

BEFORE THE MUNICIPAL BOARD
OF THE STATE OF MINNESOTA

Kenneth F. Sette Chair
Robert J. Ferderer Vice Chair
John W. Carey Commissioner

IN THE MATTER OF THE PETITION FOR THE)
DETACHMENT OF CERTAIN LAND FROM THE CITY) FINDINGS OF FACT
OF BRANCH AND ANNEXATION TO THE CITY OF) CONCLUSIONS OF LAW
NORTH BRANCH PURSUANT TO MINNESOTA) AND ORDER
STATUTES 414) AND MEMORANDUM OPINION

The above-entitled matter came on for hearing before the Minnesota Municipal Board pursuant to Minnesota Statutes 414, as amended, on September 23, 1992, and continued from time to time at North Branch, Minnesota. The hearing was conducted by Terrence A. Merritt, Executive Director, pursuant to Minnesota Statutes 414.01, Subdivision 12. Also in attendance were Kenneth F. Sette, Chair, and Robert J. Ferderer, Vice Chair. The petitioners appeared by and through Alfred S. Alliegro, Assistant County Attorney, the City of Branch appeared by and through William S. Radzwill and Andrew J. MacArthur, Attorneys at Law, and the City of North Branch appeared by and through Barry L. Blomquist, Attorney at Law.

After due and careful consideration of all evidence, together with all records, files and proceedings, the Minnesota Municipal Board hereby makes and files the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On June 30, 1992, a petition for concurrent detachment and annexation by all of the property owners was filed with the

Minnesota Municipal Board. The petition contained all of the information required by statute, including a description of the area proposed for concurrent detachment and annexation, which is as follows:

All that part of the East Half of the Southeast Quarter ($E\frac{1}{2}$ of $SE\frac{1}{4}$) of Section Twenty-one (21), Township Thirty-five (35), Range Twenty-one (21), which lies North and East of Chisago County Road No. 14;

AND

That part of the Southwest Quarter ($SW\frac{1}{4}$) of Section Twenty-two (22), Township Thirty-five (35) North, Range Twenty-one (21) West, lying North of the existing centerline of County Road No. 14 except the following described parcel:

Beginning at the South quarter corner of said Section 22; thence northerly along the East line of said $SW\frac{1}{4}$ 1412.00 feet; thence westerly deflecting to the left $90^{\circ}00'00''$, 235.00 feet; thence southwesterly, deflecting to the left $65^{\circ}59'29''$, 631.65 feet; thence southwesterly, deflecting to the right $08^{\circ}04'33''$, 306.87 feet; thence westerly, deflecting to the right $57^{\circ}54'56''$, to the existing centerline of said County Road No. 14, thence southeasterly along said centerline to the intersection with the South line of said $SW\frac{1}{4}$; thence easterly to the point of beginning.

AND

The North Half of the Southeast Quarter ($N\frac{1}{2}$ of $SE\frac{1}{4}$) of Section Twenty-two (22), Township Thirty-five (35) North Range Twenty-one (21) West.

2. Due, timely and adequate legal notice of the hearing was published, served and filed.

3. The area proposed for concurrent detachment and annexation, hereinafter referred to as "the subject area," is presently within the City of Branch, hereinafter referred to as "Branch," and abuts the City of North Branch, hereinafter referred

to as "North Branch." The perimeter of the subject area is approximately 2.5% bordered by North Branch.

4. Branch had a population of approximately 880 in 1970, approximately 1,866 in 1980, and has a current population of approximately 2,509.

North Branch had a population of approximately 1,106 in 1970, approximately 1,597 in 1980, and has a current population of approximately 1,950.

The subject area had a population of approximately 135 in 1970, approximately 135 in 1980, and has a current population of approximately 135.

5. Branch is approximately 22,115 acres in size. Branch was incorporated in approximately 1961.

6. North Branch is approximately 1,019 acres in size.

7. The subject area has a total acreage of approximately 179 acres.

8. The subject area has a protected tributary/watercourse to the Sunrise River which traverses through the southwest half, southeast quarter and the northeast quarter of Section 22, Township 35N, Range 21W. The north branch of the Sunrise River travels through both Branch and North Branch. The subject area is generally flat. The subject area has significant tree massing on the northwest tip, the southern most tip and on the County property.

