

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Orderly Annexation
of Certain Real Property to the City of
Fergus Falls from Fergus Falls Township
(MBAU Docket OA-819-7)

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

On or about October 14, 2016, this matter came on before Chief Administrative Law Judge Tammy L. Pust upon the request of the City of Fergus Falls for an order approving annexation of certain real property to the City of Fergus Falls from Fergus Falls Township.

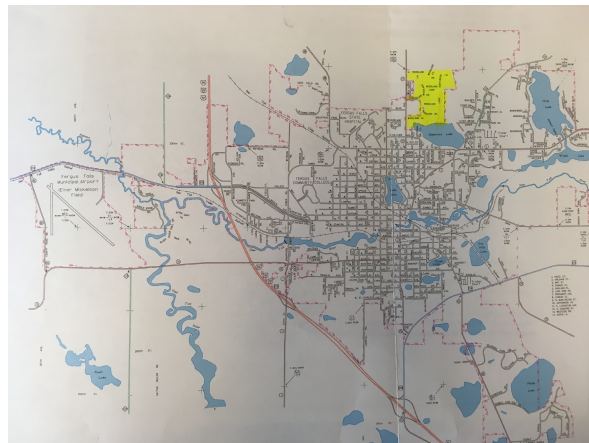
Christopher M. Hood and Robert T. Scott, Flaherty & Hood, P.A., appear on behalf of the City of Fergus Falls (City). Brent J. Edison, Vogel Law Firm, appears on behalf of Fergus Falls Township (Township).

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

FINDINGS OF FACT

Subject Property

1. This proceeding involves the City's attempt to annex property referred to as the Woodland Heights Area. The location of the Woodland Heights Area is shown in yellow in the image below.



2. The Woodland Heights Area is legally described as follows:

The West Half (W½) of Section Twenty-six (26) not presently within the corporate limits of the City (which includes all of Auditors Plats of Woodland Heights, First Addition to Woodland Heights, Second Addition to Woodland Heights and Lot Six (6), Block Two (2) of the Third Addition to Woodland Heights, according to the plats of record on file in the office of the County Recorder, Otter Tail County, Minnesota), all in Township One Hundred Thirty-three (133), Range Forty-three (43), Otter Tail County, Minnesota.

Excepting therefrom the following described tract of land, to wit:

Commencing at the Northwest corner of Section 26, Township 133N, Range 43W; thence on an assumed bearing of South 00 degrees 02 minutes 15 seconds West on the Westerly line of said Section 26 for a distance of 580.04 feet; thence North 89 degrees 52 minutes 38 seconds East 50 feet to the Northwest corner of Lot 1, Block 2 of WOODLAND HEIGHTS 3RD ADDITION and the point of beginning; thence continuing North 89 degrees 52 minutes 38 seconds East on the Northerly line of said WOODLAND HEIGHTS 3RD ADDITION for a distance of 400.28 feet; thence South 00 degrees 07 minutes 20 seconds East 5.01 feet; thence North 89 degrees 52 minutes 40 seconds East 72.72 feet; thence South 00 degrees 00 minutes 15 seconds West 464.63 feet; thence South 42 degrees 57 minutes 14 seconds West 31.22 feet; thence South 00 degrees 24 minutes 46 seconds East 277.47 feet; thence South 89 degrees 55 minutes 39 seconds East 23.80 feet; thence South 00 degrees 02 minutes 15 seconds West 230.55 feet to the Southeast corner of Lot 5, Block 2, WOODLAND HEIGHTS 3RD ADDITION; thence North 89 degrees 57 minutes 45 seconds West 201.76 feet; thence South 00 degrees 02 minutes 15 seconds West 210.00 feet; thence South 89 degrees 57 minutes 45 seconds East 201.76 feet; thence South 00 degrees 02 minutes 15 seconds West 174.95 feet to the Southeast corner of WOODLAND HEIGHTS 3RD ADDITION; thence South 83 degrees 39 minutes 15 seconds West on the Southerly line of WOODLAND HEIGHTS 3RD ADDITION for a distance of 480.98 feet to the intersection with the East line of the West 50.00 feet to said Section 26; thence North 00 degrees 02 minutes 15 seconds East parallel to the Westerly line of said Section 26 for a distance of 1437.63 feet to the point of beginning, which is platted as Lots 1, 2, 3, and 4, Block 1 and Lots 1, 2, 3, 4, 5, and 7, Block 2, Woodland Heights, 3rd Addition, together with the adjacent right of way of Otter Tail County Highway 27.¹

2002 Orderly Annexation Joint Resolution

3. In 1974, the City and the Township entered into a Joint Resolution for Orderly Annexation By and Between Fergus Falls Township and the City of Fergus Falls

¹ City of Fergus Falls Resolution No. 249-2016, at Appendix. A.

