

BEFORE THE MUNICIPAL COMMISSION  
OF THE STATE OF MINNESOTA

Joseph Robbie  
Robert W. Johnson  
Irving R. Keldsen

Chairman  
Vice-Chairman  
Secretary

In the Matter of the Petition of Freeholders for the Annexation of Adjoining Unincorporated Property Consisting of Approximately 268 Acres within Sections 11 and 12, Township 30, Range 22 to the City of White Bear Lake, Pursuant to Laws 1959, Chapter 686, Section 3.

The petition by certain freeholders for the proposed annexation of adjoining unincorporated property therein described including 268 acres lying within Sections 11 and 12, Township 30, Range 22 to the City of White Bear Lake, came regularly on for hearing before the Minnesota Municipal Commission in the City Hall of White Bear Lake, Ramsey County, Minnesota, on the 13th day of October, 1959, at 10:00 o'clock in the forenoon. All members of the Commission were present: Joseph Robbie, Chairman; Robert W. Johnson, Vice-Chairman; and Irving R. Keldsen, Secretary. Theodore Glasrud appeared as counsel for the petitioners. Robert Wille of the law firm of Wille and Wille appeared as counsel for White Bear Township. No counsel appeared for any other party. Evidence was taken and testimony heard from all parties appearing and indicating a desire to be heard. Certain exhibits were allowed in evidence. Thereafter, the Commission reconvened the hearing upon due statutory notice for December 4, 1959, to consider whether the Commission should alter the boundaries of the area proposed to be annexed by increasing or decreasing the area so as to include only that property which is so conditioned as to be properly subjected to municipal government and to preserve the symmetry of the area under Laws 1959, Section 3, Subdivision 3, including for consideration all of the unincorporated area in White Bear Township.

Pursuant to such notice, the petition came duly on for reconvened hearing before the Commission in the City Hall of the City of White Bear Lake, Minnesota, on the 4th day of December, 1959, at 10:00 o'clock in the forenoon. All members of the Commission were present.

Theodore Glasrud again appeared as counsel for the petitioners. William Fleming appeared as counsel for the White Bear Chamber of Commerce as its interests may appear. Robert Wille of the law firm of Wille and Wille and Paul C. Thomas of the law firm of Thomas, Bradford, King & Collatz appeared for White Bear Township. Further evidence was taken and testimony heard from all parties appearing and indicating a desire to be heard.

Certain additional exhibits were allowed in evidence. Upon motion by counsel for White Bear Township, the hearing was then adjourned to January 25, 1960, to permit White Bear Township to further prepare its testimony, evidence and exhibits for introduction into the record.

Upon request by counsel for White Bear Township when the hearing reconvened in the City Hall of the City of White Bear Lake, Minnesota on the 25th day of January, 1960 at 10:00 o'clock in the forenoon, the hearing was further continued to February 15, 1960 by the Order of the full Commission.

A pre-hearing conference was held on the 9th day of February, 1960 at 827 Plymouth Building, Minneapolis, Minnesota, at 1:30 o'clock in the afternoon, in the offices of the Commission Chairman for the purpose of permitting the parties to stipulate certain exhibits and evidence into the record, which were thereupon ordered to be made a part of the record. The Chairman and Secretary of the Commission were present. All counsel of record were in attendance.

The petition came duly on for continued hearing on the 15th day of February, 1960 in the City Hall of the City of White Bear Lake, Minnesota, at 10:00 o'clock in the forenoon. All members of the Commission were again present. Evidence was taken and testimony heard from all parties appearing and indicating a desire to be heard. Certain additional exhibits were allowed in evidence and the exhibits and evidence which had been stipulated at the pre-hearing conference were entered in the record.

The Commission amplified the record with facts as to the population, area and assessed valuation of the territory, now legally described in Paragraphs IV and V of the Findings of Fact which follow from public records, and served notice upon all parties of record that the Commission would take notice of such facts, all pursuant to MSA 15.0419, Subd. 4, and no objections were made by any party within the period of five days to which objections were limited by such notice.

The Commission having carefully considered the evidence, and upon all of the files and records, now makes and files the following Findings of Fact, Conclusions of Law, Order and Memorandum Opinion:

#### FINDINGS OF FACT

##### I.

A petition for the annexation of adjoining unincorporated property was filed by the legally required number of petitioners residing in the area proposed to be annexed.

##### II.

The first hearing upon such petition was conducted on October 13, 1959. Thereafter the Minnesota Municipal Commission reconvened such hearing for the purpose of determining according to law if the Commission should alter the boundaries of the

to be annexed by increasing the area to include any or all of the remaining unincorporated property in White Bear Township or to decrease the area.

### III.

The area proposed for annexation in such petition (referred to here as the South Bald Eagle Corridor) is legally described as follows:

All that part of the County of Ramsey, State of Minnesota, described as follows: The territory within the Town of White Bear in the County of Ramsey, the boundaries of which are as follows: On the South by the North line of the City of White Bear Lake as it appears in Section 14, Township 30, Range 22; on the West by the center line of Bald Eagle Avenue, extended to the shore line of Bald Eagle Lake, and then running North-easterly along the shore line of Bald Eagle Lake to a point of intersection with the center line of Buffalo Avenue, extended Westerly to the said shore line of Bald Eagle Lake, thence on the North by the center line of Buffalo Avenue, bounded on the East by the center line of Trunk Highway 61, consisting of approximately 268 acres.

### IV.

Subsequent to the filing of the said petition for annexation, the Ramsey County District Court issued a writ of ouster invalidating a previous annexation of the following described unincorporated property in White Bear Township (referred to here as the North Bald Eagle area) adjoining the property proposed for annexation in the said petition:

All that part of the County of Ramsey, State of Minnesota, described as follows: Commencing at the center of the intersection of Hammond Road and Centerville Road; thence running northerly along the center line of Centerville Road to the center of Section 4; thence running easterly along the Quarter Section line to the east quarter corner thereof; thence running north along the east line of said Section 4 to the north county line (Ramsey-Anoka County line); thence running easterly along the said north county line to its point of intersection with the center line of Trunk Highway 61; thence running southerly along the center line of Trunk Highway 61 to a point where it intersects with the center line of Buffalo Street; thence continuing in a westerly direction along a line across Bald Eagle Lake to a point where it intersects with the intersection of the center lines of County Road H-2 and Otter Lake Road; thence running south along the center line of Otter Lake Road to its intersection with the center line of Hammond Road; thence westerly along the center line of Hammond Road to the point of beginning at its intersection with the center line of Centerville Road.

### V.

The territory approved for annexation includes the property described in Paragraphs III and IV above to which is added the additional adjoining unincorporated property north of the present boundaries of the City of White Bear Lake and the Village of Vadnais Heights as shown on the map attached to these Findings of Fact, identified as Appendix A, and made a part hereof. The territory approved for

annexation is legally described as follows:

Those lands in Ramsey County in Township 30 North, Range 22 West, bounded on the West by the now existing corporate limits of the Village of North Oaks, bounded on the North by the North line of said Township 30, bounded on the East by the centerline of Canterville Road as to the part in the South one half (S $\frac{1}{2}$ ) of Section 16, Township 30, Range 22, and elsewhere by the East line of Ramsey County, bounded on the South by the now existing corporate limits of the City of White Bear Lake and the now existing corporate limits of the Village of Vadnais Heights.

VI.

The territory described in Paragraphs III, IV and V all lies within the Township of White Bear, in the County of Ramsey, in the State of Minnesota, and is one compact area all adjoining the City of White Bear Lake, Minnesota.

VII.

The territory described in Paragraph III consists of 268 acres. The territory described in Paragraph IV consists of 1,530 acres. The total area of the territory described in Paragraph V (inclusive of Paragraphs III and IV) is 4,267 acres.

VIII.

The population of the territory described in Paragraph III above is 582 and the number of dwelling houses is 153. The population of the territory described in Paragraph IV above is 749 and the number of dwelling houses is 129. The total population of the area proposed for annexation in Paragraph V (inclusive of Paragraphs III and IV) is 3,720 and the number of dwelling houses thereon is 930. The assessed valuation of the territory described in Paragraph III above is approximately \$200,000. The assessed valuation of the area described in Paragraph IV is approximately \$252,494. The assessed valuation of the total area described in Paragraph V (inclusive of Paragraphs III and IV) is \$926,640. The assessed valuation of the City of White Bear Lake is \$5,246,164.

