

A-2947 Jordan
A-2948 Jordan
A-2950 Jordan

BEFORE THE MUNICIPAL BOARD
OF THE STATE OF MINNESOTA

Thomas J. Simmons	Chairman
Robert W. Johnson	Vice Chairman
Gerald J. Isaacs	Member
Roland Boegeman	Ex-Officio Member
Marvin Oldenburg	Ex-Officio Member

IN THE MATTER OF THE RESOLUTION)
FOR ANNEXATION OF CERTAIN LAND)
TO THE CITY OF JORDAN)

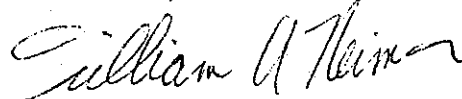
DENIAL OF MOTION
FOR REHEARING

The request by the City of Jordan for a rehearing regarding the above-entitled matters is hereby denied on the following grounds:

- A. The City of Jordan did not comply with the procedural requirements of the Minnesota Municipal Board's Rules of Practice (Rule 19b).
- B. Even if there had been compliance with these Rules, the City of Jordan's request failed to set forth sufficient grounds upon which a rehearing can be granted.

Dated this 4th day of March, 1977

MINNESOTA MUNICIPAL BOARD
Suite 165 Metro Square Building
Saint Paul, Minnesota 55101



William A. Neiman
Executive Secretary

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 TO THE CITY OF JORDAN)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

The above-entitled matter came on for hearing before the Minnesota Municipal Board pursuant to Minnesota Statutes 414, as amended, on June 28, 1976 at Jordan, Minnesota and was continued from time to time. The hearing was conducted by Chairman Thomas Simmons. Also in attendance were County Commissioners Roland Boegeman and Marvin Oldenburg, ex-officio members of the Board. The City of Jordan appeared by and through Lee Labore and the Township of Sand Creek appeared by and through Lou Moriarity. Testimony was heard and records and exhibits were received.

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

FINDINGS OF FACT

1. On May 3, 1976, a copy of a Notice of Intent to annex was filed with the Minnesota Municipal Board by the City of Jordan. Further procedural discussion is contained within the accompanying memorandum which is hereby incorporated by reference. The Notice of Intent contained all the information required by statute including a state-

intersection with the East line of said Southeast quarter thence South along said East line to the point of beginning, all in Sand Creek Township, Scott County, Minnesota.

An objection to the proposed annexation was received by the Minnesota Municipal Board from Sand Creek Township on March 30, 1976. The Municipal Board upon receipt of this objection conducted further proceedings in accordance with M.S. 414.031, Subds. 3 & 4 as required by M.S. 414.033, Subd. 3.

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

3. Geographic Features

- a. The area subject to annexation is unincorporated and abuts the City of Jordan.
- b. The total area of the City of Jordan is 1,260 acres. The total area of the territory subject to annexation is 33 acres.
- c. The degree of contiguity of the boundaries between the annexing municipality and the proposed annexed property is as follows: approximately 60%.
- d. The natural terrain of the area, including general topography, major watersheds, soil conditions, rivers, lakes and major bluffs is as follows: Land is cut off from the rest of the city by a highway, a railway, and a stream. Also, the topography is irregular and the above mentioned highway divides the area under consideration.

4. Population Data

- a. The City of Jordan
 - 1) Past population growth: Slow growth through 1960 (1,479 pop.)
 - 2) Present population: In 1970, 1,836 persons.
 - 3) Projected population: By 1980, 2,500 persons.
- b. The area subject to annexation has approximately 7 families

County's plan of development near urban centers. City plans include residential for this area. City is considering a comprehensive plan and expects this area to remain residential.

b. What land use controls are presently being employed.

1) In the City of Jordan

a. Zoning - Yes

b. Subdivision Regulations - Yes

c. Housing and Building Codes - State Building Code

d. Other - Building Inspector, State Plumbing Code

2) In the area to be annexed:

a. Zoning - Sand Creek has zoning

b. Subdivision Regulations - Yes

c. Other - Sand Creek has a Planning Commission

c. Does the city require future growth space? Yes, Metropolitan Council projects approximately 125 more households in Jordan by 1980. The growth will further accelerate by 1990. If so, will the area subject to annexation provide the City of Jordan with necessary growth space? Yes, it is projected that this area can provide 13 residential units in addition to those already situated there. However, given alternative, better situated, residential land in Jordan, it is not clear that these units are required.

d. The present pattern of physical development is:

