

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of Certain
Real Property to the City of Stillwater from
Stillwater Township
(MBAU A-8025)

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

This matter came before Chief Administrative Law Judge Tammy L. Pust upon the filing by the City of Stillwater of an ordinance requesting annexation of certain real property (Property) pursuant to Minn. Stat. § 414.033 (2016).

David T. Magnuson, Magnuson Law Firm, appeared on behalf of the City of Stillwater (City). Stillwater Township (Township) has not formally appeared in this matter.

Based upon a review of the filings and matters of public record, of which the Chief Administrative Law Judge takes judicial notice as noted below, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

1996 Annexation Proceeding

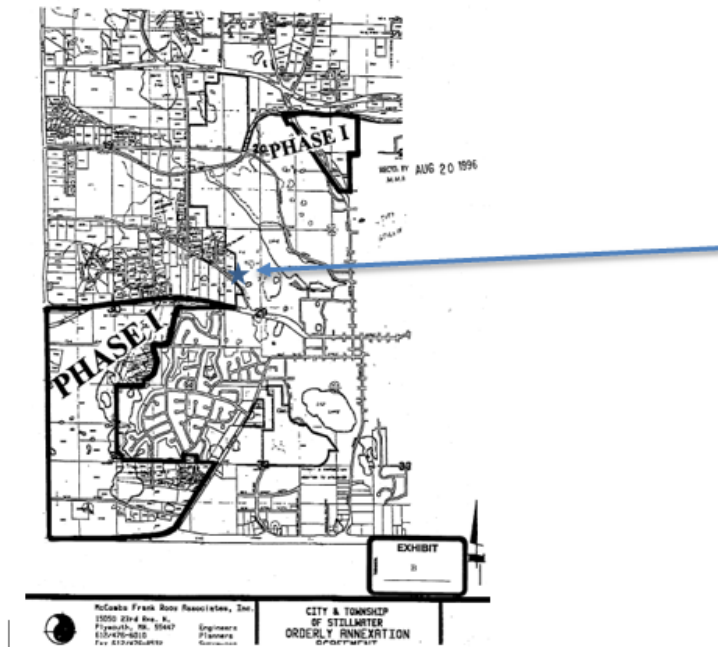
1. Two decades ago, effective August 16, 1996, the City and the Township entered into an "Agreement Between the City of Stillwater and the Town of Stillwater for Growth Management, Orderly Annexation and the Exercise of Joint Powers for Planning and Land Use Control" (Orderly Annexation Agreement) whereby the parties agreed to future municipal boundary changes related to 1,190 acres of property. In the Orderly Annexation Agreement, the parties divided the subject property into four categories, each with differing conditions for future planning and annexation. The Orderly Annexation Agreement contained no specific legal descriptions of any of the property designated for future orderly annexation but instead included high level maps of the property, divided into four phase categories.¹

2. On August 20, 1996, the City, through counsel, submitted the Orderly Annexation Agreement to the Minnesota Municipal Board and requested immediate annexation of the identified Phase I properties.²

¹ Orderly Annexation Agreement filed in OAH Docket No. OA-438 (Aug. 20, 1996).

² Correspondence from David T. Magnuson (Aug. 20, 1996).

3. In its Exhibit B, the Orderly Annexation Agreement identified the Phase I properties as located in the illustration below.³



4. On August 26, 1996, the Minnesota Municipal Board requested that the City provide additional information, including complete and accurate legal descriptions of the designated property and of the Phase I property for which the City had requested immediate annexation.⁴

5. In correspondence dated August 30, 1996 and received on September 3, 1996, the City submitted “a revised legal description for Phase I” titled “First Revision August 30, 2016,” which included legal descriptions for four independent portions of real property which, combined, constituted the 611.74 acres that made up Phase I and was intended for immediate annexation.⁵

6. One of the four components of the Phase I properties, marked with a blue star in the illustration in Finding No. 3 above, was described in reference to Section 21 of Township 30, Range 20 (the 1996 Property), and legally described as follows:

That part of the West Half of Section 21, T30, R20 described as follows: beginning at a point where the centerline of C.S.A.H. No. 5 intersects the North line of Cooper's Addition extended to the West; thence East along the North line of Cooper's Addition to the East line of Minnesota Street extended to the North; thence North along the East line of Owens Street as extended to the North line of the South Half of Section 21; thence East along the North

³ Orderly Annexation Agreement, at Exhibit (Ex.) B.

⁴ Correspondence from Patricia D. Lundy, Minnesota Municipal Board (Aug. 26, 1996).

