

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of
Certain Real Property to the City of
Bemidji from Bemidji Township
(MBAU Docket A-8144)

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

This matter came before Chief Administrative Law Judge Tammy L. Pust upon the filing by the City of Bemidji of Ordinance Number 149, 3rd Series, requesting annexation of certain real property pursuant to Minn. Stat. § 414.033, subd. 2(3) (2016).

James Thomson, Kennedy & Graven, appeared on behalf of the City of Bemidji (City). John Steffenhagen, Hellmuth & Johnson, appeared on behalf of the Bemidji Town Board (Township).

Having considered the filings in this matter, together with the arguments of counsel, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The following described real property (Property) is owned by Hard Rock Investments, LLC and located in Bemidji Township (Township):

That part of the Northeast Quarter of the Northwest Quarter, Section 7, Township 146, Range 33 West, and described as follows: Commencing at the intersection of the East right of way line of the Minneapolis, Red Lake and Manitoba Railway right of way with the North line of said Northeast Quarter of the Northwest Quarter; thence Southerly along the Easterly line of the Minneapolis, Red Lake and Manitoba Railway right of way to its intersection with the North right of way line of the Soo Line Railroad Co. thence Easterly on a line parallel to the North line of said Northeast Quarter of the Northwest Quarter to the intersection of the West right of way line of Trunk Highway No. 2; thence Northwesterly along the West right of way line of said Trunk Highway No. 2 to the North line of said Northeast Quarter of the Northwest Quarter; thence Westerly along the North line of said Northeast Quarter of the Northwest Quarter to the point of beginning.

And

The East 50 feet of the North 150 feet of the following described property:
That part of the Minneapolis, Red Lake and Manitoba Railway right of way which crosses the Northeast Quarter of the Northwest Quarter, Section 7, Township 146, Range 33 West, North of the Sioux Line Railway right of way, being approximately 800 feet by 100 feet, Less Parcel 6B, Minnesota Department of Transportation Right-of-Way Plat No. 04-3.

And

That part of the Northeast Quarter of the Northwest Quarter, Section 7, Township 146 North, Range 33 West, Beltrami County, Minnesota, lying East of the former Red Lake Railway, and lying westerly of Minnesota Department of Transportation Right of Way Plat No. 04-3, as recorded in the Office of the Beltrami County Recorder by Document No. 245376.

LESS AND EXCEPT, that part thereof described as follows: Commencing at the intersection of the east right of way line of Minneapolis, Red Lake and Manitoba Railway right of way with the north line of said Northeast Quarter of the Northwest Quarter; thence southerly along the easterly line of the Minneapolis, Red Lake and Manitoba Railway right of way to its intersection with the North right of way line of the Soo Line Railroad Co.; thence easterly on a line parallel to the north line of said Northeast Quarter of the Northwest Quarter to the intersection of the west right of way line of Trunk Highway #2; thence northwesterly along the west right of way line of said Trunk Highway #2 to the north line of said Northeast Quarter of the Northwest Quarter; thence westerly along the north line of the said Northeast Quarter of the Northwest Quarter to the point of beginning.

ALSO LESS AND EXCEPT, a 100 foot wide strip of land originally conveyed by Right of Way Deed recorded February 4, 1898 in Book 4 of Deeds on page 626, said strip being shown on said Minnesota Department of Transportation Right of Way Plat No. 04-3, as Burlington Northern Inc. Railroad Right-Of-Way.

ALSO LESS AND EXCEPT, a 100 foot wide strip of land originally conveyed by Right of Way Deed recorded May 11, 1910 in Book 18 of Deeds on page 207, said strip being shown on said Minnesota Department of Transportation Right of Way Plat No. 04-3, as Soo Line Railroad Right-Of-Way.¹

¹ City of Bemidji Ordinance No. 149, 3rd Series, An Ordinance Annexing Property Along Fifteenth Street NW to the Corporate Limits of the City of Bemidji (Hard Rock Investments, LLC) (June 4, 2018) (Annexation Ordinance).

