

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Orderly Annexation  
of Certain Real Property to the City of  
Carver from Dahlgren Township  
(MBAU Docket OA-1428-7)

**AMENDED ORDER  
APPROVING ANNEXATION**

Robert T. Ruppe, Couri & Ruppe, PLLP, appears on behalf of Dahlgren Township (Township). R. Lawrence Harris and Matthew D. MacDougall, Melchert Hubert Sjodin, PLLP, appear on behalf of the City of Carver (City).

Based upon a review of the filings submitted by the parties, together with all proceedings herein, the Chief Administrative Law Judge makes the following:

**AMENDED FINDINGS OF FACT**

**Factual Background**

1. This matter involves the efforts of the City and the Township to adjust the boundaries of certain real property (Property) by detaching the Property from the Township and annexing the Property into the City pursuant to the orderly annexation process provided in Minn. Stat. § 414.0325 (2014).

2. The Property consists of approximately 6.76 acres and is presently located within the boundaries of the Township and adjacent to the current boundaries of the City. The Property is legally described as follows:

Chicago, Milwaukee, St. Paul & Pacific Railroad Company's abandoned 66 feet wide right-of-way in, over and across the East 515 feet of the Northeast Quarter of the Northeast Quarter of Section 24, Township 115 North, Range 24 West, Carver County, Minnesota.

AND

The North 12.22 chains of the East 7.8 chains of the Northeast Quarter of Section 24, Township 115, Range 24, except for railroad right of way, Carver County, Minnesota.

EXCEPTING THEREFROM:

That part of the North 12.22 chains of the East 7.8 chains of the Northeast Quarter of the Northeast Quarter of Section 24, Township 115, Range 24, Carver County, Minnesota, described as follows:

Beginning at the Southeast corner of said North 12.22 chains of the East 7.8 chains of the Northeast Quarter of the Northeast Quarter; thence Westerly along the South line of said North 12.22 chains, a distance of 515.30 feet to the West line of said East 7.8 chains of the Northeast Quarter of the Northeast Quarter; thence Northerly along said West line a distance of 210.31 feet; thence Southeasterly 541.27 feet to a point on the East line of said Northeast Quarter of the Northeast Quarter distant 20.37 feet from the point of beginning; thence Southerly along said East line of the Northeast Quarter of the Northeast Quarter, 20.37 feet to the point of beginning.

ALSO EXCEPT:

That part of the Northeast Quarter of the Northeast Quarter of Section 24, Township 115, Range 24, Carver County, Minnesota, described as follows:

Beginning at the Northeast corner of said Northeast Quarter of the Northeast Quarter of Section 24; thence on an assumed bearing of South 00 degrees 13 minutes 13 seconds West, along the East line thereof, a distance of 143.17 feet; thence North 87 degrees 07 minutes 48 seconds West, a distance of 1340.09 feet to the West line of said Northeast Quarter of the Northeast Quarter of Section 24; thence North 00 degrees 19 minutes 32 seconds East, along said West line, a distance of 22.07 feet to the Northwest corner of said Northeast Quarter of the Northeast Quarter; thence North 87 degrees 41 minutes 25 seconds East, along the North line of said Northeast Quarter of the Northeast Quarter, a distance of 1339.92 feet to the point of beginning.<sup>1</sup>

3. The Property, identified for tax purposes as Property ID Number 04.0240900, generates a total of \$247.61 in property taxes to the Township for the applicable tax year.<sup>2</sup> For the most recent past tax years, the Property has generated tax revenue to the Township in the following amounts: 2012 - \$440.14; 2013 – \$400.35; 2014 – \$282.94; and 2015 – \$295.86.<sup>3</sup>

---

<sup>1</sup> Revised legal description and Certificate of Survey, attached as Exhibits (Ex.) D and E to May 19, 2016 submission from Matthew D. MacDougall, Melchert Hubert Sjodin, P.L.L.P.

<sup>2</sup> Carver County 2016 Property Tax Statement (available at <http://mn-carver.manatron.com/Tabs/TaxSearch/ParcelDetail.aspx?p=04.0240900&a=1208>).

<sup>3</sup> April 12, 2016 correspondence from Robert Ruppe, at Ex. A.