⁵ Correspondence from D. Magnuson (Aug. 30, 1996).

line to a point 361.25 feet West of the East line of the Southwest Quarter of the Northwest Quarter (SW 1/4 of NW 1/4); thence North along a line extended Northerly from that point to the Southerly right-of-way line of the Minnesota Zephyr Railroad right-of way; thence West along the Southerly right-of-way line to the West line of Section 21, T30, R20; thence South along the West line to the centerline of C.S.A.H. No. 5; thence Southeasterly along the centerline to the point of beginning.⁶

7. On September 26, 1996, the City again corrected errors in its submitted legal descriptions through the filing of the following documents into the official record of the proceeding: (1) two copies of a five-page legal description for the Phase I properties labeled "Second Revision September 16, 1996," one of which was highlighted to identify changes and the other of which was a clean copy; and (2) one copy of a six-page legal description for the entire designated property covered by the Orderly Annexation Agreement in Phases I, II, III and IV, labeled "First Revision September 24, 1996."⁷

8. In the Second Revision September 16, 1996 filing related specifically to the Phase I properties, the City made no changes to the legal description of the property noted in Finding No. 6 above.⁸

9. On October 11, 1996, the Minnesota Municipal Board⁹ issued an Order of Annexation whereby the 1996 Property, as legally described by the City in its submitted "Second Revision September 16, 1996," was annexed into the City effective on October 4, 1996.¹⁰

Current Annexation Proceeding

10. On April 5, 2016, the City adopted Ordinance Number 1086 requesting annexation of approximately .541 acres of real property (2016 Property) from the Township, legally described as follows:

⁶ MBAU Records, Docket No. OA-438-1, ORDER (Oct. 11, 1996), available at http://www.mba.state.mn.us/Scans/OA-438-1_Order.pdf, at 3. The Chief Administrative Law Judge takes judicial notice of this public record pursuant to Minn. R. Evid. 201.

⁷ Correspondence from D. Magnuson (Sept. 26, 1996), with attachments.

⁸ Second Revision September 16, 1996.

⁹ Legislatively created in 1959, the Municipal Boundary 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. The functions were again transferred in 2003, this time to the Minnesota Department of Administration. In 2007, these state agency functions were transferred to the Office of Administrative Hearings.

¹⁰ OAH Docket No. OA-438-1, *In the Matter of the Orderly Annexation Agreement Between the City of Stillwater and the Town of Stillwater Pursuant to Minnesota Statutes 414*, ORDER (Minn. Office Admin. Hearings (Oct. 4, 1996).

All that part of the East half of the NW ¼ of the SW ¼ Section 21 T 30 Range 20 lying East of the Northly extension of the East line of Owens Street extended to the North line of the NW ¼, except the South 550 feet thereof.¹¹

11. The 2016 Property is owned by the Stillwater Country Club.¹²

12. The City filed Ordinance No. 1086 with the Office of Administrative Hearings on or about April 27, 2016 and requested the issuance of an order of annexation pursuant to Minn. Stat. § 414.033, subd. 2(2) (2014).¹³

13. On April 29, 2016, the Office of Administrative Hearings returned the City's filing for lack of compliance with the cited statute, noting that: (a) the Ordinance contained inconsistent provisions related to its statutory basis; (b) the required map of the subject area was not provided; and (c) there was no proof of service on contiguous property owners.¹⁴

14. On October 18, 2016, the City adopted Amended Ordinance Number 1086 (Amended Ordinance) again requesting annexation of the 2016 Property from the Township and again citing the legal description of the 2016 Property as follows:

All that part of the West half of the NW ¼ of the SW ¼ Section 21 T 30 Range 20 lying East of the Northerly extension of the East line of Owens Street extended to the North line of the NW ¼, except the South 550 feet thereof.¹⁵

15. Effective October 27, 2016, on October 21, 2016 the City filed the Amended Ordinance with the Office of Administrative Hearings and requested the issuance of an order, pursuant to Minn. Stat. § 414.033, subd. 2(2) (2016), annexing the 2016 Property into the City and thereby detaching it from the Township.¹⁶ The Amended Ordinance recited that the 2016 Property is unincorporated and is completely surrounded by land located within the municipal limits of the City of Stillwater.¹⁷

16. With the Amended Ordinance, the City also filed three maps grossly depicting the location of the 2016 Property. None of the maps contain any references to the applicable section number, starting or ending points in reference to survey monuments or the referenced legal description of the 2016 Property. The map¹⁸ which provides the most information regarding the City's understanding of the location of the 2016 Property, noted as a blue rectangle, is set forth below:

¹¹ Ordinance No. 1086, at Ex. A (Apr. 5, 2016).

¹² Ordinance No. 1086 at Ex. B (Apr. 5, 2016).

¹³ Correspondence from D. Magnuson (Apr. 7, 2016).

¹⁴ Correspondence from Katie Lin to D. Magnuson (Apr. 29, 2016).

¹⁵ Amended Ordinance No. 1086, at Ex. A (Oct. 18, 2016).

¹⁶ Correspondence from D. Magnuson, (Oct. 21, 2016) (on file with the Minn. Office Admin. Hearings).

¹⁷ Amended Ordinance at 1, ¶ 2.

¹⁸ Amended Ordinance at Ex. C.



EXHIBIT C

0 0.05 0.1 0.2 0.3 0.4
Miles

17. In its initial filings, the City originally asserted that the 2016 Property was included within the legal description of the 1996 Property, and further asserted that Washington County, within which the City and Township are located, believed that the 2016 Property was not included. The City represented that Washington County had taken the position that the 2016 Property was inadvertently omitted from the legal description of the 1996 Property and so the 1996 annexation failed to include the 2016 Property within the City's boundaries, leaving it instead as an island of Township surrounded by the 1996 Property.¹⁹

18. The City's current counsel was also its counsel in 1996. The City's counsel prepared the legal description of the 1996 Property, which was submitted in and relied upon in the 1996 annexation proceeding.²⁰

19. On January 4, 2017, the Office of Administrative Hearings determined that the City's submissions were inadequate to confirm whether the 2016 Property had, or had not, been included within the 1996 Property's annexation, and so issued Findings of Fact, Conclusions of Law, and Order for Supplementation of Record requiring the City to file a legally sufficient map locating the 2016 Property within the Township in compliance with Minn. R. 6000.0800(C) (2015).²¹ This applicable rule requires that all petitions related to boundary adjustment matters include the following:

A map showing the subject area and its relationship to any adjacent municipality or town. All distance references should be given by length. Beginning points should be land survey monuments and the description must close the boundaries. References to roads or railroads should be to

¹⁹ Correspondence from D. Magnuson (Nov. 16, 2016).

