

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of Certain
Real Property to the City of Montrose from
Marysville Township (MBAU Docket A-8201)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER FOR FURTHER
PROCEEDINGS**

This matter involves an attempt by the City of Montrose (City) to annex by ordinance certain City-owned land currently located in Marysville Township (Township).

The City is represented by Amy B. Schutt, Campbell Knutson, PA. The Township has not yet formally appeared in the matter.

Upon review of all the files and proceedings herein, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

2006 Municipal Boundary Adjustment Act

A. Orderly Annexation

1. Orderly annexation is a statutory process whereby a city and adjacent township may designate identified property for future annexation as allowed by the Municipal Boundary Adjustment Act (Act), Minnesota Statutes ch. 414.

2. The Act provides that municipalities' submission of a joint orderly annexation resolution to the Office of Administrative Hearings¹ confers jurisdiction to the

¹ Initially enacted in 1959, the Act created a Minnesota Municipal Commission and provided it with statutory authority to approve and modify municipal boundaries in a wide scope of circumstances. See *Vill. of Farmington v. Minn. Mun. Comm'n*, 284 Minn. 125, 133, 170 N.W.2d 197, 202–03 (1969) (“The 1959 act creating the commission was intended to recodify and revise traditional procedural and substantive laws governing incorporation of new municipalities and changes in the boundaries of existing municipalities in Minnesota.”) The 1999 Minnesota Legislature dissolved the Commission and assigned its duties to the Minnesota Office of Strategic and Long Range Planning’s Municipal Boundary Adjustment unit, a part of the Department of Administration. In 2005, the unit was reassigned and became a part of the Minnesota Office of Administrative Hearings. For sake of clarity, all filings identified in this matter are referenced with respect to receipt by the Office of Administrative Hearings no matter whether the actual filing was received by a predecessor-in-interest.

agency over annexations in the designated area.²

3. During the relevant timeframe, the Act required that municipalities publish in an area newspaper of general circulation a Notice of Intent to Designate Property for orderly annexation, and that the publication occur at least 10 days before the municipalities executed a joint orderly annexation agreement related to the designated property. The law required that the published notice identify the boundaries of all property affected and also notify the public of the date, time and place of an informational meeting to be held as required by Minn. Stat. § 414.0333.³

4. Although the statute places parameters around the timing of the required public informational meeting in circumstances involving annexation by ordinance, Minn. Stat. § 414.0333 does not specify when the public informational meeting must be held in reference to the adoption of an orderly annexation agreement. The statute does specify various notice requirements and meeting logistics applicable in all statutory types of annexation proceedings.

5. In relevant part, the Act also provides that: (a) “An orderly annexation agreement is a binding contract upon all parties to the agreement ...”; and (b) “If an orderly annexation agreement provides the exclusive procedures by which the unincorporated property identified in the agreement may be annexed to the municipality, the municipality shall not annex that property by any other procedure.”⁴

B. Annexation by Ordinance

6. Minnesota Statutes section 414.033 (2018) provides another statutory process for a City to annex property: annexation by ordinance.

7. In relevant part, Minn. Stat. 414.033, subd. 2(1) allows a municipality to annex by ordinance unincorporated property abutting a municipality if the land is owned by the municipality.

2008 Joint Orderly Annexation Agreement

8. On December 17, 2007, the Township adopted a Joint Resolution and Agreement of the City of Montrose and the Town of Marysville as to the Orderly Annexation of Territory (2008 Orderly Annexation Agreement).⁵

² Minn. Stat. § 414.0325, subd. 1(b) (2018).

³ Minn. Stat. § 414.0325, subd. 1b (2006).

⁴ Minn. Stat. § 414.0325, subd. 6 (2006).

⁵ 2008 Orderly Annexation Agreement, filed in OAH Docket No. OA-1379.