(1974 Joint Resolution), which was duly filed by the Minnesota Municipal Board (Board) as OA-109 and amended by the parties by a joint resolution executed in 1994.²

4. In February 2002, the City and Township entered into a second Joint Resolution for Orderly Annexation By and Between Fergus Falls Township and the City of Fergus Falls (OAA).³

5. The OAA rescinded the 1974 and 1994 Joint Resolutions and designated the entire Township for orderly annexation upon specified terms: some properties were identified for immediate annexation; other properties were designated for annexation in the future.⁴

6. With respect to the Woodland Heights Area, the OAA contains the following relevant terms:

The parties to this Agreement understand and agree that pursuant to previous Agreements by and between the City and the Town, the City has the unilateral right to annex the Woodland Heights area, upon its own resolution at any time from and after January 1, 2002. Notwithstanding this fact that the City has this authority to annex this area, the City has chosen to delay said annexation in order to obtain the within Agreement with the Township. Based upon this consideration, the parties agree as follows:

A. The City agrees that it will not initiate any annexation proceedings over the [Woodland Heights Area], for a period of eight (8) years, terminating December 31, 2009, unless [certain identified criteria are met].⁵

* * *

E. The City and Township hereby agree that on or after January 1, 2010, the City may initiate and the Township will not object to annexation of the [Woodland Heights Area].⁶

F. Pursuant to Minnesota Statutes, Section 414.0325, the City and Township agree that no alteration of the boundaries stated herein is appropriate, that all conditions for annexation of the area legally described in Exhibit D are contained in this Joint Resolution, and that no consideration by Minnesota Planning is necessary. On filing of a Resolution by the City with Municipal Planning or its successor, providing for the

² City of Fergus Falls Resolution No. 249-2016, at Appendix. C at 1.

³ City of Fergus Falls Resolution No. 249-2016, at Appendix. C.

⁴ *Id.*, at 1.

⁵ *Id.*, at 3.

⁶ *Id.*, at 4.

annexation of the area legally described in Exhibit D, Minnesota Planning may review and comment thereon, but shall, within thirty (30) days of receipt of said Resolution and a copy of this Joint Resolution for Orderly Annexation, order the annexation of the area legally described in Exhibit D or the remainder of the area not already annexed under the foregoing provisions of this Joint Resolution, in accordance with the terms and conditions contained in this Joint Resolution.⁷

- G. No election will be required because there is not [sic] election required by law in effect as of January 1, 2002. This provision shall continue to be in force notwithstanding the fact that the law may change at the time of the actual annexation.⁸

7. With respect to all properties identified for annexation, including but not limited to the Woodland Heights Area, the OAA provides:

- IX. Entire Agreement. ...This Joint Resolution shall be binding upon and inure to the benefit of the respective successors and assigns of the City and Township.⁹
- XII. Termination Date. The parties agree that this agreement shall terminate by mutual agreement of the parties by Joint Resolution, upon the annexation of all of Fergus Falls Township, or upon the date of December 31, 2016, whichever dated [sic] first occurs.¹⁰

2016 Resolution for Annexation

8. On October 11, 2016, the City adopted City of Fergus Falls Resolution No. 249-2016 (Annexation Resolution) and requested the issuance of an order, pursuant to Minn. Stat. § 414.0325 (2016), allowing the immediate annexation of the Woodland Heights Area.¹¹

9. The City Resolution contains the following relevant terms:

- a. A “review and comment” provision in conformity with Minn. Stat. § 414.0325, subd. 1(h) (2016).¹²

⁷ *Id.*

⁸ *Id.*, at 5.

⁹ *Id.*, at 7.

¹⁰ *Id.*, at 8.