²⁰ *Id.*

²¹ Findings of Fact, Conclusions of Law, and Order for Supplementation of Record (Jan. 4, 2017).

survey lines such as centerline or known right-of-way line. The intent to include or exclude highway, railroad, and street rights-of-way surrounding platted blocks or lots should be clearly stated.

20. On or about January 10, 2017, the City supplemented the record by filing the following map:²²



21. In its cover letter accompanying the map, the City asserts that Washington County “changed the map” recorded by the City with respect to the 1996 annexation proceeding, and as a result the County mistakenly believes that the 2016 Property is not included within the City’s boundaries. Through counsel, the City states as follows:

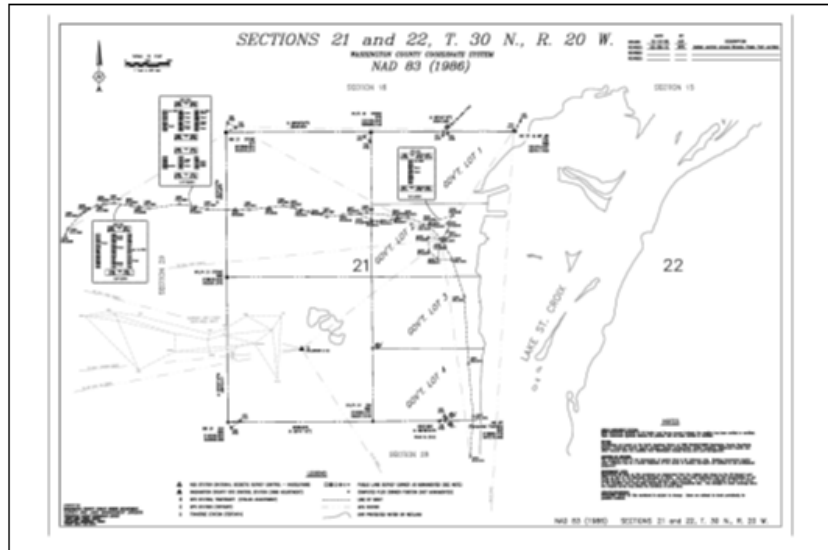
A review was undertaken to determine whether this parcel was already within the City by reason of it being described within the October 11, 1996 Orderly Annexation description. Although it was intended that the subject parcel be included, the legal description in that early proceeding was in error and the subject parcel was not included. However, when Ordinance 1086 was adopted, and served upon the County as required by the statute, the County staff changed the map and the property is now included in the City even though the proceeding is not final without the approval of the Administrative Law Judge. For that reason, we respectfully request that the Annexation be approved so that we can say that this proceeding is finished.²³

²² Correspondence of D. Magnuson (Jan. 9, 2017).

²³ *Id.*

22. Contrary to the requirements of the applicable rule, the supplemental map filed by the City contains no distance references given by length, no beginning points referenced by land survey monuments, and no references to roads or railroads in relation to survey lines such as centerline or known right-of-way line.

23. The publicly recorded records on file indicate that the following map accurately represents the location of Section 21, Township 30, Range 20 West in the County of Washington, State of Minnesota.²⁴



24. When compared to the publicly recorded map of Section 21, it is clear that the supplemental map filed by the City in this matter is inaccurately labeled in so much as it purports to illustrate the whole of Section 21 but instead illustrates, at most, some or all of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 21, Township 30, Range 20.

25. Because the 1996 annexation described the 1996 annexed property in reference to the “point where the centerline of C.S.A.H. No. 5 intersects the North line of Cooper’s Addition ...” and because the mislabeled supplemental map filed by the City contains no reference to or overlay of Cooper’s Addition, the map is of little to no value to the Office of Administrative Hearings in locating the subject Property for purposes of determining whether it was, or was not, included in the 1996 Property and therefore has, or has not, already been annexed into the City as part of the 1996 annexation proceeding.

26. In addition, and for the reasons and based upon the evidence set forth in the attached Memorandum, which is hereby incorporated by reference, the errors in the

²⁴ Washington County Coordinate System NAD 83, Washington County Plat Book (1986), a publicly recorded government document of which the Chief Administrative Law Judge takes judicial notice pursuant to Rule 201, Minn. R. Evid.

legal description related to the 1996 Property must be corrected before the present matter can be allowed to proceed.

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

CONCLUSIONS OF LAW

1. Annexations by ordinance are governed by the provisions of Minnesota Statutes, chapter 414 (2016) (Municipal Boundary Adjustment Act) and, most specifically, by Minn. Stat. § 414.033.

2. The Chief Administrative Law Judge is authorized to review and approve annexations by ordinance pursuant to Minnesota Statutes §§ 414.01-.12 (2016) and Minnesota Rules 6000.0100-.3400 (2015).