The subject area has two primary types of soils: the Isanti Series and the Lino Series. The Isanti Soils consist of

poorly and very poorly drained soils, which pose severe constraints to septic tank absorption fields due to severe wetness and poor filtering. The Lino Soils consist of somewhat poorly drained soils formed on shallow depressions and drainage ways, which pose severe constraints to septic tank absorption fields due to severe wetness and poor filtering.

At times the water table is within two and a half to three feet from the surface. Such a water table can be adversely impacted by an improperly functioning on-site septic system.

9. Branch has land in residential, institutional, commercial, industrial, and agricultural use, as well as vacant lands.

North Branch has land in residential, institutional, commercial, industrial, and agricultural use, as well as vacant lands.

The subject area includes approximately 80 acres owned by the County of Chisago, hereinafter referred to as "County." The Green Acres Nursing Home is located on the 80-acre parcel. There are also two residential parcels and a parcel presently being used for agricultural purposes. The subject area contains no commercial or industrial use.

10. Branch has approximately 10 miles of highways, streets, and roads. North Branch has approximately 47.24 miles of highways, streets, and roads. The subject area has less than one quarter mile of highways, streets, and roads.

Access to the subject area from North Branch is by County

Roads 14 and 73 and Hemmingway Avenue, the sole city street in the subject area. That portion of Hemmingway Avenue north of County Road 14 and south of the east/west center line of Section 22 is completely within the subject area.

11. North Branch has a zoning ordinance, subdivision regulations, an official map, capital improvements program and budget, a fire code, a shoreland ordinance, and a floodplain ordinance.

Branch has a zoning ordinance, subdivision regulations, an official map, capital improvements program and budget, a shoreland ordinance, a floodplain ordinance, and a sanitation ordinance.

12. The current zoning of the subject area is rural residential.

The anticipated zoning, if the subject area becomes part of North Branch, would be residential.

The development in the subject area is anticipated to remain the same.

13. North Branch has adopted an urban rural taxing district. Branch has not adopted an urban rural taxing district.

14. No planning authorities have taken an official position on the proposed boundary adjustment.

15. Branch and North Branch have a building code inspection.

16. Branch and North Branch rely on the jointly prepared plan, A Growth Management System and Code Ordinances for the Cities of Branch and North Branch dated 1978/80 prepared by the Central

Regional Development Commission for their planning and zoning controls.

North Branch is currently in the process of a comprehensive plan update by its city planner. Branch continues to use the existing comprehensive plan.

17. North Branch provides its residents with water, sanitary sewer and waste-water treatment, storm sewer, fire protection, police protection, street improvements and maintenance, administrative services, and recreational facilities.

North Branch provides the subject area with fire protection through a contract with Branch.

18. Branch provides some portions of the city with water, sanitary sewer and waste-water treatment, and storm sewer. It provides fire protection through a contract with North Branch. It provides police protection through the Chisago County Sheriff's Department. It provides street improvements, snowplowing and maintenance through a contract with a private company, and administrative services and recreational facilities.

Branch is in the planning stages of providing water and sanitary sewer and waste-water treatment to the subject area. There is no time table for the extension of sewer to the subject area. It provides storm sewer to the subject area. It provides the subject area with fire protection, and police protection in the same fashion it provides that service to the remainder of the City. Branch provides the subject area with street improvements and maintenance, administrative services and recreational facilities

in the same fashion that it provides these services to the remainder of Branch.

19. Electric service to Branch and the subject area is presently provided by East Central Electric Association. North Branch is served by its own electric utility.

The concurrent detachment and annexation of the subject area to North Branch would not automatically change the electric service to the subject area.

20. The Green Acres Nursing Home owned by the County and leased by the Board of Social Ministry is under direction to correct a notice of violation by the Minnesota Pollution Control Agency, hereinafter referred to "MPCA."