1) In the City of Jordan

a) Residential - Yes

b) Industrial - Yes

c) Commercial - Yes

d) Institutional - Yes

2) In the area subject to annexation: There is some

- 1) Water - No
- 2) Sewer - No
- 3) Fire Protection - No, contracts with Jordan
- 4) Police Protection - A constable
- 5) Street Improvements - Unknown
- 6) Street Maintenance - Yes
- 7) Recreational - Unknown

b. Presently, the City of Jordan provides its citizens with the following services:

- 1) Water - Yes
- 2) Sewer - Yes
- 3) Fire Protection - 27 person, volunteer force, three pumpers, other vehicles, including new rescue unit.
- 4) Police Protection - 4 full-time officers, 24 hour service, 2 cars
- 5) Street Improvements - Yes
- 6) Street Maintenance - Various equipment, 2 full-time persons
- 7) Recreational - Year around recreational program, 2 parks another being developed.

c. Presently, the City of Jordan provides the area subject to annexation with the following services:

- 1) Water - No
- 2) Sewer - No
- 3) Fire Protection - Yes, by contract with Sand Creek, including entire township for over 20 years.
- 4) Police Protection - Informal assistance
- 5) Street Improvements - No
- 6) Street Maintenance - No
- 7) Recreational - All programs and facilities available.

d. Plans to extend municipal services to the area subject to annexat

to annexation include the following: Property can be serviced for sewer by lateral extensions from present system. System designed to service 8,000 people.

Jordan's water supply is also sufficient to service this area and existing lines are nearby. Street Department can service area; however, many services would be extremely difficult to provide because of Highway #169, a railroad track, and a creek.

e. There are existing or potential pollution problems which are: It is likely that the area has a sandy gravel, soil condition, increasing the likelihood that private system will

7. Fiscal Data

- a. In the City of Jordan, the assessed valuation trend is rising, the mill rate garnered \$2.89 per \$100 valuation and the bonded indebtedness as of December 31, 1975 is \$1,173,000, \$715,000 being retired through special assessments.
- b. In the area subject to annexation, the assessed valuation of all five (5) parcels is \$90,000 (over 3 million in the entire township).
- c. The mill rate trends in the following units of government are:
 - 1) County - In 1974, \$3.43 per \$100 valuation
 - 2) School Districts - In 1974, \$4.90 per \$100 valuation
 - 3) Sand Creek Township - In 1976, 2.73 mills
- d. Will the annexation have any effect upon area school districts? No.

CONCLUSIONS OF LAW

1. The Minnesota Municipal Board duly acquired and now has jurisdiction of the within proceeding.
2. The area subject to annexation is not about to become urban or suburban in character.
3. Municipal government is not required to protect the public health, safety, and welfare in the area subject to annexation.
4. The best interest of the City of Jordan and the area subject to annexation will not be furthered by annexation.
5. An order should be issued by the Minnesota Municipal Board denying the annexation proposal.

O R D E R

IT IS HEREBY ORDERED: That the annexation proposal described herein is denied.

IT IS FURTHER ORDERED: That the effective date of this order

A-2331 Jordan
A-2948 Jordan
A-2950 Jordan
A-2329 Jordan

M E M O R A N D U M

Sand Creek Township has moved that the Municipal Board dismiss four proceedings initiated under Minnesota Statute 414.033, Subdivision 5. The Board took this matter under advisement. The township alleges that, in each instance, its right to proper notice under the statute was denied. This motion, without precedent, has required that the Municipal Board closely examine both the law and the underlying policies of this chapter and section.

Chapter 414 was enacted nearly 20 years ago to reform the haphazard adjustment or creation of urban boundaries. The basic law, improved by the Legislature from time to time, has functioned well and has remained largely intact. There are a variety of proceedings available for the expansion of a municipality into a township including annexation, consolidation, orderly annexation, and annexation by ordinance. It is the latter section which is the concern of this memorandum.

Annexation by ordinance, Minnesota Statutes 414.033, was created in order that relatively simple procedures would be available to various parties when a small-scale annexation appeared in order. Subdivision 5 permits annexation by ordinance to be initiated by a petitioning landowner, and it is this subdivision which is the focus of this memorandum.

Minnesota Statute 414.033, Subdivision 5, can only be utilized when certain conditions are met. These include: a petition by the landowner or a majority of landowners; platted land or unplatted land having an area of less than 200 acres; an abutting municipality; and, certain notice and hearing requirements. It is only the "notice" factor which concerns the township. The other conditions, the town

I. A-2331 (Joachim Property)

1. A petition is signed and dated September 28, 1972.
2. Municipal Board receives a copy of this petition January 8, 1973.
3. On July 14, 1976, a new petition requesting annexation is filed by the same property owner for the identical area.