3. The City, as the party submitting the Ordinance, bears the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for annexation have been met.²⁵

4. The applicable rules, at Minn. R. 6000.0600, authorize the Chief Administrative Law Judge to independently verify the accuracy of the facts recited in and submitted to the Office of Administrative Hearings in filings related to annexation.

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 municipality.²⁶

6. Minn. R. 6000.0800 (C), requires that all petitions related to boundary adjustment matters include the filing of the following:

A map showing the subject area and its relationship to any adjacent municipality or town. All distance references should be given by length. Beginning points should be land survey monuments and the description must close the boundaries. References to roads or railroads should be to survey lines such as centerline or known right-of-way line. The intent to include or exclude highway, railroad, and street rights-of-way surrounding platted blocks or lots should be clearly stated.

7. The maps filed by the City in this matter do not constitute sufficient corporate boundary maps in that they do not accurately describe the current boundaries of the City or any distance references, correlation to land survey monuments, or any other means by which the Chief Administrative Law Judge can determine whether the 2016

²⁵ Minn. R. 1400.7300, subp. 5 (2015).

²⁶ Minn. Stat. § 414.011, subd. 9; see *also* Minn. R. 6000.0800 (C).

Property is already included in the City boundaries as a result of the 1996 annexation.

8. The maps filed by the City, when compared to the official and filed plat of Cooper's Addition to the City of Stillwater, establish as a matter of law that the description of the 1996 Property, as provided by the City as part of the 1996 annexation proceeding, was legally insufficient in that it does not describe a bounded area of property.

9. "A written instrument may be reformed if the following elements are proved: (1) there was a valid agreement between the parties expressing their real intentions; (2) the written instrument failed to express the real intentions of the parties; and (3) this failure was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party."²⁷

10. When the rights of third parties are not at issue²⁸ and the intent of parties to a matter involving an inaccurate legal description are clear, the Office of Administrative Hearings may make findings related to correction of a legal description without requiring a formal action for reformation.²⁹

11. On the present record, it is impossible to determine whether the 2016 Property was or was not included in the 1996 annexation.

12. On the present record, the chief administrative law judge determines that the 1996 annexation was issued in error, and that the legal description which formed the basis for that order must be reformed and the order reissued to accurately reflect the legal description of all designated property.

Based upon the submissions of the City and the record, the cited authorities, and for the reasons set forth in the attached Memorandum which is incorporated herein by reference, the Chief Administrative Law Judge makes the following:

ORDER

1. The matter is set for a prehearing conference on **Monday, July 10, 2017**, beginning at **10:00 a.m.** by telephone. At that time, the parties are directed to dial **1-888-742-5095** and, when prompted, enter conference code **847 901 7851#**. At the prehearing conference, an appropriate timeframe will be determined for the City to serve upon the Township and file with the Office of Administrative Hearings, an accurate and complete legal description which delineates the accurate boundaries of the 1996 Property.

2. Upon completion or a review for legal sufficiency, the Office of Administrative Hearings will vacate the October 11, 1996 Order of the Minnesota Municipal Board and issue a new order again annexing the 1996 Property with respect to

²⁷ *Nichols v. Shelard National Bank*, 294 N.W.2d 730, 731, 734 (Minn.1980), citing *Theros v. Phillips*, 256 N.W.2d 852, 857 (Minn.1977) and *Fritz v. Fritz*, 94 Minn. 264, 102 N.W. 705 (1905).

²⁸ *Proulx v. Hirsch Bros, Inc.*, 279 Minn. 157, 164, 155 N.W.2d 907, 912 (1968).

²⁹ See *Neill v. Hake*, 254 Minn. 110, 118, 93 N.W.2d 821, 828 (1958).

its accurate and complete legal description.

3. If for any reason the City's supplemental and corrected legal description of the 1996 Property does not include the 2016 Property and the City wishes to proceed with the current proceeding with respect to annexation of the 2016 Property, it may reinitiate the current proceeding for that purpose upon the issuance of the above-described order related to the 1996 Property.

4. If, instead, the City proceeds to include the 2016 Property within the corrected legal description of the 1996 Property, the current matter will be dismissed by future order of the Office of Administrative Hearings.

Dated: June 12, 2017

A handwritten signature in black ink, appearing to read 'T. Pust', written over a horizontal line.

TAMMY L. PUST
Chief Administrative Law Judge

MEMORANDUM

The City commenced this action seeking annexation of a piece of property which it had intended, but failed, to include in a 1996 annexation proceeding due to an error in the legal description it submitted as the basis for the 1996 Annexation Order. In the current proceeding, the City requested that the Office of Administrative Hearings issue a second order of annexation covering the 2016 Property, alleging that the County was responsible for the erroneous omission of this property in that it had “changed the map”³⁰ of the 1996 Annexation, thus necessitating the current action.

Correcting the 1996 error cannot be accomplished by merely “papering over” the historical mistakes through the issuance of the requested order. The Office of Administrative Hearings has no legal authority to issue annexation orders except in compliance with Minn. Stat. ch. 414. In this case, the statute requires a record of proof to establish, by a preponderance of the evidence, that the 2016 Property is “completely surrounded by land within the municipal limits.”³¹ That determination cannot be made without examining where the municipal limits are currently located, which in turn requires an examination of the 1996 Annexation.