IX.

The petitioners commenced a census of the territory described in Paragraph III above on August 26, 1959, and completed the census on August 31, 1959.

X.

The existing facilities consist of fire protection furnished by the City of White Bear Lake and police protection furnished by the Sheriff's Office of Ramsey County, Minnesota. There is no water system or sewage disposal system. Zoning and street planning is as provided by the Township of White Bear. The territory is residential or potentially residential in nature and adjoins the City of White Bear Lake.

XI.

The area described in Paragraph V above has no present plan to establish a sewer or water system and none is foreseen in the near future.

XII.

The territory described in Paragraph V above is served by individual wells and septic tanks. No tests have been conducted to determine whether or not the water in such wells is contaminated.

XIII.

The City of White Bear Lake has the physical capability of furnishing services and facilities including police, fire, library, parks and recreation, zoning and planning, water and sewage disposal, sanitation, street maintenance, city administration, public health service, engineering and building inspection, street lights, Municipal Court facilities and boat docks to all of the area described in Paragraph V.

XIV.

The territory described in Paragraph III above is at least 50% developed with single dwelling family homes according to land use maps. The churches and schools of the City of White Bear Lake serve the entire territory described in Paragraph V which includes the area described in Paragraphs III and IV.

XV.

The residents of the territory described in Paragraph V above do virtually all of their shopping and trading and participate in the community life of the City of White Bear Lake including membership in the fraternal and social organizations of such municipality.

XVI.

One grocery store is the only place of business in the property described in Paragraph III above and the entire territory described in Paragraph V above is dependent on the business life of the City of White Bear Lake for shopping and trading.

XVII.

The territory described in Paragraph V is generally desirable for development, the area suitable for residential use have a high water level, and the area is suburban in character or is in the process of becoming suburban in character.

XVIII.

The territory described in Paragraph V needs the construction of storm sewers. When all problems have been resolved, the entire area will be open for residential use.

XIX.

The population density in the territory described in Paragraph III is two persons per acre which is comparable to the population density of the present City of White Bear Lake. The population density in the territory described in Paragraph IV is two persons per acre. The entire area described in Paragraph V above is in the process of becoming urbanized and is all included in Metropolitan Planning Commission maps as urban in character.

XX.

If the territory described in Paragraph V above is annexed to the City of White Bear Lake, the residents will benefit from the services of full-time employees of the City of White Bear Lake. White Bear Township hires no full-time employees who are available at a central office to be contacted. Such employees as are hired by the Township of White Bear must be contacted by the public at their homes to obtain governmental services.

XXI.

The mill levy of White Bear Township in 1958 was 23.49. The mill levy of the City of White Bear Lake for the same year was 28.82. A 5 mill difference in mill levy amounts to \$6.00 additional taxes on a \$15,000.00 home.

XXII.

The petition for annexation is not motivated by revenue raising purposes. The return in additional or improved municipal services to the people living in the territory described in Paragraph V above are at least commensurate with any increase in taxes.

XXIII.

The City of White Bear Lake has conducted a water distribution study and has a master plan to serve the entire area included in Paragraph V above.

XXIV.

The City of White Bear Lake has a fire underwriter's class rating of 7 on residential property and the Township has a rate of 9 on residential property.

XXV.

According to the Minnesota Highway Department, the freeway through White Bear Township will go along or on present Centerville Road with interchange at Highway 96 and the North Ramsey County Line.

XXVI.

The area approved for annexation election is a compact unit. The proposed annexation will preserve and advance the symmetry of the area and will provide for orderly urban growth and development.

XXVII.

Areas A and C on the map must be included in the area to preserve, advance and improve the symmetry of the area. The farmland included within Area C is a pocket entirely surrounded by urban or metropolitan area and can be reasonably expected to participate in urban growth.

XXVIII.

Municipal government of the entire area approved for annexation election will advance the protection of public health.

XXIX.

The territory described in Paragraph V is as outlined in red on the map (appendix A) and the legal description was obtained from the Minnesota Highway Department and the Ramsey County Auditor (Division of Land Records.)

XXX.

Due, timely, correct and adequate legal notices were given pursuant to statute as to all hearings conducted in these proceedings on the petition to annex and the proceedings to determine if the proposed area should be altered.

CONCLUSIONS OF LAW

I.

The territory proposed for annexation described in paragraph III above, commonly known as the South Bald Eagle area, is so conditioned as to be properly subjected to municipal government.

II.

The territory described in paragraph V is so conditioned as to be properly subjected to municipal government.

III.

The annexation of the territory described in paragraph V would be to the best interests of the City of White Bear Lake and of the territory affected.

IV.

The best interest of the City of White Bear Lake and the territory described in the petition ( and in paragraph V above) will be served by increasing the territory to be annexed to include the entire territory of which it is a part as legally described in paragraph V above. This will also serve the best interest of the North Bald Eagle area. The symmetry of the entire area will be preserved and advanced by increasing the territory to be annexed so that it will include the North Bald Eagle area legally described in paragraph IV and the additional territory included to comprise the unit described in paragraph V which is inclusive of paragraphs III and IV.

V.

An election shall be held on April 26, 1960, in the territory described in paragraph V in the Findings of Fact pursuant to laws 1959, Chapter 686, Section 3.

## O R D E R

Upon the petition of the legally required number of freeholders residing in the area described in paragraph III of the Findings of Fact herein to annex such unincorporated territory to the City of White Bear Lake, Ramsey County, Minnesota, which came regularly on for hearing before the Minnesota Municipal Commission at 10 o'clock in the forenoon on the 13th day of October, 1959, in the City Hall of the City of White Bear Lake, Ramsey County, Minnesota, at which time testimony was heard and evidence taken, and upon the motion of this Commission that hearings be held and consideration given to increase or decrease the area to be annexed, which came regularly on for hearing before the Commission at 10 o'clock in the forenoon on the 4th day of December, 1959; again at 10 o'clock in the forenoon on the 25th day of January, 1960; and again on the 10th day of February, 1960, all at the City Hall in White Bear Lake, Minnesota, at which hearings testimony was heard and evidence taken; upon facts determined from public records of which due notice was given to all parties of record to which none protested, and upon all of the files and records herein, the Commission being fully advised in the premises.

IT IS ORDERED: That such petition for annexation be, and it is hereby approved.

IT IS FURTHER ORDERED: That the area to be annexed as proposed in such petition be increased by adding thereto the unincorporated property described in paragraph IV of the Findings of Fact herein and the additional unincorporated property contained in the legal description in paragraph V in order to preserve and advance the symmetry of the area.

IT IS FURTHER ORDERED: That an election be held in the entire area approved for annexation on the question of whether or not such unincorporated territory should be annexed and should become a part of the City of White Bear Lake, Ramsey County, Minnesota. The annexation area covered by such election is legally described as follows:

Those lands in Ramsey County in Township 30 North, Range 22 West, bounded on the West by the now existing corporate limits of the Village of North Oaks, bounded on the North by the North line of said Township 30, bounded on the East by the centerline of Centerville Road as to the part in the South one half (S $\frac{1}{2}$ ) of Section 16, Township 30, Range 22, and elsewhere by the East line of Ramsey County, bounded on the South by the now existing corporate limits of the City of White Bear Lake and the now existing corporate limits of the Village of Vadnais Heights.

IT IS FURTHER ORDERED: That such election be held on the 26th day of April, 1960 at the following place within the area to be annexed: Bald Eagle Building, Intersection of Hugo Road and Park Avenue, White Bear Township, Minnesota; that the polls be open at said polling place from 7 o'clock a.m. until 7 o'clock p.m.; that the following three elector residents of the area proposed to be annexed act as judges, and that such



election be conducted insofar as practicable in accordance with the election of town officers:

Polly Knight  
2245 Park Avenue

Hazel Kuehn  
5251 Portland Avenue

Hazel White  
5241 N. Lakeview

Only voters residing in the territory herein described shall be entitled to vote. The ballot shall bear the words "For Annexation" and "Against Annexation" with a square before each of the phrases, in one of which the voter shall make a cross to express his opinion. The ballots and necessary supplies shall be provided by the City of White Bear Lake.