4. The fee owners of the Property, Diedrich Lenzen and Jeanette E. Lenzen as joint tenants (Lenzens),<sup>4</sup> propose to sell the property to a developer for commercial purposes which require the extension of City utilities.<sup>5</sup>

5. The development of the property is being managed by Community Asset Development Group, L.L.C. (CADG). CADG is managed by David Pokorney, its principal, and regularly provides development consulting service for property owners and project proponents.<sup>6</sup>

6. On or about February 11, 2009, the City and the Township executed a “Joint Resolution for Orderly Annexation Between the Town of Dahlgren and the City of Carver, Carver County, Minnesota” (Joint Agreement).<sup>7</sup>

7. In pertinent part, the Joint Agreement contains the following terms:

**3. No Alterations of Boundaries.** The Township and City mutually agree and state that the MBA may review and comment, but no alterations by the MBA of the stated boundaries of the area designated for orderly annexation is appropriate absent the MBA taking action following a petition for annexation and a hearing pursuant to Chapter 414.<sup>8</sup>

**4. Review and Comment by Municipal Boundary Adjustments.** The Township and City mutually agree and state that this Agreement sets forth all the conditions for annexation of the areas designated on **Exhibit 1** and that no consideration by the MBA is necessary. At such time as the conditions for annexation of the areas set forth on **Exhibit 1** or a portion thereof as described in this Agreement have been met, upon receipt of a Resolution for Annexation from the City of Carver, the Office of Administrative Hearings, Municipal Boundary Adjustments, may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the Resolution.<sup>9</sup>

**6. Taxation Reimbursement. A. Tax Reimbursement.** Unless otherwise agreed, to allow the Township to be reimbursed for the permanent loss of taxable property (determined by Carver County’s GIS system net of existing roads) from Township tax rolls for property in the Orderly Annexation Area, the City agrees that it will not initiate annexation or forward a resolution for annexation of any portion of the property described on **Exhibit 1** to the Office of Administrative Hearings, or its successor agency, until such time as the Township has received reimbursement for the loss of such taxable property in the amount of \$500

---

<sup>4</sup> May 19, 2016 submission from Matthew D. MacDougall, Melchert Hubert Sjodin, PLLP.

<sup>5</sup> Annexation Resolution, at 1.

<sup>6</sup> May 19, 2016 submission from Matthew D. MacDougall, Melchert Hubert Sjodin, PLLP, p. 1 and at Ex. A.

<sup>7</sup> Joint Agreement No. 102-09/61-09 at 9-10.

<sup>8</sup> Joint Agreement, § 3, emphasis in original.

<sup>9</sup> Joint Agreement, § 4, emphasis in original.

for each acre described in the City resolution to be annexed to the City. Tax exempt property at time of annexation is not subject to tax reimbursement.<sup>10</sup>

**8. Conditions for Orderly Annexation.** The City and the Town mutually state and agree that properties in the Orderly Annexation Area described on **Exhibit 1** and as shown on **Exhibit 2**, or any portion thereof, shall be annexed to the City by the MBA upon receipt of a resolution from the City requesting such annexation. The City may submit such resolution to the MBA not sooner than 31 days after submitting notice to the Township (the Township may waive the 31 day period) and only when all of the following conditions are met:

\* \* \*

D. The Township has received tax reimbursement as provided by paragraph 6A above for the acres described in the notice.<sup>11</sup>

**15. Severability and Repealer.** A determination that a provision of this Agreement is unlawful or unenforceable shall not affect the validity or enforceability of the other provisions herein. However, should any element of paragraph 6 relating to “Tax Reimbursement” be deemed unlawful or unenforceable, the Township at its discretion may terminate this Agreement. Any prior agreement or joint resolution existing between the parties and affecting the property described in the attached Exhibits shall be considered repealed upon the effective date of this Agreement.<sup>12</sup>

8. The Property is included within the area designated for orderly annexation pursuant to the Joint Agreement.

9. On or about February 9, 2016, the Property owners petitioned the City for immediate orderly annexation of the Property.<sup>13</sup>

10. The Property owners were informed that “to process the petition which we understand is covered by an orderly annexation agreement with the Township, a fee of \$500 per acre is to be paid to the Township.”<sup>14</sup>

11. In conformity with the Joint Agreement’s requirement that the \$500 per acre tax reimbursement charge be imposed on annexed acreage “net of existing roads,” the Township imposed the \$500 per acre charge on 4.33 acres of the 6.76 acres designated

---

<sup>10</sup> Joint Agreement, § 6.A., emphasis in original.

<sup>11</sup> Joint Agreement, § 8, emphasis in original.