The facts in the record establish that the legal description submitted by the City in the 1996 annexation was legally insufficient in that it does not encapsulate any recognizable area of real property. The Minnesota Municipal Board relied upon the City’s legal description in its 1996 Annexation order.

The deficiency of the 1996 legal description, incorporated into the resulting Order, is revealed upon examination of the record. That examination begins with a review of the relevant portion of the legal description of the 1996 Property, provided as follows:

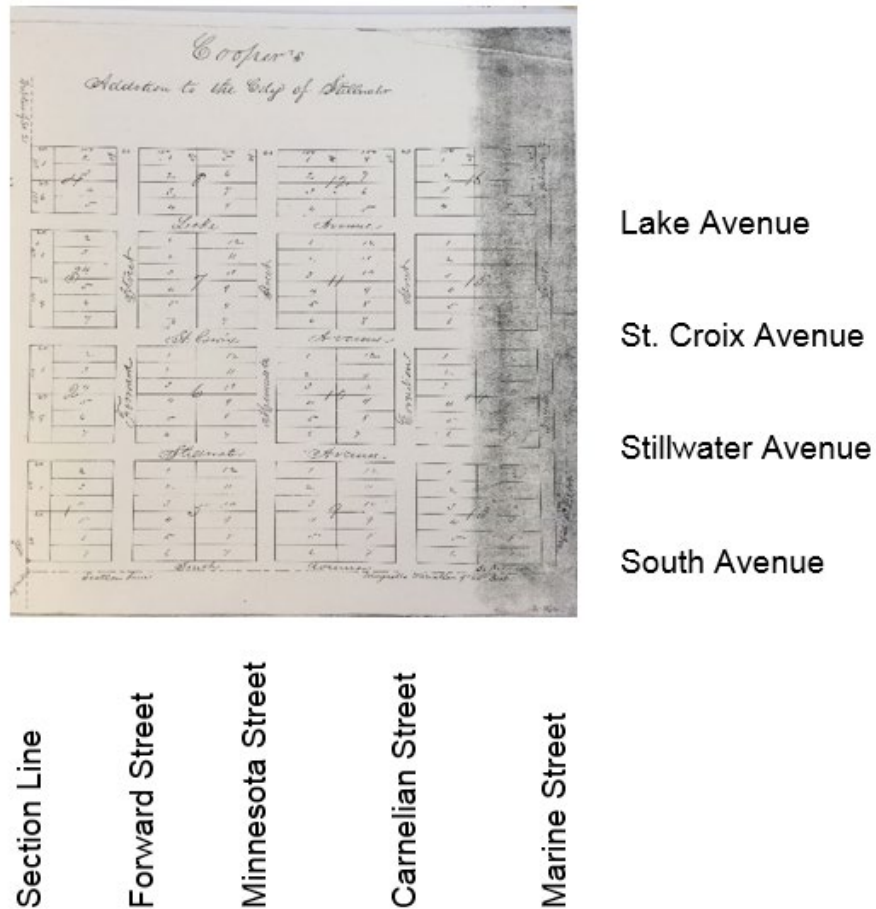
That part of the West Half of Section 21, T30, R20 described as follows: beginning at a point where the centerline of C.S.A.H. No. 5 intersects the North line of Cooper’s Addition extended to the West; thence East along the North line of Cooper’s Addition to the East line of Minnesota Street extended to the North; thence North along the East line of Owens Street as extended to the North line of the South Half of Section 21; thence East along the North line to a point 361.25 feet West of the East line of the Southwest Quarter of the Northwest Quarter (SW 1/4 of NW 1/4); thence North along a line extended Northerly from that point to the Southerly right-of-way line of the Minnesota Zephyr Railroad right-of way; thence West along the Southerly right-of-way line to the West line of Section 21, T30, R20; thence South along the West line to the centerline of C.S.A.H. No. 5; thence Southeasterly along the centerline to the point of beginning.

³⁰ Correspondence of D. Magnuson (January 9, 2017).

³¹ Minn. Stat. § 414.033, subd. 2(2) (2016).

One need only attempt to locate the provided legal description on a map to conclude that it is erroneous as a matter of law. The following analysis supports this conclusion.

The legal description of the 1996 Property, located in “the West Half of Section 21,” starts “at a point where the centerline of C.S.A.H. No. 5 intersects the North line of Cooper’s Addition extended to the West.” As the City had provided no evidence of the location of Cooper’s Addition in its filings in this proceeding, on or about April 3, 2017, the Office of Administrative Hearings requested from the City, and received, a copy of the plat of Cooper’s Addition to the City of Stillwater, duly filed as a matter of record on July 15, 1856.³² The plat of Cooper’s Addition, and a key of the identified streets included in the plat, is included below.