IT IS FURTHER ORDERED: That the petitioners cause a copy of this Order approving the petition to be posted not less than 20 days before the 26th day of April, 1960 in three public places in the area to be annexed and to be published in the White Bear Press, a medium of official and legal publication of general circulation in the area to be annexed two weeks before the 26th day of April, 1960.

Dated this 4th day of April, 1960.

BY THE MINNESOTA MUNICIPAL COMMISSION

Irving R. Keldsen  
S E C R E T A R Y

## MEMORANDUM OPINION

This proceeding originally came before the Minnesota Municipal Commission upon a petition by resident freeholders to annex certain adjoining unincorporated property to the City of White Bear Lake. The territory described in the petition is marked on the attached map as Area H and is hereafter referred to as the petitioned for area or South Bald Eagle. A public hearing was held on October 13, 1959.

When the petition was filed, the unincorporated area lying north and to the west of Bald Eagle Lake, marked on the attached map as Area E, hereafter referred to as North Bald Eagle, was a part of the City of White Bear Lake by a previous annexation. This territory became separated from the remainder of the municipality as a result of a writ of ouster affirmed by the Minnesota Supreme Court invalidating the annexation of the territory connecting it with the North White Bear city limits. State ex rel Town of White Bear v. City of White Bear Lake, 95 N.W. 2d 294. This territory, shown on the attached map as Area E, is hereafter referred to as North Bald Eagle.

After the Supreme Court decision, a writ of ouster was issued by the Ramsey County District Court invalidating the annexation of North Bald Eagle on the grounds that it was no longer contiguous to the city. Thus, the effect of the Supreme Court decision was not only to invalidate the annexations there at issue but likewise to make North Bald Eagle vulnerable to deannexation.

The Municipal Commission thereupon determined that these proceedings should be reconvened for additional hearings to determine whether or not the area petitioned for should be altered by increasing or decreasing the area as authorized by Section 3, Subdivision 3 of the Annexation Act (Laws 1959, Chapter 686.) Since an annexation election in South Bald Eagle, if favorable, would result in connecting the city limits with North Bald Eagle, and no attack was made in the Ramsey County ouster proceedings on the suitability of North Bald Eagle for annexation to the City of White Bear Lake, it was decided that this territory should be considered in the same proceedings as South Bald Eagle to avoid a multiplicity of future proceedings in reference to the complex White Bear Township boundary situation. The Commission likewise took cognizance of Section 5 of the Annexation Act relating to urban townships. A discussion of the reasons and legal basis for reconvening the hearings to consider alteration of the boundaries of the annexation area and to broaden the scope of our consideration to include a Section 5 review of White Bear Township boundaries is in order because these are the first annexation proceedings under the comprehensive municipal incorporation and annexation code adopted by the 1959 Legislature which creates the Minnesota Municipal

Commission and changes many of the procedures and ground rules for annexations including a consideration of what disposition to make of the remaining unincorporated property within so-called urban towns in a metropolitan or intensively urbanized area where the review of the boundaries of an urban town is made pursuant to Section 5. This will furnish the context in which we consider the White Bear boundary complex.

#### AUTHORITY TO ALTER BOUNDARIES

This Commission was created by Laws 1959, Chapter 686 for the purpose of hearing and determining petitions for the incorporation of property into villages; the detachment of property from municipalities; and the annexation of property to municipalities. This covers the entire scope of creating municipalities or altering their boundaries. (Section 1). Annexations are divided into the two categories of unincorporated and incorporated property. The annexation of unincorporated property to a municipality is covered by the terms of Section 3. This provides for a petition for the annexation of adjoining unincorporated property by twenty per cent of the freeholders or one hundred freeholders, whichever is less, residing in the area to be annexed, or by resolution of the annexing village or city. The petition here came from freeholders of the annexation area. (Section 3, Subd. 1). A public hearing is provided on an annexation petition (Subd. 2) and the Commission is then required to make findings upon nine factors as a guide in arriving at a determination of whether or not the property to be annexed is so conditioned as to be properly subjected to municipal government and the annexation would be to the best interests of the village or city and of the territory affected. This subdivision thereafter provides:

"The Commission shall have authority to alter the boundary of the area to be annexed by increasing or decreasing the area so as to include only that property which is so conditioned as to be properly subjected to municipal government and to preserve the symmetry of the area."

The record discloses that there are at least seventeen parcels of unincorporated property in White Bear Township, none of them connected with any other, all under township government. From this, our concern may be understood in reopening the hearings to determine if territory should be added to the proposed annexation parcel to advance or preserve the symmetry of the area. The Minnesota Legislature has been aware for many years of this complex configuration in White Bear Township and took account of it in the legislative report which led to the creation of this Commission and the adoption of the annexation code.

#### REVIEW OF URBAN TOWNS UNDER SECTION 5

As mentioned above, our annexation laws have undergone complete comprehensive codification, substantial revision, and an administrative fact finding Commission

exercising a delegation of legislative authority in quasi-judicial proceedings has been created since the decision of the Minnesota Supreme Court in cited White Bear case decided March 6, 1959. In fact, in that decision, at page 302, the late Justice Leroy E. Matson called for the creation of such a Commission because of the inequities recognized by the Court in that decision. The Court said:

"This case vividly illustrates the inequities and the inflexibility of the present statutory procedures for the annexation, or the original incorporation, of suburban territory within a large metropolitan area. Although the testimony herein clearly demonstrates that large portions of the annexation territory are properly conditioned for the benefits of municipal government, both annexations fail completely because once an annexation proceeding has begun, our statutes make no provision for a separation of improperly conditioned territory from that which is properly conditioned for city government. Much good can be accomplished by amending our statutes to provide that, before a proposed annexation is submitted to the voters for their consideration, a hearing, upon due notice, be first held before an administrative commission to determine if improperly conditioned territory has been included, and to give consideration to the conflicting claims of rival municipalities seeking to annex the same territory. The present hit-and-miss annexation procedures result in a gerrymandering of suburban areas which makes long-range planning both difficult and expensive. It seems desirable that annexation- or original incorporation- of territory can best be supervised by a part-time administrative commission composed of impartial persons who are familiar with the problems of towns, villages, cities, and metropolitan areas."

Not only has the Minnesota Legislature changed the law as recommended by Justice Matson, but it has likewise installed a radical departure in the treatment of townships as a unit of government within a densely populated, highly urbanized metropolitan area. Section 5 of the new act is a clear recognition of the problem raised by existence of urban towns and is a legislative evaluation that in many instances the township is not an adequately effective unit of local government in an urban setting or a metropolitan area. Section 5 is a legislative declaration that there should be a power to review urban town boundaries in an agency of state government with authority to initiate action to incorporate all or part of urban towns within municipal limits where more effective and economical local government will result. The problem arises particularly where urban towns are exercising special municipal powers but are neither incorporating nor becoming annexed to existing municipalities of which they are a natural part.

The review of such urban townships to "determine whether all or a part of the area will best be served by incorporation, annexation, or to remain as a township" is mandatory upon this Commission. The Act as Originally drawn (House File 1277) provided that the Commission could order an urban township to incorporate, and incorporation would become effective unless within six months the township acted to incorporate all or a

part of the territory to an adjoining municipality. Either action could be taken without a consent vote in the area. By an amendment in the House of Representatives, a provision for a local consent election was written into Section 5 as to Commission Orders to incorporate such urban townships (Section 5, Subd. 3) but no similar consent election amendment was written into Section 5, Subd. 4 relating to Commission Orders for the annexation to adjoining municipalities of the unincorporated area in urban townships.