9. The City adopted the 2008 Orderly Annexation Agreement on January 14, 2008.⁶

10. The 2008 Orderly Annexation Agreement pertained to approximately 3,200 acres made up of parcels that, with a few exceptions, abut either the City or the Township.⁷

11. The 2008 Orderly Annexation Agreement included the following relevant terms:

- A. This Joint Resolution and Agreement shall be effective on the day it is approved by The Department.⁸
- B. The parties agree that no land within the OAA shall be annexed from Township to City via any process except that set forth herein, so long as this Joint Resolution and Agreement remains in effect. It is the intent of the parties that the terms of this Joint Resolution and Agreement act to prohibit annexation (within the OAA) under any laws currently in force, if annexation under such laws would be contrary to the annexation procedures set out in this Joint Resolution and Agreement.⁹

12. In addition, the 2008 Orderly Annexation Agreement provided the following process for eventual annexation of any designated property into the City:

- A. A property owner submits a petition for annexation to the City and pays a specified fee, depending on whether the property is improved, plus all deferred special assessments, including interest.
- B. The City and Township discuss the petition and specified environmental or water runoff concerns, and may schedule a joint public meeting to discuss the petition with the property owner.
- C. If approved, the City and Township adopt a joint resolution approving the requested annexation.
- D. Once submitted and approved by the Office of Administrative Hearings, the annexation becomes effective and proof thereof is filed with the Wright County Recorder.¹⁰

⁶ *Id.*

⁷ Correspondence from Kristen Carr, Couri, MacArthur & Ruppe PLLP (Jan. 23, 2007).

⁸ 2008 Orderly Annexation Agreement at ¶¶ 6.

⁹ *Id.* at ¶ 9.

¹⁰ *Id.* at ¶ 3.

13. On or about January 28, 2008, the City and the Township jointly submitted the 2008 Orderly Annexation Agreement to the Office of Administrative Hearings for approval pursuant to the requirements of Minnesota Statutes ch. 414 (2006).¹¹

14. Prior to adopting the 2008 Orderly Annexation Agreement, the City and Township failed to publish a Notice of Intent to Designate Property or identify a date, time and place for a public informational meeting.

15. The Office of Administrative Hearings notified the City and the Township of this deficiency in the proceeding in February 2008, December 2008, and June 2009.¹²

16. On July 6 and 13, 2009, notice of a July 20, 2009, public informational meeting was published in the Delano Herald Journal.¹³

17. A public informational meeting was held on July 20, 2009. Representatives of the City and Township were in attendance. No members of the public attended.¹⁴

18. On August 20, 2009, the Office of Administrative Hearings accepted the 2008 Orderly Annexation Agreement.¹⁵

19. For almost 10 years, no designated property has been the subject of any resolution for orderly annexation under the authority of the 2008 Orderly Annexation Agreement.

2019 Annexation by Ordinance

20. On December 10, 2018, the City adopted Ordinance Number 2018-15 requesting annexation of certain real city-owned property from the Township.

21. Pursuant to the authority of Minn. Stat. § 414.033, subd. 2(1) (2018), the City filed Ordinance Number 2018-15 with the Office of Administrative Hearings on February 15, 2019.

22. On March 7, 2019, the City determined that the legal description in Ordinance Number 2018-15 was in error.

¹¹ *Id.*

¹² Correspondence from Office of Administrative Hearings dated Feb. 4, 2008; Dec. 31, 2008; and June 30, 2009.

¹³ Affidavit of Publication (Jul. 13, 2009).

¹⁴ Correspondence from Barbara C. Thwing-Swanson, City Administrator (Jul. 22, 2009).

¹⁵ Correspondence from Office of Administrative Hearings (Aug. 20, 2009).