¹¹ City of Fergus Falls Resolution No. 249-2016.

¹² *Id.*, at 2.

b. Acknowledgement that the OAA is silent on the issue of tax reimbursement, coupled with a request that the annexation order contain the following provision “in accordance with Minnesota Statutes, section 414.036” (2016):

Tax Reimbursement. Pursuant to Minnesota Statutes, Section 414.036, the City, upon annexation of the Subject Area, shall reimburse the Township for the loss of taxes from the property so annexed in an amount equal to one hundred (100) percent of the property taxes distributed to the Township in regard to the annexed area in the last year that property taxes from the annexed area were payable to the Township for a period of five years. There shall be no additional tax reimbursement from the City to the Township following the fifth year.¹³

c. Acknowledgement that the OAA is silent on the phasing in of the property tax rate from the current Township rate to the City rate, coupled with a request that the annexation order contain the following property tax rate phase-in provision:

Tax Rate Phase-in. Pursuant to Minnesota Statutes, Section 272.67, subd. 1, following annexation of the Subject Area, the tax rate of the City thereafter applied to the Subject Area hereby annexed shall be increased in approximately equal proportions over six (6) years to equality with the City’s tax rate applicable to other similarly situated property already located within the City in the sixth year following the date of annexation of the Subject Area.¹⁴

d. A requested effective date of annexation that is on or after November 9, 2016, a date chosen to avoid conflicts related to voting in the general election.¹⁵

10. On October 20, 2016, the Township filed an Objection to Annexation, asserting the following grounds:

a. The OAA impermissibly restricted post-2002 Township Boards from objecting to the annexation of the Woodland Heights Area;

b. The OAA is an unenforceable contract because it lacks essential terms;

c. The OAA contemplated the execution of amendments;

¹³ *Id.*, at 4.

¹⁴ *Id.*

¹⁵ *Id.*, at 5.

d. An effective date of November 9, 2016 would effectively deny the residents of the Woodland Heights Area their right to vote for City Council members;

e. The OAA denies due process to the Township; and

f. The residents of the Woodland Heights Area are “nearly unanimous” in their opposition to annexation.¹⁶

11. The Township did not include in its Opposition to Annexation any objection to the terms proposed by the City with regard to tax reimbursement or the phase-in of the City’s tax rate.¹⁷

12. On October 21, 2016, the City filed a response to the Township’s Objection to Annexation, outlining legal arguments in support of the Annexation Resolution and requested order.¹⁸

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

CONCLUSIONS OF LAW

1. 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.”¹⁹

2. Orderly annexations are governed by the provisions of Minn. Stat. § 414.0325.

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.²⁰

4. The orderly annexation 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.²¹

¹⁶ Objection to Annexation dated October 18, 2016.

¹⁷ *Id.*

¹⁸ Correspondence from Robert T. Scott, Flaherty & Hood P.A., dated October 19, 2016.

¹⁹ Minn. Stat. § 414.01, subd. 1b(3) (2016).

²⁰ Minn. Stat. § 414.0325, subd. 4.

²¹ 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), or the parties silence on the issue as evidenced in their joint resolution.

6. Minnesota Statutes, section 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.

7. Minnesota Statutes, section 414.036, provides sufficient legal authority for the Chief Administrative Law Judge to adopt the City's proposed provision related tax reimbursement, which will be reflected in this Order of Annexation as required.

8. Minnesota Statutes, section 414.035 (2016), provides that an annexation order issued in a proceeding under Minn. Stat. § 414.031 (2016) may, but is not required to, provide for a phased increase of the affected property's tax rate, as follows:

Whenever an order, under section 414.031, annexes part or all of a township to a municipality, the order may provide that the tax rate of the annexing municipality on the area annexed shall be increased in substantially equal proportions over not more than six years to equality with the tax rate on the property already within the municipality. The appropriate period, if any, shall be based on the time reasonably required to effectively provide property-tax-supported municipal services to the annexed area. Nothing in this section prohibits a differential tax provision from being included in an orderly annexation agreement.