For a complete exposition of the legislative history preceding enactment of Section 5, and the legislative considerations leading to the adoption of that provision, see the Report of the Commission on Municipal Annexation and Consolidation, submitted to the 1959 Legislature, pages 17-19, under the title "Proposal as to Urban Towns," hereafter referred to as Report. This Report was filed with the Legislature on March 4, 1959 after a two year study by a Commission composed of five members of the Senate and five members of the House of Representatives. Chapter 686 was included in the Report as Appendix A, page 27, and was introduced as HF 1277 and SF1112. The Interim Commission was charged, among other things, "to study the laws relating to the incorporation of cities and villages and the annexation of land to and detachment of land from cities and villages, and the laws granting special powers to so-called urban towns, including towns having 1,200 people residing on platted territory or having land within 25 miles of the City Hall of a city of the first class." (Laws 1957, Chapter 833, Section 1). At Section 2 (5) of this Act, the Legislature imposed upon the Interim Commission the duty to include in its reports a recommendation on "the need for a separate statutory class of urban towns and, if such a class is deemed necessary, the content of the statutes relating to such class, including the procedure by which a town becomes an urban town and the relationship between such towns and cities and villages." At page 17 of the Report, the Commission said:

"Perhaps the thorniest problem presented to this Commission for study and construction of a new statutory technique by the Legislature was posed by Chapter 833, Laws 1957, Section 2(5) which charged us to investigate the 'need of a separate statutory class of urban towns...' This is a quandary which has puzzled the Legislature and called for a special class legislation throughout past sessions. It led to a study by the Minnesota Legislative Research Committee in 1953. This Committee filed an extensive report with the 1955 Legislature (Problems of Urban Towns (townships) in Minnesota, Minn. Legislative Research Committee Publication No. 58, November, 1953.)"

The Report pointed out that at page 18 the Legislative Research Committee in the 1953 report had reduced possible solutions to two:

"(1) To adopt a strict policy of not giving them special dispensation but encouraging them to seek fundamental and lasting means of meeting their problems through annexation and incorporation; and

(2) To create a specific classification of urban towns and grant them specific authority relating to special assessments for local improvements and other public undertakings short of those which can be accomplished by incorporated municipalities."

The Report then asserted:

"In choosing between the two alternatives posed by the Legislative Research Committee in this report written in 1953 for the 1955 legislature, we find that the first suggestion, 'to seek fundamental and lasting means... through annexation and incorporation,' is preferable. The creation of a State Municipal Commission to hear petitions for incorporations or annexations furnishes the machinery by which suitable annexation or incorporation can be accomplished when such townships become more urban than rural in nature."

We emphasize that this language in the report was in explanation of Section 5 as contained in the proposal which was introduced as H.F. 1277 and S.F. 1112 and became upon enactment Chapter 686 of the Laws of 1959. Section 5, as thus explained, was adopted without modification except as to the local consent election provided in Subd. 3 thereof relating to ordering the incorporation of urban town area. This becomes important in our present consideration because of the light shed by the above legislative comments in the report on the definition of property which is so conditioned as to be properly subjected to municipal government in the annexation of urban town property to adjoining municipalities under the provisions of Section 5.

#### RECONVENED HEARINGS

Additional public hearings were held at which testimony was adduced and exhibits received to determine whether the annexation area should be increased or decreased to advance, preserve or improve the symmetry of the area, including the consideration of all of White Bear Township under Section 5. The evidence disclosed a chaotic boundary situation. T. C. Rhodes, Director of Land Records in the Office of the Ramsey County Auditor, testified that there are 17 separate and distinct islands of unincorporated property, none connected with any other, all under White Bear Township government, and that there are two additional parcels where it is impossible to clearly ascertain whether they are under the government of the Township or City of White Bear Lake. Seven of the islands are entirely circumscribed by the boundaries of the City of White Bear Lake.

Theodore J. Blair, Chairman of the White Bear Town Board, conceded that some eleven of these islands could be better governed by the City of White Bear than by White Bear Township including the seven islands within White Bear Lake municipal limits, numbered 1-7 inclusive on the attached map.

#### ANNEXATION AREA PROPOSED FOR ELECTION

From the perplexity of local boundaries within White Bear Township, including the municipalities which have been carved from it, we would be constrained to order an

election to bring the entire urban township under municipal government were that practical in these proceedings. It cannot be accomplished for the following reasons:

1) A new municipal corporation cannot be formed from the remaining unincorporated territory in White Bear Township for this would perpetuate the gerrymandered boundaries resulting from past annexation procedures and create a village of seventeen or more scattered parts (or ten if the tracts lying within the City of White Bear Lake were excluded) thus accomplishing only a transfer of boundary chaos from unincorporated to municipal status.

2) An election to annex all of the Town of White Bear to the City of White Bear Lake would leave islands of annexed property geographically separated from the remainder of the municipality. Any final solution to the White Bear boundary problem should not leave non-contiguous parcels.

3) Annexation of all of the remaining unincorporated property in White Bear Township to the present municipality which could serve it best cannot be accomplished here because some of the affected municipalities are not parties to these proceedings.

We, therefore, seek the most constructive partial solution available in these proceedings based upon the petition and Section 5 of the Annexation Act which have been merged for our consideration.

We conclude that the major problem involving the unincorporated property north of the corporate limits of the City of White Bear Lake can be resolved by ordering an annexation election of that entire area except for the small tract in the northwestern corner of White Bear Township which is not contiguous to the annexation area.

The approved annexation area is circumscribed in red on the attached map. For ready reference, we have marked separate portions of the area on the map:

Area H is South Bald Eagle, the petitioned for area.

Area E is North Bald Eagle which was part of the City of White Bear Lake until it became geographically separated as a result of the Supreme Court decision and was thereafter deannexed.

Area C is a corridor lying directly between the north boundary of the City of White Bear Lake and the south boundary of Area E which includes North Bald Eagle and Bald Eagle Lake. Symmetry could not be maintained without including it with Areas E & H.

Area F is a swamp which would be left as an island separated from White Bear Township if only Areas E, C and H were included in the annexation area.

Areas A and B, in the northwest and northeast corners of the territory, would become isolated if not included in a unified annexation area.

Area G is now almost entirely surrounded by the Villages of North Oaks,

Vadnais Heights and the City of White Bear Lake.

In its entirety, the proposed annexation area makes one compact unit which, if added to the present City of White Bear Lake, will not only eliminate much boundary confusion but also will provide ready access to the entire area by the unit of local government then responsible for providing municipal services. The orderly development of the entire annexation area will best be served by including it now in a compact unit to be added to the municipality.

#### OTHER CONSTRUCTIVE POSSIBILITIES

The Chairman of the Town Board had pointed the way to the immediate further solution of White Bear boundary problems by his fair and objective testimony. He has conceded that eleven unincorporated pockets could better be served by municipal government than by remaining a part of White Bear Township. Seven of these, numbered 1-7 inclusive, lie entirely within the corporate limits of White Bear Lake. This being true, the municipality has the present authority to annex all seven parcels without reference to this Commission except by filing the final annexation ordinance. This can be accomplished under Section 3 (7) of the Annexation Act which provides:

"If the land is completely surrounded by land within the municipal limits, the governing body may adopt a resolution stating its intention to annex the property and fixing a time and place for a hearing. A copy of the resolution should be served in the manner provided for the service of a summons in a civil action upon all owners of the land to be annexed at least ten days before the date of the hearing. If after such hearing the Council determines the annexation will be to the best interests of the municipality and of the territory affected, it may by ordinance declare the land annexed to the municipality."

Where the unincorporated land is completely surrounded by land within the municipal limits, no consent election is needed. All that is required is that the landowners be served and given an opportunity to be heard. Since some of these unincorporated pockets within the White Bear municipal limits consist of only one building, an election ordered by this commission would hardly be a practical procedure. We suggest to the White Bear governing body that they proceed with dispatch to annex the unincorporated parcels marked 1-7 inclusive under the terms of Section 3(7) since they have now been given the green light by the Town of White Bear. This will do much to improve the local government boundary complex in White Bear Township.

The Chairman also marked Areas 8-11, shown on the map, as being more properly subject to municipal government than remaining a part of the Township. All four are incorporated tracts surrounded on three sides by the Village of Vadnais Heights. They appear to be properly a part of Vadnais Heights and should be annexed. As we have pointed out, this cannot be accomplished in these proceedings even with the cooperation of the Town of White Bear. Annexation under Section 3(7) by petition, Council hearing, and ordinance is more practical than to order an annexation election under Section 3 (1-6)



### PROPERLY CONDITIONED TEST

In designating the area for an annexation election, we are aware of our responsibility to determine that the property to be annexed is so conditioned as to be properly subjected to municipal government and that the annexation would be to the best interests of the annexing city and of the territory affected. We are likewise aware that some of the described area, i.e. the western 320 acres of Area C on the attached map, was found not to be so conditioned as to be properly subjected to the municipal government of White Bear Lake in State ex rel Town of White Bear, et al v. City of White Bear Lake, supra. We have set forth the background and history of the enactment of Chapter 686 as a new Minnesota approach to municipal incorporation and annexation to delineate the legislative purpose in adopting Section 5 because it is clear that the Legislature has added a new dimension in the consideration of what land is properly conditioned for municipal government in urban towns, particularly within the heart of the metropolitan area. Direct testimony was taken in reference to White Bear boundary problems from town officials and counsel at the hearings before the Commission on Municipal Annexation and Consolidation before Chapter 686 was drafted and the Report prepared. Section 5 is a clear delegation of authority to the Minnesota Municipal Commission to exercise discretion in determining the point at which part or all of an urban town as therein defined can be better served by annexation or incorporation than by remaining a part of township government.