The Cooper’s Addition plat encompasses an area identified as measuring 1320 feet by 1320 feet in total, which contains 16 numbered blocks made up of numbered lots, all intersected by areas designated for up to eight identified roadways.³³ The plat

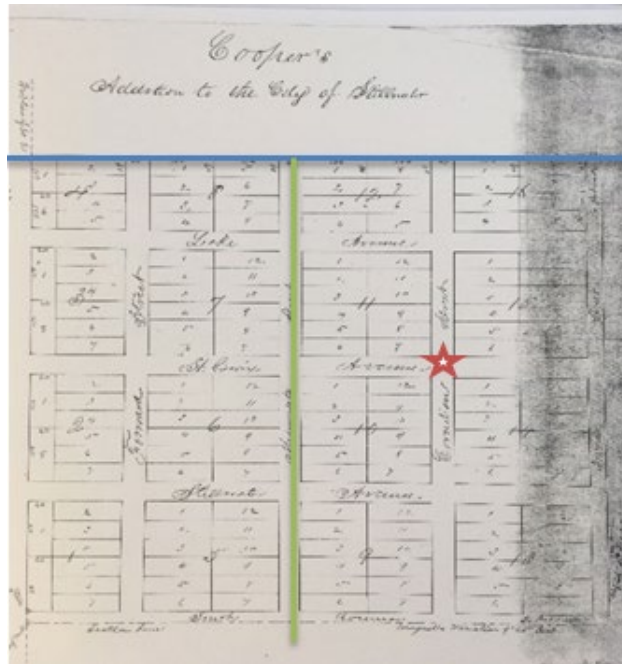
³² Certified Plat, Cooper’s Addition to the City of Stillwater (July 15, 1856).

³³ *Id.*

specifies that the western boundary of the platted property coincides with “the West line of Section 21,” the southwestern-most corner corresponds to the “Corner of Sec 21” and the southern boundary is located on the “Section Line” located at “Magnetic Variation 9 degrees 25 minutes East.” As a result, it appears that the entire plat of Cooper’s Addition is located in the SW 1/4 of the SW 1/4 of Section 21.³⁴

Locating the “North line of Cooper’s Addition” requires location of the plat within the landmarks visible on the ground today. None of the City’s submissions provided necessary evidence of these required facts, contrary to the requirements of the statute.³⁵

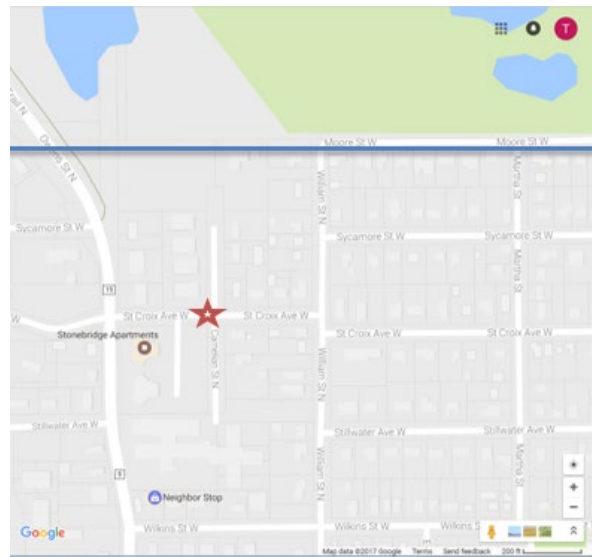
The plat of Cooper’s Addition indicates that the intersection of Carnelian Street and St. Croix Avenue corresponds to the red star, and the “North line” corresponds to the blue line, both superimposed upon the plat illustration below. Minnesota Street is identified as the first street to the west of Carnelian Street, and is marked with a green line below:



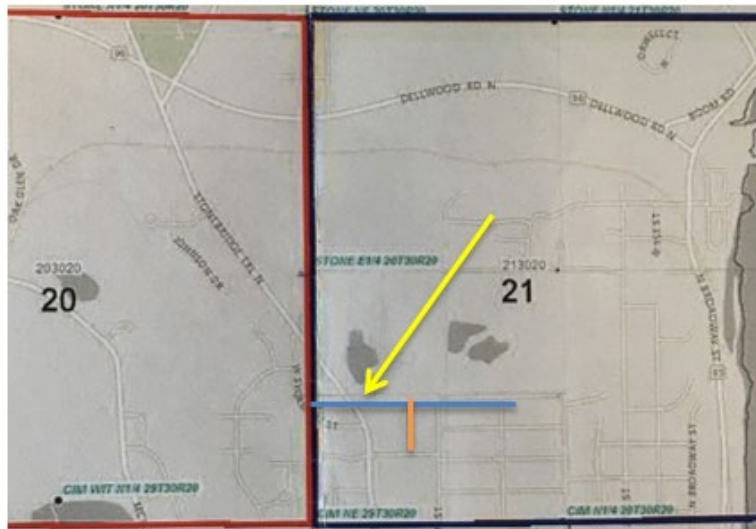
³⁴ *Id.*

³⁵ Even estimating that the centerline of Highway No. 5 is located in roughly the same spot today that it was in 1996 when the legal description was drafted, the starting point for the description does not correspond with the location identified with a large green circle labeled as “Point of Origin” on the supplemental map submitted by the City, nor does the record indicate whether the City intended this identified point to indicate the location of the starting point for the legal description in 1996. In and of itself, this lack of clarity in the record supports the conclusion that the City has failed, to date, to establish the requirements of the statute by a preponderance of the evidence in the record.

The following Google Map illustration³⁶ depicts the location of that same intersection of Carnelian Street and St. Croix Avenue, again noted with a red star, and an estimated location of the plat’s “North line,” again noted in blue.