9. Although the present proceeding is brought pursuant to Minn. Stat. § 414.0325 and not Minn. Stat. § 414.031, there is nothing in the orderly annexation statute that prevents the inclusion of a tax rate phase-in provision upon the request of a party to an orderly annexation proceeding. Given that including the tax rate phase-in provides a direct benefit to the residents of the annexed property and given that the Township had no reason to and did not object to the inclusion of the proposed provision

should annexation be granted, the Chief Administrative Law Judge has included the requested tax rate phase-in as specified.

10. 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, and for the reasons set forth in the Memorandum below, the Chief Administrative Law Judge issues the following:

ORDER

1. Pursuant to Minn. Stat. 414.0325, the OAA and the Annexation Resolution are deemed adequate in all legal respects and properly support this Order Approving Annexation.

2. Pursuant to the terms of the OAA, the Annexation Resolution and this Order Approving Annexation, the property legally described as follows is hereby **ANNEXED** into the City effective on November 14, 2016:

The West Half (W½) of Section Twenty-six (26) not presently within the corporate limits of the City (which includes all of Auditors Plats of Woodland Heights, First Addition to Woodland Heights, Second Addition to Woodland Heights and Lot Six (6), Block Two (2) of the Third Addition to Woodland Heights, according to the plats of record on file in the office of the County Recorder, Otter Tail County, Minnesota), all in Township One Hundred Thirty-three (133), Range Forty-three (43), Otter Tail County, Minnesota.

Excepting therefrom the following described tract of land, to wit:

Commencing at the Northwest corner of Section 26, Township 133N, Range 43W; thence on an assumed bearing of South 00 degrees 02 minutes 15 seconds West on the Westerly line of said Section 26 for a distance of 580.04 feet; thence North 89 degrees 52 minutes 38 seconds East 50 feet to the Northwest corner of Lot 1, Block 2 of WOODLAND HEIGHTS 3RD ADDITION and the point of beginning; thence continuing North 89 degrees 52 minutes 38 seconds East on the Northerly line of said WOODLAND HEIGHTS 3RD ADDITION for a distance of 400.28 feet; thence South 00 degrees 07 minutes 20 seconds East 5.01 feet; thence North 89 degrees 52 minutes 40 seconds East 72.72 feet; thence South 00 degrees 00 minutes 15 seconds West 464.63 feet; thence South 42 degrees 57 minutes 14 seconds West 31.22 feet; thence South 00 degrees 24 minutes 46 seconds East 277.47 feet; thence South 89 degrees 55 minutes 39 seconds East 23.80 feet; thence South 00 degrees 02 minutes 15 seconds West 230.55 feet to the Southeast corner of Lot 5, Block 2, WOODLAND HEIGHTS 3RD ADDITION; thence North 89 degrees 57 minutes 45 seconds West 201.76 feet; thence South

00 degrees 02 minutes 15 seconds West 210.00 feet; thence South 89 degrees 57 minutes 45 seconds East 201.76 feet; thence South 00 degrees 02 minutes 15 seconds West 174.95 feet to the Southeast corner of WOODLAND HEIGHTS 3RD ADDITION; thence South 83 degrees 39 minutes 15 seconds West on the Southerly line of WOODLAND HEIGHTS 3RD ADDITION for a distance of 480.98 feet to the intersection with the East line of the West 50.00 feet to said Section 26; thence North 00 degrees 02 minutes 15 seconds East parallel to the Westerly line of said Section 26 for a distance of 1437.63 feet to the point of beginning, which is platted as Lots 1, 2, 3, and 4, Block 1 and Lots 1, 2, 3, 4, 5, and 7, Block 2, Woodland Heights, 3rd Addition, together with the adjacent right of way of Otter Tail County Highway 27.

3. Pursuant to Minn. Stat. § 414.036, the City, upon annexation of the Subject Area, shall reimburse the Township for the loss of taxes from the property so annexed in an amount equal to one hundred (100) percent of the property taxes distributed to the Township in regard to the annexed area in the last year that property taxes from the annexed area were payable to the Township for a period of five years. There shall be no additional tax reimbursement from the City to the Township following the fifth year.²²

4. Pursuant to Minn. Stat. § 272.67, subd. 1 (2016), following annexation of the property described above the tax rate of the City thereafter applied to the property annexed shall be increased in approximately equal proportions over six (6) years to equality with the City's tax rate applicable to other similarly situated property already located within the City in the sixth year following the date of annexation of the Subject Area.