21. The Green Acres Nursing Home, on April 15, 1991, received a notification of violation from the MPCA. The waste-water treatment facility for the nursing home does not meet sewage treatment discharge requirements. There has been some freezing of the lines. There have been no citations from MPCA since. The County has been working on correcting the waste-water treatment problem.

22. The waste-water treatments facility serving the Green Acres Nursing Home has not complied with its permit requirements since approximately 1982. The main form of violation is an excess capacity flow of effluent.

The present facility exceeds its design capacity approximately 80% of the time. The facility produces a flow of approximately twelve to thirty three percent above the plant's

design capacity. There is presently significant seepage from the facility's holding pond.

The Green Acres sewage treatment permit limits discharge to once every 180 days. Presently, the discharge to the creek that leads to the Sunrise River is every 100 days. The pond's capacity is approximately 41 days between discharges; the seepage out of the pond is significant.

23. Included in the permit approval received from the MPCA for the operation of the waste-water treatment plant for Green Acres, is a time table for the implementation of a new facilities plan for treatment of the waste water from the nursing home. The time table is as follows: a facilities plan in place by July 1, 1993, construction commencing by April 1, 1994, and completion of the compliance of final effluent limitations by July 1, 1995.

24. The Green Acres Nursing Home considered the creation of a soil-absorption system located in Branch, as well as a stabilization pond located in Branch or the connection to the North Branch municipal waste-water treatment plant.

If the subject area receives municipal waste-water treatment service from North Branch without annexation of its property into North Branch, the sewer rates will be two times North Branch's existing rates.

25. The connection to a stabilization pond is an alternative the County can implement without involvement from Branch. The stabilization pond holds the sewage for treatment and is approximately 3.5 acres in size.

The proposed stabilization pond plan by either the County or Branch, uses sunlight and wind to reduce the contaminants in the sewage, holds the sewage for 180 days, then discharges it to the unnamed creek that connects to the north branch of the Sunrise River twice a year, in the spring and fall. The stabilization pond can give off a noxious smell.

At any time during the past ten years, the County could have constructed a new stabilization pond. The MPCA requirements prevent construction of residential development within a quarter mile of a stabilization pond.

26. The County advisors have determined that replacement of the present Green Acres waste-water plant would need to accommodate approximately 25,000 gallons per day flow.

27. The North Branch waste-water treatment plant is at approximately 36% of its existing capacity. In the past four years, North Branch has reduced the infiltration problem to its sewer system. North Branch has indicated a willingness to provide municipal sewer to the subject area if it becomes a part of North Branch.

28. Branch has no present waste-water system available to the subject area. Branch considered either a stabilization pond or a soil absorption system as options to address the Green Acres waste-water treatment problem. The soils and water table in the area for the proposed soil absorption system are unsuitable for such a system. Branch has no specific plans for land acquisition for the waste-water treatment system.

The Branch engineer completed Branch's Municipal Wastewater Treatment Plan in June of 1992. Branch City Council adopted the plan sometime before February, 1993.

29. Branch began a sanitary sewer needs assessment study and sewer study, partially in response to the development at the interchange of Interstate 35 and Trunk Highway 95, hereinafter referred to as "the I-35 Interchange."

30. The main Branch water service is at the I-35 Interchange.

31. The I-35 Interchange is over a mile away from the western most portion of the subject area. That direct line travels through North Branch.

32. North Branch has a sewer system in place. Branch has a plan for a sewer system that has no time table for implementation.

33. North Branch had a 1991 assessed valuation of \$43,666,400. The City's tax rate was 27.575; its tax rate for the County was 43.199; its tax rate for the School District was 54.016. It had a total bonded indebtedness of \$4,170,000.

Branch had a 1991 assessed valuation of \$63,208,300. The City's tax rate was 22.778; its tax rate for the County was 43.199; its tax rate for the School District was 54.016. It had a total bonded indebtedness of \$2,060,000.