<sup>12</sup> Joint Agreement, § 15.

<sup>13</sup> Annexation Resolution, at 1, 4<sup>th</sup> ¶; May 19, 2016 submission from Matthew D. MacDougall, Melchert Hubert Sjodin, PLLP, at Ex. C.

<sup>14</sup> February 5, 2016 correspondence from Dick Lenzen to Mary Olson, Township Clerk, attached as Ex. B to City’s Request to Amend Order Approving Annexation.

for annexation in recognition of the fact that the remainder of the Property is comprised of existing roads and roadway rights-of way, thus requiring a tax reimbursement payment of \$2,165.<sup>15</sup>

12. CADG, not the Lenzens, paid to the Township the tax reimbursement charge totaling \$2,165.00.<sup>16</sup>

13. On March 21, 2016, the City adopted Resolution No. 109-16 (Annexation Resolution) whereby the City resolved to annex the Property pursuant to the terms of the Joint Agreement.<sup>17</sup>

14. The Annexation Resolution contains an erroneous legal description for the Property. The included legal description failed to reference the second exception noted above in Finding of Fact No. 2,<sup>18</sup> as follows:

That part of the Northeast Quarter of the Northeast Quarter of Section 24, Township 115, Range 24, Carver County, Minnesota, described as follows:

Beginning at the Northeast corner of said Northeast Quarter of the Northeast Quarter of Section 24; thence on an assumed bearing of South 00 degrees 13 minutes 13 seconds West, along the East line thereof, a distance of 143.17 feet; thence North 87 degrees 07 minutes 48 seconds West, a distance of 1340.09 feet to the West line of said Northeast Quarter of the Northeast Quarter of Section 24; thence North 00 degrees 19 minutes 32 seconds East, along said West line, a distance of 22.07 feet to the Northwest corner of said Northeast Quarter of the Northeast Quarter; thence North 87 degrees 41 minutes 25 seconds East, along the North line of said Northeast Quarter of the Northeast Quarter, a distance of 1339.92 feet to the point of beginning.

15. The Annexation Resolution recites the following statement: **"WHEREAS,** the Petitioner has paid the reimbursement to the Township required under Sections 6 and 8 of the Joint Agreement and Dahlgren Township has provided evidence to the City to document the payment..."<sup>19</sup>

16. In further pertinent part, the Annexation Resolution contains the following terms:

4. In accordance with Section 4 of the Joint Agreement, the OAH may review and comment on this Annexation Resolution, but shall within

---

<sup>15</sup> City's Request to Amend Order Approving Annexation, at 1.

<sup>16</sup> Request to Amend Order Approving Annexation, at Ex. A.

<sup>17</sup> City Resolution No. 109-16, Ex. A.

<sup>18</sup> Revised legal description and Certificate of Survey, attached as Exs. D and E to May 19, 2016 submission from Matthew D. MacDougall, Melchert Hubert Sjodin, P.L.L.P.

<sup>19</sup> Annexation Resolution, at 1.

thirty (30) days of receipt of this Annexation Resolution order the annexation of the Lenzen Property designated in this Annexation Resolution and legally described in Exhibit A in accordance with the terms of the Joint Agreement. No alteration of the stated boundaries as described in this Annexation Resolution is appropriate, no consideration by the OAH is necessary, and all terms and conditions for annexation thereof have been met as provided for in the Joint Agreement.

9. In the event there are errors, omissions, or any other problems with the legal descriptions or mapping provided in Exhibit A or Exhibit B of this Annexation Resolution, in the judgment of the OAH Municipal Boundary Adjustments Office, the City shall make such corrections and file such additional documentation, including a new Exhibit A or Exhibit B, making the corrections requested or required by the OAH as necessary to make effective the annexation of said area in accordance with the Joint Agreement.<sup>20</sup>

## **Procedural Background**

17. Pursuant to the Annexation Resolution adopted on March 21, 2016, and filed with the Office of Administrative Hearings on March 24, 2016, the City requests annexation of the Property under the authority of Minn. Stat. § 414.0325.

18. In the Annexation Resolution, the City makes the following findings:

The Petitioner<sup>21</sup> has paid the reimbursement to the Township required under Sections 6 and 8 of the Joint Agreement and Dahlgren Township has provided evidence to the City to document the payment.<sup>22</sup>

19. On April 5, 2016, the Chief Administrative Law Judge issued Findings of Fact, Conclusions of Law, and Order Regarding Supplementation of Record wherein the parties were required to supplement the record with regard to the Township's legal authority for charging the property owner a \$500 per acre tax reimbursement payment.