23. On April 8, 2019, the City adopted Ordinance Number 2019-03 repealing Ordinance Number 2018-15 and requesting annexation of certain real property (Property) with the following corrected legal description:

That part of the following described PARCEL A lying westerly of the following described LINE A

Parcel A

That part of the Southeast Quarter of Section 26, Township 119, Range 26, described as follows Commencing at the Northeast corner of said Southeast Quarter, thence on a bearing of South 0 degrees 00 minutes 00 seconds East along the East line of said Southeast Quarter a distance of 835.70 feet to the point of beginning, thence continue South 0 degrees 00 minutes 00 seconds East along said East line a distance of 275.00 feet, thence North 90 degrees 00 minutes 00 seconds West a distance of 396.00 feet, thence North 0 degrees 00 minutes 00 seconds West a distance of 275.00 feet, thence South 0 degrees 00 minutes 00 seconds East a distance of 396.00 feet to the point of beginning, according to the United States Government Survey thereof, Wright County, Minnesota.

LINE A

Commencing at the northeast corner of the Southeast Quarter of Section 26, Township 119 North, Range 26 West, Wright County, Minnesota, thence South 00 degrees 16 minutes 27 seconds West, assumed bearing, along the east line of said Southeast Quarter, 835.70 feet to the northeast corner of the above described tract, thence North 89 degrees 43 minutes 33 seconds West, along the north line of the above described tract, 396.00 feet to the northwest corner of the above described tract, thence continuing North 89 degrees 43 minutes 33 seconds West along the westerly extension of said north line 36.00 feet, thence South 00 degrees 16 minutes 27 seconds West 102.43 feet, thence southeasterly 136.95 feet, along a non-tangential curve concave to the southwest, having a radius of 560.00 feet, a central angle of 14 degrees 00 minutes 44 seconds, and a chord which bears South 15 degrees 00 minutes 17 seconds East, to a west line of the above described tract and the point of beginning of the line to be described, thence southeasterly a distance of 41.03 feet continuing along the last described curve concave to the west, having a radius of 560.00 feet, a central angle of 04 degrees 11 minutes 53 seconds, to the south line of the above described tract and said line there terminating.

PID 211-000-264102

24. The Property consists of a small strip of land located in close proximity to Arapahoe Lane in the area illustrated in blue below.



25. The Property is owned by the City.¹⁶

26. The Property abuts the City's current boundary.¹⁷

27. The Property that is the subject of the City's 2019 annexation ordinance is part of the area designated for orderly annexation in the 2008 Orderly Annexation Agreement.¹⁸

28. The City requests from the Chief Administrative Law Judge an Order either: (a) rejecting the current request for annexation by ordinance "based on the fact that there is a valid [2008 Orderly Annexation Agreement] covering the property"; or (b) approving the requested annexation by ordinance "based on the fact that the [2008 Orderly Annexation Agreement] is not valid" due to the parties' failure to publish the required Notice of Intent to Designate and identify the public informational hearing schedule prior to execution of the agreement.¹⁹

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

¹⁶ Ordinance No. 2019-03.

¹⁷ Beacon™ map of Wright County, Minnesota (Feb. 27, 2019).

¹⁸ Supplemental Information (Feb. 19, 2019).

¹⁹ *Id.*

CONCLUSIONS OF LAW

1. The Chief Administrative Law Judge of the Office of Administrative Hearings has jurisdiction over this matter pursuant to Minn. Stat. §§ 414.0325 and 414.033 (2018).

2. The parties' 2008 submission to the Office of Administrative Hearings of the 2008 Orderly Annexation Agreement provides the Chief Administrative Law Judge with continuing jurisdiction over annexations involving the designated Property.²⁰

3. Since 2008, the Chief Administrative Law Judge has had the statutory authority to initiate annexation of any part of the designated area, including the Property that is the subject of the instant action.²¹

4. In cases where an enforceable orderly annexation agreement exists, Minn. Stat. § 414.0325, subd. 6, mandates that the parties to that agreement are statutorily and contractually bound to seek annexation of designated property under the orderly annexation process.²²

5. "[T]he legislative intent behind section 414.0325, subdivision 6, [is] to prevent parties to an annexation agreement from later reneging on that agreement and annexing by ordinance land that was subject to the agreement."²³