The creation of municipal corporations, change in their boundaries by annexation or severance of territory, and the conditions under which such creation or change may be made, are legislative and not judicial questions. State ex rel Smith v. Village of Gilbert, et al (1914) 127 Minn. 452; State v. Simons 32 Minn. 540, 21 NW 750; Hammer v. Narverud, 142 Minn. 149; City of Winona v. School Dist. No. 82, Winona Co., 40 Minn. 540, 41 NW 539, 3 LRA 46, 12 Am. St. 687; People v. City of Riverside, 70 Cal. 461, 11 Pac. 759; State v. City of Waxahachie, 81 Tex. 626, 17 SW 348; Kelly vs. Pittsburg, 104 U.S. 78, 26 L.Ed. 659, and Section 265, McQuillin, Municipal Corporations. The Legislature has the unquestioned authority to incorporate areas or to subject them to municipal government. In many states, cities have formed the habit of going directly to the Legislature to extend their boundaries where they could not obtain necessary consent of those living in adjoining unincorporated areas under existing statutes. This Commission is delegated the legislative authority by Chapter 686.

In Minnesota, under our archaic procedures that existed virtually since statehood until the adoption of Chapter 686 in 1959, the Supreme Court imposed the test that an area could not be included within municipal limits either by incorporation or annexation

unless it was so conditioned as to be properly subjected to municipal government. This judicial test was an outgrowth of incorporation and annexation statutes which permitted a mere handful of petitioners to draw the area proposed for incorporation or annexation, force an election in proposed area with no discretion at any level of government to alter the boundaries to exclude predominantly agricultural land or other property obviously unsuited for municipal purposes or scarcely requiring municipal services and the taxes incident thereto, to gerrymander or pick and choose the area at random in order to obtain a favorable vote on the proposition of annexation or incorporation, and, if successful, to thus subject the entire area selected in this haphazard manner to municipal government.

In State ex rel (Childs) v. Minnetonka Village, et al, 57 Minn. 326; 59 NW 972; 25 LRA 755, this delegation of authority was challenged as being unconstitutional. The point made was that the Legislature had neither itself determined how much or what character of land should be included in a village, nor delegated the power to do so to any proper subordinate official body, but had left it wholly to the arbitrary determination of any thirty private citizens who might sign the petition, subject to only the conditions that the territory contain a population of 175, and that there be somewhere within its boundaries a tract of land platted into lots and blocks, and that the majority of the electors, within the territory whose boundaries are thus arbitrarily fixed by the petitioners, vote in favor of incorporation. The Court said it would be difficult to sustain the act if given the meaning thus contended for because under such a construction it would be left to the petitioners, subject only to the above limitations, to arbitrarily determine how much and what character of territory should be included in the proposed village. They might include a rural territory 50 or 100 miles square provided "that they did not skip over any as they advanced." But, said the Court, this was not the intention of the Legislature:

"The purpose evidently was to authorize the incorporation of 'villages,' in the ordinary and popular sense, and not to clothe large rural districts with extended municipal powers, or to subject them to special municipal taxation for purposes for which they were wholly unsuited.

A 'village' means an assemblage of houses, less than a town or city, nevertheless urban or semi-urban in its character, and the object of the law was to give these aggregations of people of a comparatively small territory greater powers of self government and the enacting of police regulations than are given to rural communities under the township laws. The law evidently contemplates, as a fundamental condition to a village organization, a compact center or nucleus of population on platted land; and, in view of the expressed purposes of the Act, it is also clear that by the term 'lands adjacent thereto' is meant only those lands lying so near and in such close proximity to the platted portion as to be suburban in their character, and to have

some unity of interest with the platted portion in the maintenance of a village government. It was never designed that remote territory, having no natural connection with a village, and no adaptability to village purposes, should be included."

This decision disposed of the constitutional question, then enunciated the historic Minnesota judicial concept of the statutory test of what constitutes land properly conditioned for municipal government. It was in the context of a law leaving the definition of the area to be incorporated to those circulating the petition, with no delegation of authority to any subordinate official body, that the court judicially determined, in order to sustain the constitutionality of the act, that the Legislature must mean only land satisfying a three-factor formula:

- 1) that the platted portion of the lands contains a compact center or nucleus of population;
- 2) that the adjacent unplatted lands are suburban in character; and
- 3) that the unplatted lands have with the platted portion a unity of interest in the maintenance of a village government.

The Minnetonka Village rule of Construction was applied in State v. Buhl (1921) 150 Minn. 203 and State ex rel Hilton v. Nashwauk, et al (1922) 151 Minn. 534. The three-formula statutory test of lands properly conditioned for municipal government enunciated in the Minnetonka Village case is supported in the subsequent decisions to date, with flexible adaptations to meet the problems of mining and metropolitan areas, and subject to criteria added by Laws 1959, Chapter 686, which has not been the subject of judicial review.

This test is cited with approval in State ex rel Hilton v. Village of Fridley Park, et al. (1895) 61 Minn. 146; State ex rel Young v. Village of Gilbert, et al 107 Minn. 364; State ex rel Hilton v. So-called "Village of Minnewashta" et al (1925) 165 Minn. 369; State ex rel Twp. of Copley, et al v. Village of Webb, et al. 250 Minn. 22; 83 NW 2d 788; State ex rel Town of White Bear, et al, v. City of White Bear Lake, et al supra, and others.

The same qualifications extend to territory sought to be annexed as to territory included in the original incorporation, namely, it must be so conditioned as properly to be subjected to municipal government. State ex rel Smith v. Village of Gilbert, et al. 127 Minn. 452, 149 NW 951.

The Minnetonka Village formula is adapted to conditions in the mining area in State ex rel Smith v. Gilbert, et al. 127 Minn. 452, 149 NW 951, reconciling the decision State v. Village of Alice, 112 Minn. 330; 127 NW 1118, and citing State v. Village of Dover, 113 Minn. 452, 130 NW 74, 539. In the Gilbert decision the Court

said, "From our decisions it is apparent that land may be included which is not needed for present village purposes. Future necessities and growth may be anticipated."

The problems peculiar to the metropolitan area are dealt with in State ex rel Burnquist v. Village of St. Anthony, et al (1947) 223 Minn. 149, 26 NW 2d 193 and State ex rel Twp. of Cooley v. Village of Webb. (1957) 250 Minn. 22, 83 NW 2d 788. In the St. Anthony case, the court said:

"It must be obvious that a new community of this sort springing up all over such an area needs zoning, policing, water, sewers, lights, and all the municipal facilities usually furnished by village government."

Referring to the land involved the Court commented:

"The rest, except one farm, consists of small tracts. All is suitable for division into smaller tracts and for use for suburban dwelling. Such a change has been taking place not only in the area included in the village, but also in the surrounding area in Minneapolis and in Ramsey County and the trend in that direction is increasing. It appears to be only a comparatively short time before the demand for small tracts will be so great that the owners of the large tracts will probably be induced to subdivide and sell them."

This decision is reconciled by the Court with the Minnetonka Village formula for testing lands properly conditioned for municipal government. It quoted the latter opinion to the point that no business center is required to make an area suitable to be a village.

In Webb the Court commented on the Minnetonka Village rule:

"Although this three-factor formula embraces the basic essentials, it provides no inflexible rule of application and each case must be determined according to its own peculiar facts.<sup>5</sup> The adaptability of the formula to meet different and changing conditions has been illustrated by our decisions.. This distinction between mining and agricultural lands relaxed the requirement for incorporating mineral lands primarily on the basis of the needs of the resident miners.

