

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Elko New Market/New Market Township  
(MBA OA-1651-1)

**ORDER APPROVING  
ANNEXATION**

Pursuant to Minn. Stat. § 414.0325, subd. 1(c) (2016), the Chief Administrative Law Judge has jurisdiction over these proceedings.

Based upon a review of the filings submitted by the parties and applicable law, the Chief Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. A Joint Resolution for orderly annexation (Joint Resolution) was adopted by the City of Elko New Market (City) on July 14, 2016 and New Market Township (Township) on July 12, 2016, requesting the designation and immediate annexation of the certain real property (Property).<sup>1</sup>

2. The Property consists of approximately 50 acres, which is legally described as follows:

**Parcel 1:**

The West 330.00 feet of the East 825.00 feet of the Northwest Quarter of the Southeast Quarter of Section 34, Township 113, Range 21, Scott County, Minnesota;

**Parcel 2:**

The West 330.00 feet of the East 1155.00 feet of the Northwest Quarter of the Southeast Quarter of Section 34, Township 113, Range 21, Scott County, Minnesota;

**Parcel 3:**

The East 150.00 feet of the Northeast Quarter of the Southwest Quarter of Section 34, Township 113, Range 21, Scott County, Minnesota. Together with that part of the Northwest Quarter of the Southeast Quarter of said Section 34, lying West of the East 1155.00 feet of said Northwest Quarter of the Southeast Quarter.

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<sup>1</sup> Joint Resolution, received at the Office of Administrative Hearings on July 22, 2016.

**Parcel 4:**

The West 330.00 feet of the East 495.00 feet of the Northwest Quarter of the Southeast Quarter of Section 34, Township 113, Range 21, Scott County, Minnesota;

**Parcel 5:**

The East 165.00 feet of the Northwest Quarter of the Southeast Quarter of Section 34, Township 113, Range 21, Scott County, Minnesota. Together with that part of the Northeast Quarter of the Southwest Quarter of said Section 34, lying west of the following described line:

Beginning at a point on the north line of said Northeast Quarter of the Southeast Quarter distant 191.50 feet East of the Northwest corner of said Northeast Quarter of the Southeast Quarter; thence Southwesterly to a point on the South line of said Northeast Quarter of the Southeast Quarter distant 135.00 feet East of the Southwest corner of said Northeast Quarter.

**Parcel 6:**

That part of the Northwest Quarter of Section 34, Township 113, Range 21, Scott County, Minnesota, described as follows:

Beginning at the Southeast Corner of said Northwest Quarter; thence North 01 degrees 25 minutes 58 seconds East along the east line of said Northwest Quarter a distance of 39.21 feet; thence South 88 degrees 58 minutes 37 seconds West a distance of 150.11 feet; thence South 01 degrees 25 minutes 47 seconds West a distance of 38.64 feet; thence North 89 degrees 11 minutes 39 seconds East along the south line of said Northwest Quarter a distance of 150.11 feet to the Point of Beginning.<sup>2</sup>

3. The fee owner of the Property is KJ Walk, Inc., a Florida corporation<sup>3</sup> which plans to develop the Property.<sup>4</sup>

4. The Property's current land use type is vacant land and agricultural.<sup>5</sup>

5. The Property generated a total of \$928.22 in property taxes to the Township for the 2015 tax year.<sup>6</sup>

6. In pertinent part, the Joint Resolution contains the following terms:

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<sup>2</sup> Joint Resolution, Exhibit (Ex.) A.

<sup>3</sup> See File No. 795319300029, Minnesota Secretary of State, accessible at <https://mblsportal.sos.state.mn.us/Business/SearchDetails?filingGuid=3d29a680-b571-e411-ae63-001ec94ffe7f>. The Chief Administrative Law Judge takes judicial notice of this publicly filed document pursuant to Rule 201, Minn. R. Evid.

<sup>4</sup> July 26, 2016 submission from Sandra Green, City Clerk, City of Elko New Market.

<sup>5</sup> Joint Resolution, ¶ 2.

<sup>6</sup> Scott County 2016 Property Tax Statement (available at <http://mn-scott-treasurer.publicaccessnow.com/default.aspx>). The Chief Administrative Law Judge takes judicial notice of this publicly filed document pursuant to Rule 201, Minn. R. Evid.

**7. Reimbursement to Towns for last taxes on annexed property.**

A. **Municipal Reimbursement.** For properties subject to this Agreement, the City agrees that it will provide the Township with an annual payment of \$1,400 per year for 5 years as reimbursement for the loss of township taxes.