By superimposing the section lines onto Washington County Surveyor’s Office GIS Map³⁷ marked with the intersection of Carnelian Street and St. Croix Avenue and taking into account the layout of the plat of Cooper’s Addition, it is possible to estimate the location of the North line of Cooper’s Addition as indicated in blue below, and Carnelian Street as indicated in orange.



³⁶ The underlying map is accessible at <https://goo.gl/maps/uCQ1ys4fUtG2>. The Chief Administrative Law Judge takes judicial notice of this document pursuant to Rule 201, Minn. R. Evid.

³⁷ The underlying map is accessible at <http://maps.co.washington.mn.us/surveyviewer/index.html>. The Chief Administrative Law Judge takes judicial notice of this document pursuant to Rule 201, Minn. R. Evid.

In the illustration above, the yellow arrow indicates “a point where the centerline of C.S.A.H. No. 5 intersects the North line of Cooper's Addition extended to the West.”

At this point in the analysis, the first significant legal concern is apparent: the necessity of the legal description's instruction that the North line of Cooper's Addition should be “extended to the West” in order to intersect with C.S.A.H. No. 5. If in fact the plat of Cooper's Addition is located in the S/W 1/4 of the S/W 1/4 of Section 21 as the plat notations indicate it is, its north line would already intersect with C.S.A.H. No. 5 and would not require extension.

Ignoring this concern and commencing at the point that C.S.A.H. No. 5 and the North line of Cooper's Addition intersect, the legal description directs that one next proceed “East along the North line of Cooper's Addition to the East line of Minnesota Street extended to the North.” According to the plat, Minnesota Street is located parallel to and 300 feet west of Carnelian Street. Although it is impossible to definitively locate the “East line of Minnesota Street extended to the North” in that none of the submitted post-plat documentation references Minnesota Street, it is logical to conclude that the reference is to a point that is 300 feet west of Carnelian Street, in conformity with the measured street layout included within the Cooper's Addition plat.

At this point, one is located at a point on the (perhaps westerly extended) North line of Cooper's Addition approximately 300 feet west of the commencement of Carnelian Street. From this point, the legal description directs that one travel “North along the East line of Owens.” That is impossible in that the description has not lead, to this point in the process, to any location on “Owen's Street.” There is no way to get there from where you are in the description to this point.

Unless Owens Street and Minnesota Street are one and the same, a fact not in evidence in any respect, the legal description is definitively defective at this point. Even if they are the same, the legal descriptions that rely on references to one versus the other are inherently conflicting and confusing, and require synthesis and/or correction.

As such, the October 11, 1996 Annexation Order involving the 1996 Property was legally ineffective in that the description provided by the City and utilized in the Order does not bound any identifiable area of real property. The order must be vacated and reissued, with the correct legal description, in order to accurately reflect the intent of the parties to the 1996 annexation. As part of that correction, the City will no doubt ensure that the 2016 Property is accurately described and included.

T. L. P.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of Certain
Real Property to the City of Stillwater from
Stillwater Township
(MBAU A-8025)

**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 filing by the City of Stillwater of an ordinance requesting annexation of certain real property (Property) pursuant to Minn. Stat. § 414.033 (2016).

David T. Magnuson appeared on behalf of the City of Stillwater (City). Stillwater Township (Township) has not formally appeared in this matter.

Based upon a review of the filings and matters of public record, of which the Chief Administrative Law Judge takes judicial notice as noted below, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Property is legally described as follows:

All that part of the West half of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ Section 21 T 30 Range 20 lying East of the Northerly extension of the East line of Owens Street extended to the North line of the NW $\frac{1}{4}$, except the South 550 feet thereof.¹

2. On October 18, 2016, the City adopted Amended Ordinance Number 1086 (Ordinance) requesting annexation of the Property from the Township.²

3. On October 27, 2016, the City filed the Ordinance with the Office of Administrative Hearings and requested the issuance of an order, pursuant to Minn. Stat. § 414.033, subd. 2(2), annexing the Property into the City and thereby detaching it from the Township.³ The Ordinance also contains the following statement:

WHEREAS, the Property is unincorporated and is completely surrounded by land within the municipal limits of the City of Stillwater.⁴

¹ Exhibit (Ex.) A (Ordinance No. 1086 (Ordinance)).

² Ordinance at 3.

³ Correspondence from David T. Magnuson, Magnuson Law Firm (Oct. 21, 2016) (on file with the Minn. Office Admin. Hearings).

⁴ Ordinance at 1, ¶ 2.

4. In addition to the Ordinance, the City also filed three maps grossly depicting the location of the Property. None of the maps contain any references to the applicable Section number, starting or ending points in reference to survey monuments or the referenced legal description of the Property.