Again the court in State ex rel Burnquist v. So-called Village of St. Anthony, 223 Minn. 149, 26 NW 2d 193, recognized the change in the requisite conditioning for village government of both platted and unplatted lands in large metropolitan areas where large portions of the land are devoted to light or casual farming and a vast majority of the inhabitants are engaged in urban occupations. We need not here explore the controlling factors involved in each of the foregoing decisions. It is enough to recognize that the three-factor formula has brought different results according to the character of the unplatted land, its use, and the needs of its inhabitants, and that, therefore, decisions involving mining and metropolitan areas are of little help in determining the problems that arise in a primarily agricultural community."

Later statutes incorporated the requirement that property be so conditioned as to be properly subjected to municipal government as a result of the statutory test enunciated by the Court to uphold the validity of earlier laws. Chapter 686 adopts the language in Sections 2 and 3 and Section 5 directs the Commission to apply the

standards of Sections 2 and 3 as to orders leading to incorporation or annexation of part or all of urban towns.

Section 5 is a legislative recognition of the need of dealing separately with metropolitan problems in determining the circumstances under which annexation should be accomplished. It provides a systematic policy of eliminating township government within a metropolitan area where an urban town as defined by statute requires the exercise of municipal powers. It provides the mechanism for inclusion of urban town property within municipal limits and grants broad discretion to the Municipal Commission in determining when the transitional point is reached in the passage of land from farm to urban use and should be annexed. The Municipal Commission is a subordinate official body as referred to in the Minnetonka Village and subsequent Supreme Court cases. The constitutional attack which was made upon the earlier laws resulting in the prescription of the three-formula test in the Minnetonka Village case resulted from the failure of the Legislature at an earlier time to delegate this discretionary authority to an official subordinate body such as the Municipal Commission. The reasoning in the Minnetonka Village and Nashwauk cases leads to the inescapable conclusion that there is vastly greater discretion in the Municipal Commission as a subordinate official body to the Legislature in determining what areas should be included under municipal government than existed when the petitioners described the area proposed for annexation or municipal incorporation without review or authority at any level of government or in the judiciary to alter the boundaries of the proposed area by increasing or decreasing the area for any purpose.

Under previous inflexible procedures described by Justice Matson in the 1959 White Bear decision, the Supreme Court had treated each parcel of land as a separate entity. Thus in the White Bear case the North annexation petition failed because a part of the area contained agricultural land not suitably conditioned under then existing statutes which invalidated the entire annexation. The same situation existed as to the South petition. The Court found a portion of that area not suited for municipal government and felt required by existing law to invalidate the entire annexation.

The difference faced by the Court then and by this Commission now is that the Court was dealing with annexation procedures which permitted every tract to be treated as a separate and distinct area as to municipal suitability while here we operate under a direct delegation of legislative authority to review urban townships in their entirety and to determine if any or all of the area therein would better be served by being included within municipal limits. This is the modern sensible approach to the metropolitan crisis.

The North Carolina Study Commission created by the 1957 General Assembly dealt at length with this problem in prescribing specific statutory standards for what kind of area could be annexed by North Carolina cities. In the Supplementary Report of the Municipal Government Study Commission, 1959 North Carolina General Assembly, reference is made to the fact that urban development commonly takes place along either side of highways leading from the city and soon along the lateral streets connecting radial highways. The area lying between the radial highways and streets connecting them many times is left undeveloped while urban growth continues outward along the highways and their connecting links. The Supplementary Report described the area between radial highways and the lateral connecting links as the "holes" in the "doughnut" of metropolitan growth. In enacting specific statutory standards of population density for annexation, the General Assembly took account of these so-called holes in the doughnut by providing that where they exist in areas that are developed on every side they may be annexed. North Carolina seeks to define what constitutes urban land. Their use of the term urban land must be said to be tantamount in Minnesota to use of the term properly conditioned to be subjected to municipal government.

We expressly hold that under Laws 1959, Chapter 686, Section 5, we are required by the Legislature, in applying the test of what lands are properly conditioned to be subjected to municipal government, to include not only property already platted or devoted to residential development or in the process of being so developed, but also to include that property which is reasonably adjacent to developed areas, in close proximity to the major metropolitan cities in the heart of the metropolitan area and completely encompassed by urban development, where provision of governmental services would otherwise rest upon urban township government under special exercise of municipal powers granted from time to time by the Legislature.

#### SUITABILITY OF THE APPROVED AREA FOR ANNEXATION

We turn from the judicial history of the properly conditioned test to its application to the area approved for annexation election in the light of the dimension added by Section 5 and the basic legislative philosophy of Chapter 686 which gave life to this Commission and delegated to it the legislative authority to determine what territory is properly conditioned for municipal government.

The annexation area adjoins the City of White Bear Lake on the North, in Ramsey County, second most populous in Minnesota, and in close proximity to St. Paul, one of the two major metropolitan centers. It lies in the heart of the metropolitan area, completely surrounded by urban development, within the inner core of the metropolitan district as defined by the United States Department of Commerce (this contains five

counties, Hennepin, Ramsey, Washington, Dakota and Anoka. Two additional counties, Scott and Carver, have joined the area served by the Metropolitan Planning Commission.)

Much of the opposition testimony was to the point that as increasing services become necessary to those living within the Town of White Bear, including water and sewer, they can be furnished by township government. This testimony is basically irrelevant to the extent that it deals with services ordinarily furnished by municipal government. If this testimony were accepted at face value in the light most favorable to the position taken by the Town of White Bear, it would only prove that the township itself is capable of functioning as a municipal government. The logic of this position is to prove that White Bear Township is an urban area requiring urban government which can be accorded by a township acting in a municipal or urban capacity. Assuming that a township can govern an urban area, this does not prevent the incorporation of such territory under municipal government. Indeed, if the township is considering the necessity of community water and sewage facilities, it is recognizing that it is in transit to suburban or urban character if not already there. As this record discloses, the Town of White Bear is already exercising bonding authority and other municipal powers which tend to prove that it is properly conditioned for municipal government. Section 5 is intended to deal with urban towns exercising municipal powers and provides the mechanism to convert them to municipal government with a rebuttable presumption under the statute that they have reached urban status and are now properly conditioned. One of the purposes of Section 5 is to avoid the necessity of continuing to grant municipal powers to the hybrid form of government known as the urban town.

These urban towns exist in a no-man's land of local government. Their original statutory authority enables them to adequately and properly govern a rural area. They lack the means and the tools to deal with complex urban problems. The law has always contemplated that township property be incorporated or added to existing municipalities when it becomes properly conditioned and urban in character. When a township becomes urban and does not convert to municipal government, and the developed areas are not annexed, the township form must be shored up by special municipal powers to bond, to zone and to do the other things required of municipal governments.

According to the Report, White Bear Township was the largest of the urban towns by a substantial majority in the table contained in Appendix H, page 48. It was more than twice as large as any other urban town except Stuntz Township in St. Louis County when the Report was issued March 4, 1959. It then had a population of 7,049 compared to the Stuntz Township population of 4,681. We would be hard put to say that the Legislature was not creating a strong presumption or directly saying that the Town of White Bear is now properly conditioned for municipal government when it adopted Section 5. It would be

more reasonable to assume that the Legislature had White Bear Township in mind in providing a mechanism for converting urban town property to the municipal form.

Obviously what we have said concerning townships in transit to urban status relates more directly to the Town of White Bear than to any of the smaller urban towns in Minnesota. The testimony in this record is revealing. The Chairman of the Town Board testified on direct examination that he handles such complaints as one that a resident's cesspool is draining into the lake. He said that several such cases have been handled the past year and those involved 'have been ordered to clear it up or get the full plant in condition so it doesn't do anything like that if it is affecting the area.' (TR, testimony of Theodore J. Blair, p. 20). He admitted on cross-examination that the town is probably running an urban government, could furnish water, but would not be able to furnish sewage to the Town of White Bear. (TR, pages 38-39). As to the frequency of government, he testified that the Town Board now meets four or five times a month. (TR, p. 4), but admitted on cross-examination that much of this time is taken up with annexation problems. An engineer is employed on a consulting basis, a doctor acts on health problems that arise and is paid on a piecemeal basis, law enforcement service is furnished by the Sheriff of Ramsey County and fire protection by contract with the City of White Bear Lake. One man is hired full time for road maintenance, another part-time. These are the only regular employees. The town has a planning committee of three men. It is obvious, no matter how it is described, that without technical staff or personnel there are serious limitations to the enforcement of zoning restrictions and plat control. The Chairman testified that the town looks to the Metropolitan Planning Commission which performs only an advisory regional planning function. This Commission was organized in June, 1957 and is still engaged in a comprehensive study of land use, economic base, subdivision regulation, water, sewer and other aspects of the metropolitan area. It performs no function in zoning or enforcing subdivision regulation or plat control over townships within the metropolitan area. As its work progresses, it will be available for advice or to furnish technical planning services to individual communities on a reimbursement basis but it is not constituted as a substitute for local zoning, subdivision or plat control. We think it significant that the township would refer to its cooperation with the Metropolitan Planning Commission to justify that it is operating properly in this area of municipal services. It is a further recognition that this is a metropolitan township in transition to urbanization.