2. As grossly outlined in blue in the illustration below, the Property is separated into two pieces by a tract of City-owned trail property and adjacent railroad property.²



3. The Property consists of approximately 14 acres, is vacant, is not presently served by public wastewater facilities and such facilities are not otherwise available, is not within a designated orderly annexation area, and has no outstanding special assessments or debt attributable to it by the Township.³

4. At some point before April 18, 2018, the owners of the Property filed a petition for annexation (Petition) with the City for the purpose of receiving City services to facilitate development of the Property.⁴

5. The City accepted the Petition on May 7, 2018.⁵

6. On April 18, 2018, the City served the Notice of Public Hearing pursuant to Minn. Stat. § 414.033, subd. 2b (2016)⁶.

7. On May 11, 2018, the City published a Notice of Public Hearing scheduling a May 21, 2018 public hearing at which a petition for annexation filed with the City by the owners of the Property would be heard.⁷

8. On May 8, 2018, the Township voted to contest the annexation petition and oppose the annexation proceeding.⁸

² Annexation Ordinance.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Affidavit of Service by Mail (Apr. 18, 2018).

⁷ Affidavit of Publication (May 11, 2018).

⁸ Minutes of Bemidji Township Board of Supervisors Regular Meeting (May 8, 2018), attached as Exhibit B

9. After providing required notice, the City held a public hearing on the Petition on May 21, 2018, at which time the Township's objection was noted and various members of the community appeared and expressed their opposition to the annexation.⁹

10. On June 4, 2018, the City adopted the Annexation Ordinance for the purpose of annexing the Property from Bemidji Township pursuant to Minn. Stat. § 414.033, subd. 2(3).

11. On May 14, 2018, the Township requested an evidentiary hearing in the matter pursuant to Minn. Stat. §§ 414.031, subd. 3, and .09 (2016) for the purpose of establishing that the proposed annexation does not meet the criteria set forth in Minn. Stat. § 414.031, subd. 4 (2016).¹⁰

12. On June 27, 2018, the parties participated in a scheduled telephone conference to discuss the legal authority for the Township's request and the jurisdictional limits of the Office of Administrative Hearings with respect to same.¹¹

13. During the conference, the Township raised the following legal issues for consideration: whether the proposed annexation (1) violates Sections 107 and 1207 of the Greater Bemidji Area Joint Powers Board; (2) constitutes unconstitutional spot zoning; or (3) breaches terms of a Mediated Settlement Agreement executed between the parties in 2013.

14. On June 27, 2018, the Chief Administrative Law Judge issued an Order Regarding Jurisdictional Challenge whereby the parties were allowed to submit written argument regarding the jurisdiction of the Office of Administrative Hearings to consider the Township's request for an evidentiary hearing in this matter.¹²

15. The Township filed its memorandum of law on July 2, 2018, and the City filed its responsive memorandum of law on July 5, 2018.

Following a review of the record, consideration of the arguments of counsel, and application of relevant law, the Chief Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The City has fully complied with the procedural requirements of Minn. Stat. § 414.033, subd. 2b, such that this matter is lawfully before the Chief Administrative Law Judge for determination.

to Township's Request for Evidentiary Hearing (May 14, 2018).

⁹ Minutes of City Council Proceedings, Bemidji, Minnesota (May 21, 2018).

¹⁰ Township's Request for Evidentiary Hearing.

¹¹ Order Regarding Jurisdictional Challenge (June 27, 2018).

¹² *Id.*

2. In accord with Minn. Stat. § 414.011, subd. 6 (2016), the Property abuts the City of Bemidji notwithstanding its separation into two parcels by the City-owned trail and railroad property.

3. Minn. Stat. § 414.033, subd. 2(3), allows a municipality to declare land annexed by ordinance if:

the land abuts the municipality and the area to be annexed is 120 acres or less, and the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available, and the municipality receives a petition for annexation from all the property owners of the land. Except as provided for by an orderly annexation agreement, this clause may not be used to annex any property contiguous to any property either simultaneously proposed to be or previously annexed under this clause within the preceding 12 months if the property is or has been owned at any point during that period by the same owners and annexation would cumulatively exceed 120 acres.