6. As written in 2008, the Act required that the Notice of Intent to Designate Property "must clearly identify the boundaries of the area proposed to be included in the orderly annexation agreement and the date, time, and place of the public informational meeting to be held as provided in section 414.0333."²⁴

7. The statutory requirements of Minn. Stat. § 414.0325, incorporating section 414.0333 with respect to the required pre-execution publication of both a Notice of Intent to Designate Property and a scheduled public informational meeting, were intended to ensure that owners of property affected by an orderly annexation designation received sufficient notice and opportunity to challenge the actions of their government with respect to any taxation, economic, development-related or other impacts upon their property rights.

8. As the referenced procedural requirements of the cited statutes do not provide a method for enforcement or declare a consequence for a failure to comply, the

²⁰ Minn. Stat. § 414.0325, subd. 1(c).

²¹ Minn. Stat. § 414.0325, subd. 1(e).

²² Minn. Stat. § 414.0325, subd. 6; *In re Annexation of Certain Real Prop. to City of Proctor from Midway Twp.*, 925 N.W.2d 216, 220 (Minn. 2019).

²³ *In re Annexation of Certain Real Prop. to City of Proctor From Midway Twp.*, 910 N.W.2d 460, 465 (Minn. Ct. App. 2018), *aff'd sub nom. In re Annexation of Certain Real Prop. to City of Proctor from Midway Twp.*, 925 N.W.2d 216 (Minn. 2019).

²⁴ Minn. Stat. § 414.0325, subd. 1b (2006).

requirements are directory and not mandatory in nature.²⁵

9. The fact that the City and Township publicized and held a public informational meeting, albeit 18 months after their execution of the 2008 Orderly Annexation Agreement but still 8-½ years before any designated Property was the subject of an annexation proceeding, constitutes substantial compliance with the statute's requirement that all owners of designated property be provided an opportunity to address their elected governments regarding the impacts of possible future annexation of their property.

10. Because it is owned by the City and abuts the City's current boundaries, by law the Property is deemed to be urban or suburban in character or about to become so, and thus appropriate for annexation.²⁶

11. Given the existence and validity of the 2008 Orderly Annexation Agreement, the City is bound to its terms and thus prohibited from pursuing annexation by ordinance of the designated Property as such "would be contrary to the annexation procedures set out in [the 2008 Orderly Annexation Agreement]²⁷ and therefore violate "the exclusive procedures by which the unincorporated property identified in the agreement may be annexed to the municipality."²⁸

Based upon these Conclusions of Law and the analysis set forth in the attached Memorandum, the Chief Administrative Law Judge issues the following:

ORDER

1. Pursuant to Minn. Stat. § 414.0325, subd. 6, City Ordinance Number 2019-03 is deemed inadequate and of no legal effect in that it fails to conform to the terms of the 2008 Orderly Annexation Agreement.

2. Pursuant to the authority of Minn. Stat. § 414.0325, subd. 1(e), the Chief Administrative Law Judge exercises her lawful authority to commence annexation of the subject Property pursuant to and in accord with the terms of the 2008 Orderly Annexation Agreement and subject to the terms of this Order.

²⁵ See *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 541 (Minn. 2007) (holding that "our case law recognizes that a statute may contain a requirement but provide no consequence for noncompliance, in which case we regard the statute as directory, not mandatory."); See *Sullivan v. Credit River Township*, 217 N.W.2d 502, 507 (Minn. 1974) (stating "a statute which does not declare the consequences of a failure to comply may be construed as a directory statute."); *Manco of Fairmont, Inc. v. Town Bd. Of Rock Dell Twp.*, 583 N.W.2d 293, 295 (Minn. Ct. App. 1998) (citing *Sullivan*, 217 N.W.2d at 507) (explaining that "One test for distinguishing between directory and mandatory statutes is that if a statute expresses the consequences of a failure to comply with its provisions, it is mandatory."); *Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 875 (Minn. Ct. App. 2008) (holding that the implied consent statute's requirement that a judicial review hearing be held within 60 days is directory, because the statute imposes no sanction or consequence for failing to comply).