20. The Township submitted correspondence dated April 12, 2016, including legal argument and various attachments indicating that it: considers the \$500 per acre payment "to be a contracted payment pursuant to the terms of Section 6.A (Tax Reimbursement) of the [Joint Agreement] in exchange for the Township's consent" to the requested annexation of the Property; and cites to Minn. Stat. § 365.025 (2014) and Minn. Stat. § 414.0325, subd. 6, as its legal authority to demand and collect the "contracted payment."<sup>23</sup>

21. The Township acknowledged on the record that it has "not adopted a written

---

<sup>20</sup> Annexation Resolution, unnumbered pp. 2, 3.

<sup>21</sup> The Petitioner is defined as the property owner. See Annexation Resolution, at 1, 4<sup>th</sup> ¶.

<sup>22</sup> Annexation Resolution, at 1, 8<sup>th</sup> ¶.

<sup>23</sup> April 12, 2016 correspondence from Robert T. Ruppe, counsel for the Township.

levy, assessment, ordinance, or administrative fee schedule memorializing an annexation reimbursement policy.”<sup>24</sup>

22. On April 25, 2016, the Chief Administrative Law Judge issued an Order Approving Annexation.

23. On May 2, 2016, the City filed a Request to Amend Order Approving Annexation pursuant to Minn. R. 6000.3100 (2015).<sup>25</sup> The Township joined in support of the City’s request in correspondence dated May 3, 2016.<sup>26</sup>

24. On May 14, 2016, the Chief Administrative Law Judge issued an Order Vacating Annexation Order Pending Supplementation of Record.

25. The City filed various evidence into the record of this matter on May 20, 2016.<sup>27</sup> The Township joined in support of the City’s evidence in correspondence dated May 20, 2016 and filed on May 25, 2016.<sup>28</sup>

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

### **CONCLUSIONS OF LAW**

1. Orderly annexations are governed by the provisions of Minnesota Statutes, chapter 414 (2014) and Minn. R. 6000 (2015).

2. The Municipal Boundary Adjustment Act authorizes the Chief Administrative Law Judge to scrutinize proposed municipal boundary changes “to protect the integrity of land use planning in municipalities and unincorporated areas so that the public interest in efficient local government will be properly recognized and served.”<sup>29</sup>

3. A municipality’s attempt to annex property by orderly annexation is final on the effective date specified in the Order of Annexation approved by the Chief Administrative Law Judge.<sup>30</sup>

4. Minn. Stat. 414.0325, subd. 1(h) provides as follows:

If a joint resolution designates an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration by the chief administrative law judge is necessary, the chief administrative law judge may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the resolution.<sup>31</sup>

---

<sup>24</sup> *Id.*

<sup>25</sup> Request to Amend Order Approving Annexation dated May 2, 2016.

<sup>26</sup> May 3, 2016 correspondence from Robert T. Ruppe.

<sup>27</sup> May 19, 2016 correspondence from Matthew D. MacDougall, Melchert Hubert Sjodin, PLLP.

<sup>28</sup> May 20, 2016 correspondence from Robert T. Ruppe.

<sup>29</sup> Minn. Stat. § 414.01, subd. 1b(3).

<sup>30</sup> Minn. Stat. § 414.0325, subd. 4.

<sup>31</sup> Minn. Stat. § 414.0325, subd. 1(h).

5. In orderly annexation proceedings, the Office of Administrative Hearings has authority to require compliance with Minn. Stat. § 414.036 notwithstanding the provisions of Minn. Stat. § 414.0325, subd. 1(h).

6. Although Minn. Stat. § 414.0325 authorizes municipalities to execute a joint resolution and thereby contractually agree to negotiated terms and conditions regulating the orderly annexation of property, the statute does not authorize the parties to contractually agree to tax reimbursement terms that violate the criteria set forth in Minn. Stat. § 414.036.

7. Minn. Stat. § 414.036 sets forth the following with regard to the legislatively-approved reimbursement of townships for the lost value of property annexed into an adjoining municipality:

Unless otherwise agreed to by the annexing municipality and the affected town, when an order or other approval under this chapter annexes part of a town to a municipality, the order or other approval must provide a reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order. The reimbursement shall be completed in substantially equal payments over not less than two nor more than eight years from the time of annexation. The municipality must reimburse the township for all special assessments assigned by the township to the annexed property, and any portion of debt incurred by the town prior to the annexation and attributable to the property to be annexed but for which no special assessments are outstanding, in substantially equal payments over a period of not less than two or no more than eight years.