4. The Property meets the statutory conditions of Minn. Stat. § 414.033, subd. 2(3).

5. Minn. Stat. § 414.033, subd. 10 (2016), provides as follows:

The chief administrative law judge may require the city or property owners to furnish additional information concerning an annexation by ordinance to inform the chief administrative law judge about the extent to which the proposed annexation conforms to the statutory criteria set forth in sections 414.01, subdivision 1, and 414.031, subdivision 4.¹³

6. The Township has no statutory authority to object to the annexation by ordinance and no statutory grounds upon which to request an evidentiary hearing in this matter involving annexation by ordinance pursuant to Minn. Stat. § 414.033, subd. 2(3).¹⁴

7. Noncompliance with the statutory criteria for annexations found in Minn. Stat. § 414.031 (2016) or the policy considerations in Minn. Stat. § 414.01 (2016) does not constitute a sufficient legal ground to deny a proposed annexation by ordinance that complies with Minn. Stat. § 414.033, subsd. 2 and 2b.¹⁵

Based upon the foregoing Conclusions of Law, and for the reasons explained in the Memorandum below, the Chief Administrative Law Judge makes the following:

¹³ Minn. Stat. §414.033, subd. 10.

¹⁴ *Id.* See also Minn. Stat. § 414.033, subsd. 2, 2b (2016).

¹⁵ *Gilbert v. Minnesota State Office of Strategic and Long-Range Planning*, CX-01-1221, 2002 WL 109313, at *3 (Minn. Ct. App. Jan. 29, 2002).

ORDER

1. Pursuant to Minn. Stat. § 414.033, subds. 2 and 2b, the Annexation Ordinance properly supports this Order.

2. If not already done, the City must file a copy of the Annexation Ordinance with the Township, the appropriate county auditor(s), and the Secretary of State as required by Minn. Stat. § 414.033, subd. 7 (2016).

3. Pursuant to the terms of the Annexation Ordinance and as of the date on which the ordered filings noted above are completed or the date of this Order, whichever is later in time, the Property is **ANNEXED** to the City.

4. Pursuant to Minn. Stat. § 414.036 (2016), the City will reimburse the Township as stated in the Annexation Ordinance.

Dated: August 2, 2018



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). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Beltrami 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 (2017). However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

The Township objects to the City's proposed annexation by ordinance on the grounds that the criteria of Minn. Stat. §§ 414.01, subd. 1, and 414.031, subd. 4, have not been satisfied. The first of these two cited provisions sets forth "the overall purpose" and the "public policies that the legislature has determined that the [Office of Administrative Hearings] shall pursue" in approving municipal boundary adjustments.¹⁶ The latter provision identifies 17 factors that govern the agency's approval of certain types of annexations.¹⁷ The Township seeks an evidentiary hearing in this matter to address whether the City can sufficiently establish that these criteria are met.

In an unpublished case decided in 2002, the Minnesota Court of Appeals considered and rejected a nearly identical objection and request for hearing. *Gilbert v. Minnesota State Office of Strategic and Long-Range Planning*¹⁸ involved an annexation by ordinance action through which the City of Rochester sought to annex 918 acres from Rochester Township. Various landowners sought to overturn the approved annexation ordinance on the grounds that the administrative agency had refused to exercise its discretion, granted in Minn. Stat. § 414.033, subd. 10, to consider whether the statutory criteria of Minn. Stat. §§ 414.01, subd. 1, and 414.031, subd. 4, were met. Reviewing the statutory scheme, the Court of Appeals held that the agency was "simply not *required* to conduct hearings regarding these policy objectives" because the "streamlined approval process" which had been legislatively approved for the annexation by ordinance at issue was sufficient to indicate that the specified property was appropriate for annexation.¹⁹

While the *Gilbert* decision is nonprecedential,²⁰ it is instructive. In the main, the Chief Administrative Law Judge agrees with the court's analysis of the two statutory annexation processes: annexation by agency order under Minn. Stat. § 414.031 and annexation by ordinance under Minn. Stat. § 414.033 (2016). With respect to annexations by agency order, the statute: allows a township to object; requires a hearing; and specifies that judicial findings require consideration of 17 statutory factors.²¹ The statute provides differently with respect to annexations by ordinance and specifically differentiates between types of annexations by ordinance. With respect to annexations by ordinance brought under Minn. Stat. § 414.033, subds. 3 or 5, the statute: allows a township to object; requires a hearing if an objection is filed; and mandates that a hearing results in judicial findings based on a consideration of the 17 statutory factors. With respect to annexations by ordinance brought under any subpart of Minn. Stat. § 414.033, subd 2, the statute does not authorize: the filing of an objection by a township or other party; a hearing by the agency; or any judicial findings relative to the 17 statutory factors. Instead,

¹⁶ *Gilbert* at *3.

¹⁷ *Id.*

¹⁸ 2002 WL 109313 (Minn. Ct. App 2002). See Office of Administrative Hearings' website at <http://www.mba.state.mn.us/history-municipal-boundary-adjustments-minnesota>.