²⁶ Minn. Stat. § 414.033, subd. 2.

²⁷ 2008 Orderly Annexation Agreement at ¶ 9.

²⁸ Minn. Stat. § 414.0325, subd. 6.

3. If the City and the Township desire to proceed with this annexation proceeding, they should submit to the Chief Administrative Law Judge evidence that the following terms of the 2008 Orderly Annexation Agreement have been met:

- A. The record owner of the Property has submitted a petition for annexation to the City and paid all applicable fees and deferred special assessments including interest, if any.
- B. The City and Township have discussed the petition and specified environmental or water runoff concerns, and further discussed the whether it serves the public interest to schedule a joint public meeting to discuss the petition with the property owner.
- C. The City and Township have adopted a joint resolution approving the requested annexation.²⁹

4. Upon receipt and processing of these submissions, plus sufficient evidence that any further requirements specified in the 2008 Orderly Annexation Agreement identified by the parties have been met, the Chief Administrative Law Judge will promptly issue an Order of Annexation.

Dated: June 19, 2019



TAMMY L. PUST
Chief Administrative Law Judge

MEMORANDUM

Ten years ago, the City and the Township jointly agreed to designate property for future annexation, and to eventually annex any or all of the designated property pursuant to specified orderly annexation processes. Those efforts are to be commended in that they represent joint land use planning, a policy that the Minnesota legislature has encouraged.³⁰

In 2019, the City enacted an ordinance seeking to annex part of the property designated for orderly annexation back in 2008. This enactment sets up the legal question in this case: whether the 2008 Orderly Annexation Agreement effectively precludes the City's attempt to annex by ordinance. If the 2008 Orderly Annexation Agreement is valid,

²⁹ 2008 Orderly Annexation Agreement at ¶ 3.

³⁰ Minn. Stat. § 414.01, subd. 1a(5) (2018).

the City is statutorily and contractually bound by its terms³¹ and may not annex the Property by ordinance.

The Chief Administrative Law Judge finds that the 2008 Orderly Annexation Agreement is valid notwithstanding the fact that the City and the Township failed to follow all of the procedural steps that the applicable statute required in 2008. The record is clear that, while Minn. Stat. 414.0325, subd. 1b, provided that parties “must” publish a Notice of Intent to Designate Property and notice a scheduled public informational meeting before they executed an orderly annexation agreement, the City and Township did not do so before they adopted the 2008 Orderly Annexation Agreement. The fact that they held the public informational meeting later, while laudable and in conformity with the purposes of the notice requirement, does not erase the legal effect, if any, of their failure to comply with the statute in the first instance.

While government agencies are expected to comply with statutory requirements, failure to do so does not necessarily invalidate the action taken. Minnesota courts have long recognized that the statutory words “may,” “shall,” “must,” and “will” are elastic and are often used in statutes interchangeably.³² Historically, courts have recognized that:

the law does not mandate in all cases strict and literal compliance with all procedural requirements. Technical defects in compliance which do not reflect bad faith, undermine the purpose of the procedures, or prejudice the rights of those intended to be protected by the procedures will not suffice to overturn governmental action, particularly where, as here, substantial commitments have been made.³³

That is not to say that the government can ignore the dictates of statute at will. Strict compliance is required, even for government actors, for statutory provisions and processes that are deemed mandatory, not directory.³⁴ “To determine whether a statute is mandatory rather than directory, we consider whether the statute expresses the consequences of a failure to comply with its provisions; if it does, it is mandatory.”³⁵ If it does not and “no substantial rights depend on compliance,”³⁶ it is directory, and the

³¹ *In re Annexation of Certain Real Prop. to City of Proctor from Midway Twp.*, 925 N.W.2d at 220.