8. The Property generates only a small amount of tax revenue for the Township, currently measured in total at \$247.61 per tax year.

9. Minn. Stat. § 414.036 does not provide legal authority for the Township to impose upon landowners who are residents of the Township a per acre tax reimbursement charge in order to obtain the Township's support for a requested annexation.

10. Minn. Stat. § 365.02(b)(3) (2014) provides that a Minnesota township may "enter into any contract that is necessary for the town to use any of its powers...", while Minn. Stat. § 365.025 states as follows: "Notwithstanding other law, a town board may enter into any contract it considers necessary or desirable to use any town power."

11. For the reasons and upon the authorities set forth in the original Order Approving Annexation including at pages 8-14 of the attached Memorandum, all of which is hereby adopted by reference, the Township lacks any current legal authority, whether as a tax, assessment or administrative fee, to charge a tax reimbursement charge to any entity acting as a petitioner for annexation under Minn. Stat. Chapter 414 in exchange for the Township's support for a requested annexation.



12. For the reasons and upon the authorities set forth in the original Order Approving Annexation including at pages 8-14 of the attached Memorandum, all of which is again hereby adopted by reference, the Township lacks any current legal authority to charge by contract a tax reimbursement charge to an owner of property located with the Township and acting as a petitioner for annexation under Minn. Stat. Chapter 414, in exchange for the Township's support for a requested annexation.

13. The Chief Administrative Law Judge makes no ruling on the Township's current legal authority, under Minn. Stat. § 365.02(b)(3) and/or Minn. Stat. § 365.025 or other statute or authority, to charge by contract a per acre tax reimbursement to a developer, or to any other party not constituting an owner of property located with the Township and acting as a petitioner for annexation, seeking to obtain services or other consideration from the Township with respect to any request for annexation, as that issue is not within the jurisdiction of the Chief Administrative Law Judge as framed by Chapter 414.

14. As the record is silent as to whether the City and the Township have agreed that they prefer not to have the issue of reimbursement addressed in this Amended Order Approving Annexation, the order must reflect the requirements of Minn. Stat. § 414.036 with respect to the provision for reimbursement from the City to the Township.

15. Notwithstanding the language contained in Section 9 of the Annexation Resolution which directs the City to comply with directives of the Office of Administrative Hearings, the Chief Administrative Law Judge has no authority to order the annexation on any terms other than those included in the Annexation Resolution given the language of Section 4 of the Annexation Resolution and the dictates of Minn. Stat. § 414.0325.

16. Pursuant to Minn. Stat. § 414.12, subd. 3, the Chief Administrative Law Judge must apportion the Office of Administrative Hearings' costs of contested case proceedings in boundary adjustment matters to the parties in an equitable manner if the parties have not otherwise agreed to a division of the costs.

Based upon these Amended Findings of Fact and Conclusions of Law, and for the reasons set forth in the Memorandum below, the Chief Administrative Law Judge issues the following:

### **ORDER**

1. The Property's annexation into the City is ordered effective on the date that City submits to the Office of Administrative Hearings a duly adopted resolution in support of the requested annexation which contains the correct legal description of the Property to be annexed, on which date the Chief Administrative Law Judge will issue a supplemental Order confirming the filing and the effective date of the annexation.

2. Pursuant to Minn. Stat. § 414.036, the Township is authorized to collect a tax reimbursement charge of \$247.61 from the City, that being the amount that represents

the taxes lost by the Township upon annexation of the Property and therefore the amount that represents “all or part of the taxable property annexed as part of the order” as required by the statute.

3. The costs of this matter, billed as required by law at the approved hourly rates of the Office of Administrative Hearings, shall be borne by the parties as follows: to the Township – 50%; and to the City – 50%. An itemized invoice for costs will be sent under separate cover.