B. **Developer Reimbursement.** Unless otherwise agreed, to allow the Township to be reimbursed for the permanent loss of taxable property 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 A to the Office of Administrative Hearings, or its successor agency, until such time as the Township has received reimbursement from the Developer of the property for the loss of such taxable property in the amount of \$3,000.<sup>7</sup>

7. On or about July 19, 2016, KJ Walk, Inc., tendered 3,000 to the Township in apparent satisfaction of the Developer Reimbursement fee memorialized in the Joint Resolution.<sup>8</sup>

Based upon these 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 (2016) 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>9</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>10</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

<sup>7</sup> Joint Agreement, § 6.A., emphasis in original.

<sup>8</sup> July 26, 2016 submission from Sandra Green, City Clerk, City of Elko New Market, with attachments.

<sup>9</sup> Minn. Stat. § 414.01, subd. 1b(3).

<sup>10</sup> Minn. Stat. § 414.0325, subd. 4.

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>11</sup>

5. In orderly annexation proceedings, the Office of Administrative Hearings has authority to require compliance with Minn. Stat. § 414.036 (2016) 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 \$928.22 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) (2016) 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 (2016) states as follows: "Notwithstanding other law, a town board

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<sup>11</sup> Minn. Stat. § 414.0325, subd. 1(h).

may enter into any contract it considers necessary or desirable to use any town power.”

11. The Chief Administrative Law Judge makes no ruling on the Township’s legal authority, under Minn. Stat. § 365.02(b)(3) and/or Minn. Stat. § 365.025 or other statute or authority, to require payment of a Developer Reimbursement charge as that issue is not within the jurisdiction of the Chief Administrative Law Judge as framed by Chapter 414.

12. 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 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.

13. Pursuant to Minn. Stat. § 414.12, subd. 3 (2016), 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 Findings of Fact and Conclusions of Law, the Chief Administrative Law Judge issues the following:

### ORDER

1. Pursuant to the terms of the Joint Resolution and this Order, the Property is **ANNEXED** to the City.

2. Pursuant to Minn. Stat. § 414.036, the City will reimburse the Township the sum of \$7,000, payable in five annual installments of \$1,400 as set forth in the Joint Resolution, 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.



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TAMMY L. PUST  
Chief Administrative Law Judge

Dated: August 19, 2016

## NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.0325, .07, .09, .12 (2016). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Scott 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

### I. Tax Reimbursement

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.” At the same time, 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.” Nothing in the two statutes 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. Instead, Minnesota’s rules of statutory construction require that the two statutes be read together with the purpose of effectuating both.<sup>12</sup>

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>13</sup>

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<sup>12</sup> Minn. Stat. § 645.26 (2016).

<sup>13</sup> Minn. Stat. § 414.036 (emphasis added).

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>14</sup> and to be paid that reimbursement “in substantially equal payments over not less than two nor more than eight years.”<sup>15</sup>

Under the statute, the Township is entitled to recover from the City a tax reimbursement charge for “all or part of the taxable property annexed.”<sup>16</sup> The Property generates taxes of \$928.22 per year. Thus, the statute allows the Township to recover this value “in substantially equal payments over not less than two nor more than eight years.”<sup>17</sup> Taking the annual tax liability of \$928.22 and multiplying that figure by the eight-year period envisioned by the statute, would allow a total tax reimbursement of \$7,425.76. The City and the Township have agreed instead on a total payment of \$7,000, made in five payments of \$1,400 each. This amount is well within the statutorily allowed reimbursement calculation.

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>18</sup> The statute does not exclude from its mandate orders issued pursuant to Minn. Stat. § 414.0325. Therefore, the Chief Administrative Law Judge has ordered the reimbursement from the City to the Township in the amount of \$7,000, payable in five annual payments of \$1,400 each.

The Joint Resolution very clearly differentiates between the tax reimbursement owed by the City and a different charge imposed upon the Developer of the Property. The Developer Reimbursement charge may or may not be authorized as a matter of contract under Minn. Stat. §§ 365.02(b)(3); 365.025. That issue is not within the jurisdiction of the Chief Administrative Law Judge to determine, and so no order is herein issued relevant to the Developer Reimbursement charge.

## II. Apportionment of Costs

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>19</sup> as an “enterprise fund” within the executive branch of Minnesota state government. As such, Minn. Stat. §§ 14.53 and 14.55 (2016) 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

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Minn. Stat. § 414.036.

<sup>17</sup> *Id.*

<sup>18</sup> Emphasis added.

<sup>19</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.

for the agency's services, and the agency then charges for its services pursuant to this approved hourly rate.<sup>20</sup>

Some history is instructive.<sup>21</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>22</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>23</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>24</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 \$170 per hour.

**T. L. P.**

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<sup>20</sup> See Minn. Stat. §§ 14.53; .55.

<sup>21</sup> See Office of Administrative Hearings' website at <http://www.mba.state.mn.us/History.html>.

<sup>22</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>23</sup> Minn. Stat. § 414.12, subd. 3(b).

<sup>24</sup> Minn. Stat. § 414.12, subd. 3(a), (c).