5. 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 City 75%; and to the Township 25%. An itemized invoice for costs will be sent under separate cover.

Dated: November 14, 2016



TAMMY L. PUST
Chief Administrative Law Judge

²² *Id.*, at 4.

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 Otter Tail 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

Minn. Stat. § 414.0325 allows a city and a township to jointly agree to the orderly annexation of property upon specified terms. The orderly annexation statute recognizes that municipal authorities, working together, are well positioned in appropriate cases to determine what property is “appropriate for annexation, either currently or at some point in the future, pursuant to the negotiated terms and conditions set forth in [a] joint resolution.”²³ The statute thus sets forth a streamlined process whereby municipalities can designate unincorporated property as “in need of orderly annexation,” and then seek an order of annexation relative to portions or the total of the designated area over time, in compliance with the negotiated terms of the joint resolution.

Exercising their rights under this authority, for decades the parties have been planning for and negotiating about the eventual annexation of this and other property located in the Township. By executing the OAA in 2002, which replaced an original orderly annexation agreement dating to 1974 and amended in 1994, both the Township and the City agreed that annexation of the Woodland Heights Area into the City is appropriate provided that the parties’ agreed-terms had been met.

The record clearly establishes that those terms have been met. The City did not initiate annexation prior to December 31, 2009, as it agreed it would not. It has filed the Annexation Resolution required by the OAA and the applicable law. And it has done so within the OAA’s agreed-upon term: the parties’ agreement remains in effect until December 31, 2016.

Contrary to the explicit terms of the OAA,²⁴ the Township objects to the requested annexation and raises several legal arguments in an attempt to avoid the effect of its 2002 agreement memorialized in the OAA. None of these is sufficient to avoid the annexation.

First, the Township insists that the OAA is unenforceable because it “impermissibly prohibited successor boards and councils” from objecting to the annexation of the

²³ Minn. Stat. § 414.0325, subd. 1(b).

²⁴ See OAA, at 4.

Woodland Heights Area.²⁵ The fact that the Township has in fact filed an objection in this matter appears to negate the height of the bar it identifies in this provision of the OAA. If the Township intended to assert that the OAA represents an unlawful attempt to bind a future Township Board of Supervisors, the Chief Administrative Law Judge remains unpersuaded. It is not only clear that townships have the authority to enter into contracts,²⁶ it is without question that the Legislature has specifically authorized municipalities to enter into orderly annexation agreements and deemed them to be “binding contracts” enforceable as between the parties thereto.²⁷ The fact that the OAA sets forth a term of years that extends beyond the elected terms of those who executed it is immaterial to its enforceability.²⁸

The Township also asserts that the OAA is unenforceable because it lacks essential terms. While the Township is correct that the terms it identifies as missing might have made the OAA more to its liking, it is incorrect in its assumption that the statute requires the terms be included in the OAA. Nothing in Minn. Stat. § 414.0325 requires parties to an orderly annexation agreement to address “taxing, zoning, or the division of financial assets and obligations,” nor to document any plans for future government services. While these factors are necessarily established in a proceeding under Minn. Stat. § 414.031, this is not such a proceeding. Neither does the orderly annexation statute require that the issue of tax reimbursement be addressed in an orderly annexation agreement. It does require that this issue be addressed in an annexation order, and the issue has been incorporated herein in satisfaction of that requirement.

None of the Township’s additional arguments provide any lawful basis for avoiding the annexation. Simply put, the orderly annexation statute does not require the property owners’ support, nor require that annexations take place at any specific point in time relative to the election cycle. While the Township is to be commended for seeking to ensure that its residents’ voices are heard in this proceeding, the Chief Administrative Law Judge has no authority to deny the requested annexation on these or any other grounds raised.

T. L. P

²⁵ Objection to Annexation, at 1.

²⁶ See Minn. Stat. §§ 365.02(b)(3); 365.025 (2016).

²⁷ Minn. Stat. § 414.0325, subd. 6.

²⁸ See *Butler v. Hatfield*, 277 Minn. 314, 328–29, 152 N.W.2d 484, 496 (1967). See also *United States v. Winstar Corp.*, 518 U.S. 839, 908, 116 S. Ct. 2432, 2471 (1996) (discussion regarding effect of and defenses to government contracts).