³² See *Sullivan v. Credit River Twp.*, 217 N.W.2d at 507 (holding open public meetings statute was directory); *In re Trusteeship of First Minneapolis Trust Co.*, 202 Minn. 187, 191-92, 277 N.W. 899, 902 (1938); *State v. Jones*, 234 Minn. 438, 440-41, 48 N.W.2d 662, 663 (Minn. 1951) (stating that the use of “may” or “shall” is not decisive and the import must be determined from “the subject matter, the language of the statute, the importance of the provisions, the object intended to be achieved, and the legislative intent”); *Manco of Fairmont, Inc.*, 583 N.W.2d at 296 (holding requirement regarding contents of extension notice was directory).

³³ *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 391 (Minn. 1980) (involving condemnation of parcels within development district)). See also *Manco of Fairmont, Inc.*, 583 N.W.2d at 295.

³⁴ *Manco*, 583 N.W.2d at 295.

³⁵ *In re Gourley Bros., LLC*, A13-2247, 2014 WL 4056063, at *4-5 (Minn. Ct. App. Aug. 18, 2014) (citing *Sullivan v. Credit River Twp.*, 299 Minn. at 176-77, 217 N.W.2d at 507 (1974)).

³⁶ *In re K.P.W.*, A13-1754, 2014 WL 802557, at *4 (Minn. Ct. App. Mar. 3, 2014) (quoting *State by Lord v. Frisby*, 260 Minn. 70, 76, 108 N.W.2d 769, 773 (1961)).

doctrine of substantial compliance may be applied.³⁷ Under the doctrine of substantial compliance, a minor deviation in procedure will not invalidate government action if no prejudice results to the persons intended to be protected by the statutory requirements.³⁸

Section 414.0325, subd. 1b (2006), did not, and in fact does not today, provide a method for enforcement or a consequence for failure to publish the specified notices prior to execution of an orderly annexation agreement. This lack of a consequence suggests that the statute is directory rather than mandatory in nature.³⁹ The fact that the City and Township eventually did notify the owners of designated property and held a public informational meeting to address any raised concerns provides evidence that no prejudice resulted from their initial missed steps and late compliance. In this light, and in the absence of a specific sanction for non-compliance in the statute, the Chief Administrative Law Judge concludes that the pre-execution notices were directory, rather than mandatory in this instance. Consequently, the parties' failure to establish strict compliance with the statutory provisions does not invalidate the legal effect of the 2008 Orderly Annexation Agreement.

The continued viability of the 2008 Orderly Annexation Agreement precludes granting the City's present request to annex the subject Property by ordinance. Annexation of the Property is still available, however, if the City proceeds to comply with the terms of its 2008 Orderly Annexation Agreement with the Township, adopted by reference into the terms of this Order. If, instead, either the City and/or Township communicate to the Office of Administrative Hearings that they prefer not to proceed with the annexation of the Property, the Chief Administrative Law Judge will promptly issue an Order of Dismissal.

T.L.P.

³⁷ *Manco of Fairmont, Inc.*, 583 N.W.2d at 295.

³⁸ See *City of Granite Falls v. Soo Line R. Co.*, 742 N.W.2d 690, 696–97 (Minn. Ct. App. 2007) (quoting *Wurtele*, 291 N.W.2d at 391)).

³⁹ See *Rambeck v. LaBree*, 156 Minn. 310, 314, 194 N.W. 643, 644 (1923) (“This court has said that as a general rule the statute requiring an act to be done within a certain time should be regarded as directory unless the limitation of time is essential to the protection of private rights”); see also *Riehm*, 745 N.W.2d at 875–76 (quoting *Heller v. Wolner*, 269 N.W.2d 31, 33 (Minn.1978) (“statutory provisions defining the time and mode in which public officers shall discharge their duties, and which are obviously designed merely to secure order, uniformity, system and dispatch in public business are generally deemed directory.”)).