Chairman Blair said on cross-examination that the town supervisors havenot conducted studies concerned with well pollution in White Bear Township, nor has the State Board of Health. He did say that four or five tests in the Bald Eagle area have been made with negative results. By whom the tests were made is not revealed.



It is public knowledge that the metropolitan area is in crisis as to well water contamination. Of 29 suburbs whose wells were tested by the State Department of Health, 50% of all wells were contaminated by nitrate concentration. It is also public knowledge that about four years ago the State Department of Health tested wells in a part of White Bear Township which has since been annexed to the city and found 12% of all wells contaminated by bacteria. This could be the cause of an epidemic and is a serious menace to public health. We hold that the well water crisis now the subject of legislative investigation by the Interim Commission on Municipal Laws, by the Governor's Advisory Committee on Suburban Problems, by the State Department of Public Health, by the Metropolitan Planning Commission, by the Minneapolis-St. Paul Sanitary District, by the State Department of Conservation, by the Minn. League of Women Voters and other official and private organizations poses the problem of what governing device is required to assure pure water in the rapidly expanding metropolitan area where houses are erected in such close proximity without uniform or adequate controls of the construction of wells, cesspools and septic tanks. We hold that the well contamination crisis in the metropolitan area is now a factor in determining whether or not an area is properly conditioned for municipal government based upon need of an effective unit of local government to protect public health. We hold that where the area to be annexed is in the part of the metropolitan area within close proximity to contaminated wells one of our considerations must be the comparative adequacy of municipal or town government to protect public health. We hold that in an urban township, as defined by Section 5, the test of what territory is properly conditioned for municipal government is the comparative ability of the municipal or township form to meet the needs of the people in the area. The question becomes relative where the township is already exercising municipal powers.

Demographers estimate that more than two-thirds of the American population will live in urban centers within the next 20 years. The Twin Cities Metropolitan Planning Commission estimates that this metropolitan area will increase in population by 800,000 people by 1980. This population must be anticipated and plans must be made to meet its needs. Within the metropolitan area it is necessary to furnish the tools of government which can meet problems as they arise rather than to allow other local problems to become aggravated to the extent that the well contamination problem has now reached critical proportions. We hold that in the center of the metropolitan area the problems created by the close proximity of living extend into the remaining agricultural property and require that the larger public interest be considered rather than the narrower consideration of whether each section or half section is itself sufficiently urbanized to require immediate municipal attention.

The Supplementary Report of the North Carolina Study Commission states the problem succinctly:

"Private wells may provide high quality water today. Tomorrow the water table may drop or sewage effluent may make ground water unsafe. Thus one question is whether the extension of municipal systems should be delayed until a health emergency actually arises, or whether land undergoing development should be provided with such facilities before an emergency arises.

"This discussion of need can be extended to other situations. Ribbon development leading from a city often creates traffic congestion or law enforcement problems that the sheriff with the help of the highway patrol cannot effectively handle. Should municipal police protection be delayed until critical problems arise or be extended while the development is taking place? And the same analysis can be extended to other municipal services." (p.7)

Planning and zoning are required to anticipate future growth. The advent of the developer and subdivider to construct the homes for the increased population require planning, zoning, subdivision regulation, water, sewage, and other services in the unincorporated as well as the incorporated area sufficient to protect the public interest. The recent action of the Federal Housing Administration and Veterans Administration in denying future FHA and VA mortgage loan commitments on homes in areas not having a community water system is evidence of the aggravation of the problems with the present multiplicity of local boundaries.

The vast freeway construction program introduces additional considerations. It is public knowledge that the plans of the Minnesota Highway Department envisage construction of the freeway along the western boundary of the area approved for annexation election shown on the map. (the freeway through White Bear Township will go along or on the present Centerville Road with interchange at Highway 96 and the North Ramsey County line.)

In sum, the future criteria for what territory is properly conditioned and requires the tools of municipal government to meet the problems of a swiftly expanding metropolitan population must be flexible enough to anticipate growth, to protect homeowners and the public interest as growth occurs and to serve the public interest. Progress requires that people who settle in a metropolitan area, and live from the employment it provides, assumes the responsibilities that accrue with metropolitan living. Over the long haul, their own best interest will thus be served.

We comment as follows on the municipal suitability of each of the component parts of the area ordered for annexation election on the attached map:

(1) Area H contains the territory described in the petition for annexation. No challenge was made to the conditioning of this territory for municipal government. The record discloses that it is 50% developed as residences, has no separate business life of its own, and has a unity of interest with the City of White Bear Lake. Many of its residents work there. Most of its shopping occurs there. Its people participate in

civic and community life including attendance at the White Bear Lake churches and schools. Standing alone, this area would meet any test for suitability for municipal government that has been expounded by the Minnesota courts or in any annexation or incorporation procedure prescribed by statute through the years. Its population density equals that of the annexing municipality.

(2) Area E contains the North Bald Eagle area which has previously been a part of the City of White Bear Lake and was returned to the township only because this territory became geographically separated from the municipality when the annexation of the intervening property which connected it thereto was invalidated by the White Bear Supreme Court decision in March, 1959. When the litigation was tried in Ramsey County District Court involving the validity of the previous annexation of Area E, respective counsel stipulated that one of the matters at issue was not the lack of suitability of Area E for municipal government. This understanding was repeated in the presence of the Commission at the reconvened hearings. Suffice to say that no attack was made upon the suitability of this area for annexation to White Bear Lake in the present proceedings, that portions of it are platted and devoted to residential purposes and appear to be a normal extension to the North of the municipal boundaries of White Bear Lake, that this area contains the same unity of interest with the platted areas of the City of White Bear Lake as does Area H, and that the testimony of some of the witnesses of White Bear Township indicates that its land is being reserved for ultra home development which readily indicates that it is in the period of transition to residential development. These people, the same as those in Area H, shop in White Bear Lake, participate in civic and community life, attend the White Bear churches and schools, and otherwise are a part of an urban pattern of life. The swamp areas within Area E can best be controlled and sanitation advanced by being included within municipal limits. The White Bear Supreme Court decision holds that swampland may be included within municipal limits and this has always been the law.

(3) Area A would be an unincorporated block of land far removed from White Bear Township were Areas H and E to become a part of the municipality of White Bear Lake. This area can best be served by the City of White Bear Lake and is an obvious urban pocket, or hole in the doughnut, which in a metropolitan area becomes a proper part of the urban complex to be subjected to municipal government.

(4) Area B contains strongly developed residential sections which in the normal process of urban development would undoubtedly already be a part of the City of White Bear Lake were it not ~~xxxx~~ for the inflexibility of previous annexation procedures. No challenge has been made here as to the suitability of this area for municipal government. Rather, the argument of White Bear Township and witnesses opposing annexation has simply

been that the township of White Bear is adequately meeting the problems, or will furnish a water system or any other necessary services if they are demanded by the people. This is hardly the test of when municipal government is required. We do not think that Area B requires further discussion since a look at the platted sections on the map readily indicate its suitability. Its population density and its development are comparable to those of the City of White Bear Lake and of Area H.