Dated: June 15, 2016

---

TAMMY L. PUST  
Chief Administrative Law Judge

### **NOTICE**

This Order is the final administrative order in this case under Minn. Stat. §§ 414.0325, .07, .09, .12 (2014). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Carver County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

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

## MEMORANDUM

The Property currently generates only \$247.61 per year in property taxes to the Township. Nevertheless, CADG, as or on behalf of the developer, has been required to “reimburse” the Township for lost taxes at the rate of \$500 per acre. Because the required “tax reimbursement payment” was paid by CADG and not required to be paid by the landowner, this case does not raise the same legal issues of *ultra vires* governmental action raised in other recent matters.<sup>32</sup> A brief analysis of the critical legal distinction is set forth below, together with legal authority addressing the remaining issues relevant to this case.

### I. Contract Law as a Basis for Township’s Charge to Developer

“[M]unicipalities have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.”<sup>33</sup> As against the developer and not its own regulated residents, the Township’s tax reimbursement charge may or may not be authorized as a matter of contract under Minn. Stat. § 365.025. This statute provides: “Notwithstanding other law, a town board may enter into any contract it considers necessary or desirable to use any town power.” It is similar to Minn. Stat. § 365.02(b)(3), which authorizes a Minnesota township to “enter into any contract that is necessary for the town to use any of its powers....”

If the Township has entered into a development-related contract with CADG and/or the principal for which it serves as agent, it may be able to establish that it is exercising its “business or proprietary powers” which more appropriately lend themselves to contract.<sup>34</sup> If this is in fact the case, the Township should in the future take better care to accurately craft its annexation-related resolutions and not continue to utilize template provisions in which it recites that “[t]he Petitioner has paid the reimbursement to the Township required under Sections 6 and 8 of the Joint Agreement.”<sup>35</sup> The evidence submitted into the record of this proceeding established otherwise.

### II. Correcting the Legal Description

The City readily acknowledges that the legal description of the Property, as contained in the Annexation Resolution adopted by the City Council at a public hearing, is in error. The legal description failed to include an identified exception relevant to

---

<sup>32</sup> *In re the Orderly Annexation of Certain Real Prop. to the City of Waconia from Waconia Twp.*, OAH Docket Nos. 84-0330-32991, 84-0331-32786, SECOND AMENDED ORDER APPROVING ANNEXATION UPON SATISFACTION OF CONDITION (Apr. 1, 2016).

<sup>33</sup> *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 820 (Minn. 1966); *N. States Power Co. v. City of Granite Falls*, 463 N.W.2d 541, 543 (Minn. Ct. App. 1990). See also *Country Joe, Inc. v. City of Eagan*, 548 N.W.2d 281, 286 (Minn. Ct. App. 1996) *aff’d*, 560 N.W.2d 681, 683-84 (Minn. 1997) (declining to uphold a city’s “road unit connection charge” by finding that such “would set a precedent allowing statutory cities virtually unlimited authority to impose funding measures not otherwise permitted by statute in connection with any service they provide.”)

<sup>34</sup> *Borough of Belle Plaine v. N. Power Co.*, 142 Minn. 361, 172 N.W. 217 (1919).

<sup>35</sup> Annexation Resolution, at 1, 8<sup>th</sup> ¶.

property not included in the land subject to the annexation. That error has been corrected, as set forth in Amended Findings of Fact Nos. 2 and 14, above.

The City requests that the Chief Administrative Law Judge correct the City's error by ordering the annexation of the Property referenced in the corrected legal description. The Chief Administrative Law Judge is unable to do so. Minn. Stat. § 414.0325, subd. 1(h), allows municipalities and other parties involved with annexation proceedings to divest the Chief Administrative Law Judge of any authority she might otherwise have to correct even inadvertent errors committed by cities, townships or other parties. The statute provides:

If a joint resolution designates an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration by the chief administrative law judge is necessary, the chief administrative law judge may review and comment, but **shall**, within 30 days, **order the annexation in accordance with the terms of the resolution.**<sup>36</sup>

In reliance upon this authority and presumably with the consent of the Township, the City included the following provision in the Annexation Resolution:

4. In accordance with Section 4 of the Joint Agreement, the OAH may review and comment on this Annexation Resolution, but shall within thirty (30) days of receipt of this Annexation Resolution order the annexation of the Lenzen Property designated in this Annexation Resolution and legally described in Exhibit A in accordance with the terms of the Joint Agreement. **No alteration of the stated boundaries as described in this Annexation Resolution is appropriate**, no consideration by the OAH is necessary, and all terms and conditions for annexation thereof have been met as provided for in the Joint Agreement.<sup>37</sup>

The dictates of the statute are clear: the Chief Administrative Law Judge must issue an annexation order that is in conformity with the terms of the resolution. By its very terms, the Annexation Resolution prohibits the Chief Administrative Law Judge from making "any alteration of the stated boundaries as described in this Annexation Resolution..."<sup>38</sup> Even the Joint Agreement would require a public hearing to correct the legal description.<sup>39</sup> Therefore, much as the Chief Administrative Law Judge would like to save the City the time and expense of fixing its own error, the City has prevented her from doing so.