5. Two decades earlier, on October 11, 1996, the Minnesota Municipal Board issued an Order of Annexation whereby certain real property was annexed into the City, including but not limited to the real property described as follows:

That part of the West Half of Section 21, T30, R20 described as follows: beginning at a point where the centerline of C.S.A.H. No. 5 intersects the North line of Cooper's Addition extended to the West; thence East along the North line of Cooper's Addition to the East line of Minnesota Street extended to the North; thence North along the East line of Owens Street as extended to the North line of the South Half of Section 21; thence East along the North line to a point 361.25 feet West of the East line of the Southwest Quarter of the Northwest Quarter (SW 114 of NW 114); thence North along a line extended Northerly from that point to the Southerly right-of-way, line of the Minnesota Zephyr Railroad right-of way; thence West along the Southerly right-of-way line to the West line of Section 21, T30, R20; thence South along the West line to the centerline of C.S.A.H. No. 5; thence Southeasterly along the centerline to the point of beginning.⁵

6. The City asserts that the Property which forms the subject matter of the current annexation proceeding is already included within the legal description set forth immediately above, and further asserts that Washington County, within which the City and Township are located, takes the position that the Property was inadvertently omitted from the 1996 annexation and so is not currently included within the City's boundaries.⁶

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

CONCLUSIONS OF LAW

1. Annexations by ordinance are governed by the provisions of Minnesota Statutes, chapter 414 (2016) (Municipal Boundary Adjustment Act) and, most specifically, by Minn. Stat. § 414.033.

2. The Chief Administrative Law Judge is authorized to review and approve annexations by ordinance pursuant to Minnesota Statutes 414.01-.12 (2016) and Minnesota Rules 6000.0100-.3400 (2015).

⁵ MBAU Records, Docket No. OA-438-1, ORDER (Oct. 11, 1996), available at http://www.mba.state.mn.us/Scans/OA-438-1_Order.pdf, at 3. The Chief Administrative Law Judge takes judicial notice of this public record pursuant to Minn. R. Evid. 201.

⁶ E-mail from David T. Magnuson, Magnuson Law Firm (Nov. 16, 2016) (on file with the Minn. Office Admin. Hearings).

3. The City, as the party submitting the Ordinance, bears the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for annexation have been met.⁷

4. The applicable rules, at Minn. R. 6000.0600, authorize the Chief Administrative Law Judge to independently verify the accuracy of the facts recited in and submitted to the Office of Administrative Hearings in filings related to annexation.

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 municipality.⁸

6. Minnesota Rules, part 6000.0800 (C), requires that all petitions related to boundary adjustment matters include the filing of the following:

A map showing the subject area and its relationship to any adjacent municipality or town. All distance references should be given by length. Beginning points should be land survey monuments and the description must close the boundaries. References to roads or railroads should be to survey lines such as centerline or known right-of-way line. The intent to include or exclude highway, railroad, and street rights-of-way surrounding platted blocks or lots should be clearly stated.

7. The maps filed by the City in this matter do not constitute sufficient corporate boundary maps in that they do not accurately describe the current boundaries of the City or any distance references, correlation to land survey monuments, or any other means by which the Chief Administrative Law Judge can determine whether the Property is already included in the City boundaries as a result of the 1996 annexation.

8. As both parties were fully advised as to which parcel was proposed for annexation as part of this proceeding, the insufficiency of the City's filed maps can be corrected as directed in this Order without abridging any due process or other substantive rights of the parties.⁹

Based upon the submissions of the parties and the record, the Chief Administrative Law Judge issues the following:

⁷ Minn. R. 1400.7300, subp. 5 (2015).

⁸ Minn. Stat. § 414.011, subd. 9; see also Minn. R. 6000.0800 (C).

⁹ Minn. R. Civ. P. 61; 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.").

ORDER

1. **On or before January 20, 2017**, the City is directed to serve upon the Township and file with the Office of Administrative Hearings, an accurate and complete map which delineates the location of the Property, specifically indicating starting and ending points that conform to the Property's legal description with reference to land survey monuments, as applicable, and fully closes the boundaries of the Property.

2. **On or before January 24, 2017**, 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 filing with respect to inaccuracy, incompleteness, or other indicia of unreliability.

3. Provided that the City's supplemental filing evidences that the Property is already located within the City's boundaries, upon receipt and review of the supplemental filings the Chief Administrative Law Judge will issue a final Order of Annexation, on or about January 20, 2017, containing the following additional conclusions of law:

- a. The Property which is the subject of the filed Ordinance is already located within the municipal boundaries of the City of Stillwater.
- b. As a result, no annexation order is issued with regard to the filed Ordinance and, instead, this matter is dismissed.

Dated: January 4, 2017



TAMMY L. PUST
Chief Administrative Law Judge

MEMORANDUM

The statute, at Minn. Stat. 414.033, subd. 2(2) allows a municipality to annex property by ordinance as long as the property is completely surrounded by land within the municipal limits. If the Property that is the subject of this proceeding was ordered annexed into the City in 1996, it would no longer be completely surrounded by land within the municipal limits and therefore would fail to meet the statutory prerequisites to confer jurisdiction upon the Chief Administrative Law Judge with respect to this matter.

None of the maps of the Property filed in this proceeding contain any means by which the location of the Property can be verified with relation to the City's current boundaries. The Property's legal description makes reference to portions of a specified quarter-quarter section, and includes boundaries referenced to Owens Street as modified with various distance measures. The filed maps include none of this information: no reference to section boundaries; no visible reference to Owens Street; and no

measurement of the excepted "South 550 feet thereof." Without this information, the Chief Administrative Law Judge has no means to determine whether the Property is, or is not, included in the property already annexed into the City in 1996.

The inadequacy of the record cannot be ignored. In the interests of accuracy, and therefore justice with respect to any one who in the future relies upon the order(s) in this proceeding as affecting their property rights, the City is required to file an accurate map that complies with the requirements of Minnesota Statutes Chapter 414 and Minnesota Rule Part 6000.

T. L. P.