(5) Area C comprises the corridor lying between Bald Eagle Lake and Area E on the North and the limits of the City of White Bear Lake on the South. We have discussed at length the considerations which have changed the test of suitability for municipal government since enactment of Section 5. It is clear not only from the White Bear Supreme Court decision but also from study of the map and the testimony before us that the eastern portion of Area C is suitably conditioned for municipal government under any test which has been enunciated in Minnesota from the time of the Minnetonka Village decision. As to the westerly portion of Area C, we find that it is bounded on the South by the City of White Bear Lake, on the North by North Bald Eagle which has previously been a part of the City of White Bear Lake (the suitability of which has never been contested in court), on the East by Areas C and H which are residentially developed of the same general population density as the City of White Bear Lake and on the West by the Village of North Oaks (not taking into account the swamp which is Area F). Thus it is surrounded on every side by land which is suitably conditioned for municipal government. The inescapable inference is that this area itself is an urban pocket in the very heart of the metropolitan area which will succumb to urban development by all of the rules of previous urban growth here and elsewhere. (The language earlier quoted from the St. Anthony Village decision is appropriate relative to the inducement to farmers owning large areas to sell smaller tracts as urbanization continues.) We would look away from the rapid urban trend in the Twin Cities metropolitan area (and in every American metropolitan city, completely surrounded by areas devoted to residential development, and in the first ring of suburban development, is not suitably conditioned to be properly subjected to municipal government. No hardship will be worked upon the residents of the westerly part of Area C from the standpoint of municipal taxes by being annexed to the City of White Bear Lake. Municipal taxes are substantially similar to those of White Bear Township and the improved services even to land which contains remaining farms will be commensurate with the increase of taxes involved. Residents of the annexation area will all benefit from lower insurance rates (Class 7 instead of Class 9). It would be impossible to bring municipal boundaries within the metropolitan area into a constructive and sensible pattern without including some area which still contains farms where the prospect is for later subdivision and residential development.

(6) Area F is a small parcel of land containing a swamp which obviously should be

served by either township or municipal government, whichever it fits most closely geographically, so that necessary services can be performed and sanitary control effected. The fact that it is already surrounded by the Village of North Oaks on three sides argues strongly for its suitability for municipal government under any test because obviously even before swift urban expansion swamps could not be detached from municipalities in metropolitan areas and left for the owners to shift for themselves or to be serviced by township government at a distance.

We cannot pass without taking note of the fact that those living within the Gem Lake area stoutly maintained to the Ramsey County District Court and the Minnesota Supreme Court that they could not validly be included in an area subjected to the government of the City of White Bear Lake by annexation because they were not properly conditioned for municipal government. Following the issuance of the Supreme Court decision, the metamorphosis was instant. Presumably the same people then immediately found that their area was so conditioned as to be properly subjected to municipal government. That is the only interpretation which can be placed upon their subsequent action in incorporating the Village of Gem Lake. This village is wholly carved from property which had just been ruled to be ineligible for municipal government at the request of its residents. The petition to incorporate was filed between March 6, when the Supreme Court decision was handed down, and April 24, 1959, when Chapter 686 became effective less than seven weeks later. This emphasizes the perfidy of previous annexation procedures, and of the piecemeal approach which under previous laws caused the Supreme Court to consider each parcel separately as to the suitability test.

If Gem Lake was not suitable for annexation to the City of White Bear Lake, it is less suitable for incorporation as a separate village. For annexation purposes, it at least had the unity of interest with an adjoining city having a city hall, a staff of employees, a police and fire department, churches, schools and an established business district, and the other normal appurtenances of a municipality. One of the considerations in enacting Chapter 686 was to prevent further fractionating of the metropolitan area (which now contains more than 107 cities and villages within a five-county area) by providing for annexation to existing cities and villages where they can serve an area better than it can be served by the incorporation of small or uneconomic new villages. We ironically might say that if Gem Lake has become qualified for municipal government since the Supreme Court said that the property within it was not so conditioned on March 6, 1959, the same transformation has taken place in the westerly portion of Area C on the map. It is not necessary for us to rest on this irony because we are now operating under Laws 1959, Chapter 686, Section 5 which gives us the mandate to correct the White

Bear boundary situation and to bring an urban town such as this within the limits of municipal government where sound discretion indicates that this can and should be accomplished.

In altering the boundaries of the area proposed for annexation, we rely on the merged proceedings resulting from the petition and our consideration of our duty pursuant to Section 5. We likewise rely on the authority delegated us in Section 3, Subdivision 3 to alter the boundaries of the area to preserve its symmetry. We might pause to wonder why the Minnesota Legislature included symmetry as a test of what area should be annexed unless we looked at the strange configuration of White Bear Township which has resulted from gerrymandering. The symmetrical area obtained from including the entire area North of the municipality in the annexation election is not alone a compact unit on the map but a cohesive unit for future orderly urban growth and provision of municipal services.

Since this involves Ramsey County, it is interesting to consider a dissent written in 1922 in State ex rel Hilton v. City of Nashwauk, et al, 151 Minn. 534, wherein Justice Oscar Hallam, joined by Chief Justice Calvin L. Brown, took exception to the writ of ouster issued in the incorporation of Nashwauk:

"Courts should not be too exacting in requiring that lands within the limits of a city be presently subjected to urban uses. It is well known that there are many creditable cities in the state that could not pass too rigid a test. The capitol city of the state has for more than thirty-five years had an area of approximately fifty-five square miles. Much of it is still agricultural, grazing and timberland. It has common farms, dairy farms, and even large tracts of unoccupied land. It is a matter of history that in 1885 more than thirty square miles were added at one time with only a few little clumps of inhabitants on the whole tract, and there was already within the city limits much land unoccupied for agricultural purposes. There were single farms covering a whole square mile. There was virgin forest not even cut over. There were fairgrounds, private race courses and large preserves for private country clubs. Its fauna did not rival that of the Nashwauk country but there were well-known hunting grounds and some of the increase of area was made to 'forestall' a rival. It probably could not have stood the test now applied, unless by reason of the fact that there was a special act of the Legislature, yet no one ever thought it a case for challenge by proceedings in the nature of quo warranto or otherwise."

We recognize that this was the dissent, not the law of the case. But it illustrates an early recognition nearly 40 years ago that expansion of municipal boundaries should be the preface to urban development, not a cleanup operation to solve the problems created by urban growth in unincorporated areas. The township contends in the brief submitted by counsel that it is presently and adequately supplying each of the six services upon which finding is called for in Section 3, Subd. 3. If we grant this is true, it does not defeat the petition for annexation. We have already commented that if an urban town is adequately supplying municipal services, this does not preclude establishment of

municipal government in the area. It rather indicates that the area is urban in character and properly conditioned for municipal government. It is further contended in the township brief that although the township concedes that the City of White Bear can feasibly and practicably provide all the government services referred to in factor 7 of Section 3, Subd. 3, this is not at issue if the township is adequately supplying these services. We reject this assertion as being contrary to law. The township further contends that before the Commission can order an annexation election, it must find that the annexation is to the best interest of both the city of White Bear and the township, that irrespective of whether the annexation is to the best interest of the city, the petition must fail if annexation is not to the best interest of the township. This is apparently a misconception of the language of the language in Section 3, Subd. 3 which provides that "the Commission shall approve if it finds that the property to be annexed is so conditioned as to be properly subjected to municipal government and if it finds that the annexation would be to the best interest of the village or city and of the territory affected." It is clear that the territory affected refers to the territory for which an annexation election is ordered. We agree that the Commission should consider the effect upon the remaining township area after annexation but this is not the statutory mandate to the Commission. Such a consideration is incidental. The findings which the Commission must make on this subject is that the annexation is to the best interest of the municipality and of the territory affected. (the annexation area)

We find that the entire area for which an annexation election is ordered is properly conditioned for municipal government and that the best interest of the City of White Bear Lake and of the annexation area will be served by annexation. We have carefully considered the effect on the remaining portion of White Bear Township if the election is favorable to annexation. We are of the opinion that Areas 1-11 on the map should be annexed by appropriate procedure by the City of White Bear Lake and the Village of Vadnais Heights. We believe that the remaining areas of White Bear Township can adequately govern itself until further consideration can be given under Section 5 as to the remaining disposition of White Bear Township.

All of White Bear will best be served if stillness is brought to the annexation wars. Annexation should not be the subject of competition for revenue or similar considerations. Effective local government will be advanced if sensible local boundaries are established.

BY THE FULL COMMISSION

Joseph Robbie  
Chairman