¹⁹ *Gilbert* at *2, 3. Emphasis in original.

²⁰ *Vlahos v. R&I Const. of Bloomington, Inc.*, 676 N.W.2d 672, 676 (Minn. 2004) ("...[W]e pause here to stress that unpublished opinions of the court of appeals are not precedential. See Minn. Stat. § 480A.08, subd 3(c) (2002).")

²¹ Minn. Stat. § 414.031.

in Minn. Stat. § 414.033, subd 2, annexation by ordinance proceedings, the statute merely requires the agency to determine “that at least one of the conditions enumerated in Minn. Stat. § 414.033, subd. 2, has been met and all of the procedural requirements of Minn. Stat. § 414.033, subd. 2b, have been met.”²²

The Township’s reliance on Subdivision 10 of Minn. Stat. § 414.033 does not lead to a different result. Subdivision 10 provides the Office of Administrative Hearings with the statutory authority to “require the city or property owners to furnish additional information concerning an annexation by ordinance to inform the chief administrative law judge about the extent to which the proposed annexation conforms to the [17 statutory factors.]”²³ As the *Gilbert* court noted, this authority is discretionary.²⁴ More importantly for the purposes of the Township’s argument, this authority is limited. The statute provides that the Chief Administrative Law Judge has the discretion to order the parties to provide further information relevant to whether the annexation conforms to the 17 statutory factors, but it does not authorize the Chief Administrative Law Judge to disallow a proposed annexation by ordinance on the basis of noncompliance with the 17 factors. As an administrative court, the Office of Administrative Hearings has only the authority specifically granted to it by the legislature.²⁵ As such, and with respect to annexations by ordinance brought pursuant to Section 414.033, subd. 2, the agency can ask for and even require the production of supplemental information but it cannot deny a proposed annexation because the annexation fails to conform to the 17 factors.

In the present matter, the Chief Administrative Law Judge chooses, in her discretion, not to request additional information concerning the proposed annexation by ordinance. None of the potential legal issues identified by the Township implicate claims or defenses that fall within the jurisdiction of the Office of Administrative Hearings to consider. While the annexation may, or may not, violate the provisions of the Greater Bemidji Area Joint Powers Board,²⁶ constitute invalid spot zoning,²⁷ or breach relevant terms of a Mediated Settlement Agreement executed between the parties in 2013,²⁸ none

²² *Gilbert* at *3.

²³ Minn. Stat. § 414.033, subd. 10.

²⁴ *Gilbert* at *2.

²⁵ *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”); *Frost-Benco Elec. Ass’n v. Minnesota Pub. Utilities Comm’n*, 358 N.W.2d 639, 642 (Minn. 1984) (“The extent of jurisdiction or authority bestowed upon an administrative agency is measured by the statute from which it derives its authority.”)

²⁶ According to Ordinance 2017-02 of the Greater Bemidji Area Joint Powers Board (GBAJPB), Bemidji Township is no longer a member of this governing organization. See GBAJPB Ordinance No. 2017-02 (June 14, 2017), accessed at:

https://docs.wixstatic.com/ugd/e7f67f_fb4ebee8d2ab4ce0b5ee7328efb5ab25.pdf. The Chief

Administrative Law Judge takes judicial notice of this public record pursuant to Rule 201, Minn. R. Evid.

²⁷ See *State, by Rochester Ass’n of Neighborhoods v. City of Rochester*, 268 N.W.2d 885, 891 (Minn. 1978) (“Spot zoning” is a label applied to certain zoning amendments invalidated as legislative acts unsupported by any rational basis related to promoting public welfare. The term applies to zoning changes, typically limited to small plots of land, which establish a use classification inconsistent with surrounding uses and create an island of nonconforming use within a larger zoned district, and which dramatically reduce the value for uses specified in the zoning ordinance of either the rezoned plot or abutting property.”) (Internal citations omitted.)

²⁸ See Mediated Settlement Agreement (May 31, 2013) (on file with the Minn. Office Admin. Hearings).

of those claims are within the jurisdiction of this administrative court to consider. Those claims must be pursued, if at all, in the constitutional courts of the state. As the Office of Administrative Hearings does not function to compile a record relating to claims outside its legal authority, the Chief Administrative Law Judge declines to exercise her discretion to request additional information relevant to these identified issues.

T. L. P.