II. A-2950 (O'Day Property)

1. A petition is signed and dated June 19, 1974.
2. Municipal Board receives a copy of this petition May 3, 1976.
3. On July 14, 1976, a new petition is filed requesting annexation by the same property owner for the identical area.

III. A-2949 (Fuhrman Property)

1. A petition is signed and dated September 5, 1975.
2. Municipal Board receives a copy of this petition May 3, 1976.
3. On July 21, 1976, the Municipal Board with the consent of all parties, annexes this parcel.

IV. A-2329 (Noyes Property)

1. A petition is signed and dated on December 20, 1972.
2. Municipal Board receives a copy of this petition January 5, 1973
3. On July 26, 1976, a new petition is filed requesting annexation by the new property owner (Blomquist) for the identical area.

On February 2, 1976, Jordan annexed by ordinance the parcels in question. On February 23, 1976, the Scott County Sheriff, at Jordan's request, served copies of the original petitions on the Township of Sand Creek which submitted objections to the Municipal Board on March 30, 1976.

objections to the Municipal Board on March 30, 1976.

The Board, in its discretion, consolidated the six proceedings for hearing purposes only. The first hearing was held June 28, 1976 and was continued from time to time. During the hearing process, the township and the city negotiated two consensual annexations. These included the Fuhrman property and a parcel immediately to the south which will be utilized by a church.

Sand Creek Township has strenuously objected to all the proposed annexations, except for the negotiated annexations, on the grounds that the parcels do not meet the substantive criteria required for annexation. These issues are addressed in the various orders. Further, the township has moved that the four proceedings initiated by petition be dismissed by the Board because of failure by the municipality to serve proper notice on the township. More specifically, in its initial objections, argument by counsel during the proceeding, and in a final, responsive memorandum, Sand Creek Township made a series of arguments regarding notice. These may be summarized as follows:

1. The annexation ordinances, which were adopted prior to the expiration of the 60-day objection period, are a nullity.
2. The municipality has the legal duty to supply a copy of the petition to the affected township.
3. The copies of the petition had to be delivered to the township within 60 days after the original petition had been filed with the municipality.
4. The time period between the execution of the petitions and the filing of the copies with the town board is so substantial that equitable relief, such as laches, ought to apply.

The Board denies the motion to dismiss:

approve these annexations. The Board simply treated the serving of copies of the petitions on the township as the proper initiation of the proceeding, and the resulting notices and hearings, culminating in the hearings begun June 28, 1976, were the result of Jordan's previously adopted ordinances being, in fact, a nullity.

2. Minnesota Statute 414.033, Subdivision 5, does require that the township receive notice but does not specify the party who is responsible for carrying out this function. Still, the plain language would indicate that it is the petitioner, not the city, who bears this responsibility.

The subsection requires that:

"the property owner . . . may petition the municipal council to have such land included within the abutting municipality and shall file copies of the petition with . . . the town board."

Despite the law, the typical practice has been for municipalities to deliver the copies. This is, eventually, the action that the City of Jordan took. Since the copies of the petition were ultimately presented to Sand Creek Township, the question of who should be responsible for delivery of the copies is moot.

3. The most troublesome issue raised by the township involves the question of the delivery period of the copies of the petition. The language is ambiguous. It states:

"If the land is platted, or, if unplatted, does not exceed 200 acres, the property owner . . . may petition the municipal council . . . and shall file copies of the petition with the commission, the town board . . . Within 60 days thereafter, the town board . . . may submit written objections . . ."

Sand Creek Township has argued that this subdivision requires that the township receive copies of the petition within 60 days after the municipality has received the original petition

is almost certainly the event to which the word "thereafter" refers. Clearly, the Legislature must have intended this result since a contrary reading would have a town board dependent wholly upon petitioner's whim or caprice. A responsible petitioner would likely leave such a town board with 50+ days to object, while a tardy or conniving petitioner might leave a town board but one day to make a decision simply by withholding delivery of copies. Further, no harm was done to the township as a result of the delivery, for after finally receiving the copies, the township did object within the 60-day period, and necessary hearings have been conducted.

4. The "laches argument" is without foundation. No harm has been suffered by the township as a result of the delay. Further, the "right" to presently petition for annexation by the landowners is identical to that which existed in September, 1972 and thereafter. Indeed, each of the property owners, during the course of the hearings, submitted new petitions seeking annexation. Although the Board does not believe that the law required this resubmission, it removes any doubts concerning the property owners present intent to be annexed.