lieu of taxes payable, the City of Hawley shall be responsible for all costs of maintenance and repair of the blacktop roadway constructed to serve the subject property and have consented to the Annexation by signing the Petition filed by the Applicant.

⁴ *Id.*

⁵ Warranty Deed dated April 29, 2016, submitted by the City with the Petition and Ordinance.

⁶ Ordinance, at 2.

⁷ *Id.*, at 3.

⁸ Clay County Parcel Information (available at <http://mn-clay.manatron.com/Tabs/TaxSearch/AccountDetail/BillDetail.aspx?p=13.002.3001&a=25829&b=926668&y=2016> and <http://mn-clay.manatron.com/Tabs/TaxSearch/AccountDetail/BillDetail.aspx?p=13.002.3002&a=29664&b=929525&y=2016>). The Chief Administrative Law Judge takes judicial notice of these publicly filed documents pursuant to Rule 201, Minn. R. Evid.

b. That pursuant to Minnesota Statutes §414.036 with respect to any special assessments assigned by the Town 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, for the area legally described herein there are no special assessments or debt incurred by the Town on the subject property for which reimbursement is required.⁹

11. According to a filing received from Lisa Jetvig, Clerk Treasurer for the City, on September 1, 2016, the agreement between the City and the Township referenced in the Ordinance pertains to the following submitted facts:

The City of Hawley is in the process of installing infrastructure into this annexed area that is being platted as Autumn View Addition to the City of Hawley, MN. Installation of the City services will include 7-ton paved street with curb and gutter, sanitary sewer mains and services, water mains and services, and storm sewer lines and a retention basin.

After the initial construction, the City of Hawley anticipates the expense the City will incur to maintain the street annually will be \$2,000. The maintenance for the street includes snow removal and street sweeping. Every 6 years the City crack fills and seal coats the streets and in that year the cost would be considerably more.¹⁰

12. From the record filed by the City, as supplemented by the Minutes of the City Council meeting on August 8, 2016,¹¹ it appears that any roadway the City plans to construct to provide access to the platted Autumn View Addition will be located within the City's boundaries once the annexation is complete.

13. Given that any constructed roadway(s) will be located within the City's boundaries and not within the boundaries of the Township, or located so as to provide access to properties located within the Township, the record does not evidence any benefit received by the Township with respect to the City's construction of the access roadway(s).

14. The Township has consented to the annexation by signing the Petition attached to the Ordinance.

15. The Ordinance does not include any provision with regard to the apportionment of costs associated with this matter.

⁹ Ordinance, at 3.

¹⁰ Correspondence filed by Lisa Jetvig dated September 1, 2016.

¹¹ The Chief Administrative Law Judge takes judicial notice of this publicly filed document pursuant to Rule 201, Minn. R. Evid.

16. With the receipt of the City's last filing on September 1, 2016, the record of this matter closed on that date.

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

CONCLUSIONS OF LAW

1. Annexations by ordinance are governed by the provisions of Minn. Stat. ch. 414 (2016) and Minn. R. 6000 (2015).

2. The Chief Administrative Law Judge has jurisdiction over these proceedings pursuant to Minn. Stat. § 414.01, subd. 1.

3. 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."¹²

4. A municipality's attempt to annex property by ordinance is final on the date the ordinance is approved by the Chief Administrative Law Judge.¹³

5. Minn. Stat. § 414.036 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.

6. The order approving an annexation ordinance 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."

7. As the Ordinance at issue fails to provide any reimbursement to the

¹² Minn. Stat. § 414.01, subd. 1b(3).

¹³ Minn. Stat. § 414.033, subd. 7.

Township “for all or part of the taxable property annexed,” whether in monetary terms or in other exchange of value, the Ordinance does not comply with applicable law.

8. 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.

Based upon these Findings of Fact and Conclusions of Law, the Chief Administrative Law Judge issues the following:

ORDER

1. Pursuant to the terms of the Ordinance and this Order, the Property will be annexed to the City upon the City’s filing 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 annual taxable value of the Property, noted herein to be \$249.24 on an annualized basis. Upon the date that the City properly files evidence of having tendered the required reimbursement amount, the Chief Administrative Law Judge will promptly issue an Order of Annexation relative to the Property.

2. The costs of this matter, billed as required by law at the approved hourly rates of the Office of Administrative Hearings, shall be borne by the parties as follows: to the City - 100%; and to the Township - 0%. An itemized invoice for costs will be sent under separate cover.

Dated: September 26, 2016



TAMMY L. PUST
Chief Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.033, .07, .09, .12 (2016). Minn. Stat. § 414.033, subd. 7, requires that a copy of the annexation ordinance be filed with the township, the appropriate county auditor(s), and the Secretary of State.

Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Clay County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of this Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2015). However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

I. 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.¹⁴

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”¹⁵ and to be paid that reimbursement “in substantially equal payments over not less than two nor more than eight years.”¹⁶

¹⁴ Minn. Stat. § 414.036 (emphasis added).

¹⁵ *Id.*

¹⁶ *Id.*

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.”¹⁷ The Property generates taxes of \$249.24 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.”¹⁸

With full knowledge of this statutory requirement, the City and the Township have agreed instead that the City shall be responsible for all costs of maintenance and repair of the blacktop roadway constructed to serve the annexed property. Nothing in the statute grants this authority to the parties. While the Township may be able to agree to accept non-monetary value comparable to “all or part of the taxable property annexed” in appropriate circumstances, the present case does not constitute those circumstances and so the Chief Administrative Law Judge takes no position on that issue. On the record as developed by the City in this case, it appears that the Township receives no benefit from the construction of the access roadways. Therefore, the parties have failed to comply with the dictates of the statute in failing to exchange value “for all or part of the taxable property annexed.” As such, the annexation cannot be granted.

The City can rectify this deficiency by providing adequate evidence of the required exchange of value. Once it does so, the Order of Annexation will be issued in a timely manner.

II. 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 primarily¹⁹ 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.²⁰

Some history is instructive.²¹ 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

¹⁷ Minn. Stat. § 414.036.

¹⁸ *Id.*

¹⁹ 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.

²⁰ See Minn. Stat. §§ 14.53; .55.

²¹ See Office of Administrative Hearings’ website at <http://www.mba.state.mn.us/History.html>.

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 judges²² have been equitably apportioned to the parties to boundary adjustment matters under the authority of Minn. Stat. § 414.12.

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”²³ but instead “the costs must be allocated on an equitable basis” by the Chief Administrative Law Judge unless otherwise agreed to by the parties.²⁴ In this annexation action, as the Township made no appearance and took no apparent role in the proceedings, the Chief Administrative Law Judge has allocated to the City the total costs of the agency’s billable time, measured as 1.8 hours at the current approved rate of \$170 per hour.

T. L. P.

²² 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.

²³ Minn. Stat. § 414.12, subd. 3(b).

²⁴ Minn. Stat. § 414.12, subd. 3(a), (c).