The subject area had a 1991 assessed valuation of \$3,942,100. The Green Acres Nursing Home, which is tax exempt and included in the subject area, has an estimated market value of \$3,740,500.

34. Branch and North Branch are located within the same

school district.

CONCLUSIONS OF LAW

1. The Minnesota Municipal Board duly acquired and now has jurisdiction of the within proceeding.
2. Concurrent detachment and annexation of the subject area is in the best interest of that portion of Branch consisting of the subject property.
3. North Branch can provide the subject area with the necessary governmental services.
4. The remainder of Branch can continue to survive without the subject area and will be relieved of the need to provide utility service and other municipal services necessary to correct the pollution problem Branch acknowledges exists in the subject area.
5. The concurrent detachment and annexation will provide for more effective or economic delivery of services by the affected municipalities.
6. The concurrent detachment and annexation will benefit the municipalities and is in the best interest of the municipalities.
7. The concurrent detachment and annexation will have no impact on the building code applicability or transportation network.
8. The concurrent detachment and annexation will have no impact on the area school district.
9. The Minnesota Municipal Board should issue an order approving the concurrent detachment and annexation of the subject

area from Branch to North Branch.

O R D E R

1. IT IS HEREBY ORDERED: That the property described in Findings of Fact 1 herein, be and the same hereby is, detached from the City of Branch and annexed to the City of North Branch, Minnesota, the same as if it had been originally a part thereof.

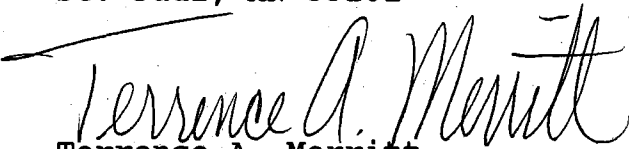
2. IT IS FURTHER ORDERED: That the population of the City of North Branch is increased by 135.

3. IT IS FURTHER ORDERED: That the population of the City of Branch is decreased by 135.

4. IT IS FURTHER ORDERED: That the effective date of this order is June 1, 1993.

Dated this 1st day of June, 1993.

MINNESOTA MUNICIPAL BOARD
475 McColl Building
St. Paul, MN 55101


Terrence A. Merritt
Executive Director

M E M O R A N D U M

In approving the concurrent detachment and annexation, the Municipal Board notes that in this instance, there will be a difference in service delivered to the subject area. In 1991, the City of Branch began studying the provision of waste-water treatment to its residents. The problem at the Green Acres Nursing Home has been ongoing since the early 1980's. By the time Branch had completed its study, the County had been looking for action for some time. The time to have prepared for sewer service was not at the end of the County's deliberation and the Minnesota Pollution Control Agency's requirement for correction; the needs have been existent for some time. It is time for the cities to put aside their independent concerns and focus on the citizens of the community at large.

The main source of pollution in Branch appears to be the sewer treatment plant of the Green Acres Nursing Home facility. The correction of that pollution by the extension of municipal sewer lines will alleviate danger to the ground water in the subject and adjacent areas. Additionally, the absence of a stabilization pond will avoid limiting development in that area, both for Branch and North Branch.

In its previous order, the Board urged the parties not to perceive a decision by the Board as supporting one of the cities and not the other. Each case that comes before the Board, is

addressed on its own merits. Additionally, there is the ongoing city consolidation petition. This local consolidation study should continue to be the focus and it will help the communities more accurately address their future.

Ultimately, this was a case that needed to address pollution. In addressing the pollution issue, the question was whether the 135 residents of the Green Acres Nursing Home and the Home's employees will be subjected to living next to the stabilization pond, or will they and the area in general be better served through the extension of municipal sewer service. The evidence supported the latter. For all the discussion of sewer service, Branch offered the type of service the property owner could have provided on their own. The property owner wanted a permanent solution.

Additionally, by extending municipal sewer, the creek and the river, as well as the ground water, is better protected and this benefits everyone.

In granting this concurrent detachment and annexation, the Board again, reminds not only the parties to this matter, but all residents of the two communities, that their best interests will be served if they work together.

JAM 6-1-93