The City argues that Section 9 of the Annexation Resolution provides a path through which the Chief Administrative Law Judge can solve the City's problem by fixing the erroneous legal description. A close reading of this provision proves otherwise.

---

<sup>36</sup> Minn. Stat. § 414.0325, subd. 1(h) (emphasis added).

<sup>37</sup> Annexation Resolution, unnumbered pp. 2 (emphasis added).

<sup>38</sup> *Id.*

<sup>39</sup> Joint Agreement, § 3, emphasis in original.

Section 9 requires action of the City; it does not reinstate to the Chief Administrative Law Judge the authority she would have had to be of assistance had the City not foreclosed such through its inclusion of Section 4 in the Annexation Resolution. Accordingly, it appears that the City will have to renote and repass the Annexation Resolution with the correct legal description, and refile it with the Office of Administrative Hearings for prompt processing in accordance with the terms of this Order.

### **III. Statutory Basis for Tax Reimbursement Charge to City**

#### **A. Minn. Stat. § 414.0325**

Minn. Stat. § 414.0325, subd. 6, authorizes the Township to contract via orderly annexation agreement.<sup>40</sup> The statute directs that the terms of an orderly annexation agreement “shall be binding upon the parties” and not preempted by Chapter 414 unless the contract so specifies. On the record in the present case, it appears that the City and the Township, both parties to the Joint Agreement, have contractually agreed to charge and pay a \$500 per acre tax reimbursement charge for annexations of property designated under the Joint Agreement.<sup>41</sup> Essentially, the Township’s argument breaks down as follows: (1) section 414.0325 authorizes contracts and makes them enforceable as between the parties thereto; (2) Minn. Stat. § 414.036 authorizes tax reimbursement charges; (3) therefore all types of contracts, even tax reimbursement-related contracts, are authorized by Section 414.0325 and are enforceable as between the City and the Township.

The Township is correct that Minn. Stat. § 414.0325, subd. 6, authorizes municipalities to enter into orderly annexation agreements, which are “binding contract[s] upon all the parties to the agreement.” It is also correct in noting that Minn. Stat. § 414.036 authorizes municipalities to collect certain tax reimbursement charges, specifically those tied to “all or part of the taxable property annexed as part of the order.” However, nothing in the existence of those two facts leads to the legal conclusion that the ability to contract found in the first cited statute operates to nullify the second statute’s identified criteria for valuing tax reimbursement payments in annexation matters.

In fact, Minnesota’s rules of statutory construction mandate the opposite result. Minnesota law provides that a more specific statute prevails over a more general provision in the same or another statute.<sup>42</sup> As such, with respect to determining a municipality’s ability to impose annexation reimbursement charges, the more specific reimbursement criteria of Minn. Stat. § 414.036 prevails over the more general language of Minn. Stat. § 414.0325. Section 414.0325 merely authorizes municipalities to agree to “negotiated terms and conditions” in an orderly annexation agreement; it does not identify approved criteria for measuring reimbursement for the loss of property through annexation. Those specific criteria are found in Minn. Stat. § 414.036, which requires “reimbursement from the municipality to the town for all or part of the taxable property

---

<sup>40</sup> April 12, 2016 correspondence from Robert T. Ruppe, counsel for the Township.

<sup>41</sup> *Id.*

<sup>42</sup> Minn. Stat. § 645.26, subd. 1 (2014).

annexed as part of the order.” Nothing in section 414.0325 allows a municipality to deviate from the statutory directive of section 414.036.

B. Minn. Stat. § 414.036

Minn. Stat. § 414.036 defines the parameters of statutorily authorized compensation attributable to the loss of property annexed into an adjoining municipality:

Unless otherwise agreed to by the annexing municipality and the affected town, when an order or other approval under this chapter annexes part of a town to a municipality, the order or other approval must provide a **reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order**. The reimbursement shall be completed in substantially equal payments over not less than two nor more than eight years from the time of annexation. The municipality must reimburse the township for all special assessments assigned by the township to the annexed property, and any portion of debt incurred by the town prior to the annexation and attributable to the property to be annexed but for which no special assessments are outstanding, in substantially equal payments over a period of not less than two or no more than eight years.<sup>43</sup>

By its terms, the statute directs that a municipality which loses property through annexation is entitled to “reimbursement ... for all or part of the taxable property annexed.”<sup>44</sup> The term “reimbursement” means “to pay back or compensate (another party) for money spent or losses incurred.”<sup>45</sup> Thus, to be “reimbursed” a municipality losing property to annexation must have incurred some loss. Because the municipality does not own the property being annexed, it is not losing the monetary value of the subject property; it never owned that value and therefore could not lose it. Instead, and at most, a municipality losing property to annexation loses the real estate taxes it would have collected from the property in the future.

Based on this analysis, the Township is entitled to recover from the City a tax reimbursement charge for “all or part of the taxable property annexed.”<sup>46</sup> The Property generates taxes of \$247.61 per year. Thus, the statute allows the Township to recover this value from the City.

Minn. Stat. § 414.036 provides that every annexation order “**must** provide a reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order.”<sup>47</sup> The statute does not exclude from its mandate orders issued pursuant to section 414.0325. Therefore, the Chief Administrative Law Judge has ordered the reimbursement from the City to the Township in the amount of \$247.61, which

---

<sup>43</sup> Minn. Stat. § 414.036 (emphasis added).

<sup>44</sup> *Id.*

<sup>45</sup> *American Heritage Dictionary of the English Language, Fifth Edition* (2011).

<sup>46</sup> Minn. Stat. § 414.036.

<sup>47</sup> Emphasis added.

amount is deemed already paid in full based upon the parties' written agreement to that effect as memorialized in the Joint Agreement.<sup>48</sup>

#### **IV. IV. Apportionment of Costs is Statutorily-Required.**

Minn. Stat. § 414.12, subd. 3, requires the Chief Administrative Law Judge to allocate equitably between the parties the costs of administrative law judge time spent on boundary adjustment matters. This legislative directive is mandated by the fact that the Office of Administrative Hearings operates primarily<sup>49</sup> as an "enterprise fund" within the executive branch of Minnesota state government. As such, Minn. Stat. §§ 14.53 and 14.55 (2014) direct the Office of Administrative Hearings to assess its costs to the state agencies and other political subdivisions to which it provides the services of administrative law judges. Each fiscal year, Minnesota Management & Budget approves a billable rate for the agency's services, and the agency then charges for its services pursuant to this approved hourly rate.<sup>50</sup>

Some history is instructive.<sup>51</sup> 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, and in 2003 the functions were again transferred, this time to the Minnesota Department of Administration. Since 1999, administrative law judges at the Office of Administrative Hearings have presided over all contested case proceedings related to municipal boundary adjustment matters. In accord with Minn. Stat. § 14.53 and 14.55, the costs of the services provided by administrative law judges<sup>52</sup> have been equitably apportioned to the parties to boundary adjustment matters under the authority of Minn. Stat. § 414.12.

In recognition of the legislature's funding scheme pertinent to the state agency, Chapter 414 specifically provides that the Office of Administrative Hearings "is not liable for [its] costs"<sup>53</sup> but instead "the costs must be allocated on an equitable basis" by the Chief Administrative Law Judge unless otherwise agreed to by the parties.<sup>54</sup> In this orderly annexation action, the Chief Administrative Law Judge has allocated equally to the Township and the City the costs of the Chief Administrative Law Judge's time, allocated to the tenth of a billable hour and valued at a current approved rate of \$120 per hour.

#### **T. L. P.**

---

<sup>48</sup> See Joint Agreement, § 8D.

<sup>49</sup> The Office of Administrative Hearings receives different funding for the work of its Workers' Compensation Division and for contested cases related to data privacy matters.

<sup>50</sup> See Minn. Stat. §§ 14.53, 14.54.

<sup>51</sup> See Office of Administrative Hearings' website at <http://www.mba.state.mn.us/History.html>.

<sup>52</sup> Parties are not and have not been billed for the costs of the administrative staff in the Municipal Boundary Adjustment Unit, which remain funded through a general fund appropriation from the legislature.

<sup>53</sup> Minn. Stat. § 414.12, subd. 3(b).

<sup>54</sup> Minn. Stat. § 414.12, subd. 3(a), (c).