

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF ADMINISTRATION  
OFFICE OF MUNICIPAL BOUNDARY ADJUSTMENTS

In the Matter of the Petition for Acceptance  
of Annexation, Exclusion from Incorporation  
and Objection to Incorporation, A-6792  
Egan (January 8, 2003).

**ORDER ON MOTION**

On January 8, 2003, landowner Vincent E. Egan filed his Petition for Acceptance of Annexation, Exclusion from Incorporation and Objection to Incorporation with the Office of Strategic and Long-Range Planning, Boundary Adjustments Division. The Petition requested an order accepting and finalizing the annexation of his land by ordinance. Annexation had been approved by an ordinance of the City of Rogers. As part of the petition, he also requested that his land be excluded from the area proposed for incorporation by the Town of Hassan. Finally, he requested that the matter be assigned to the Office of Administrative Hearings for further proceedings.

On January 30, 2003, the Acting Director of the Office of Strategic and Long-Range Planning delegated the Petition, along with other matters relating to Hassan Township and the City of Rogers, to the Office of Administrative Hearings. The delegation, made pursuant to Minn. Stat. sec. 414.12, subd. 2 (2002) included authority to hold hearings and issue orders, including final orders, in the delegated matters.

On March 27, 2003, a status conference was held before the undersigned Administrative Law Judge. As a result of that status conference, all matters relating to the proposed incorporation and proposed annexations by ordinance were referred to the Honorable Beverly Jones Heydinger for mediation. However, the First Prehearing Order issued by the undersigned Administrative Law Judge on March 31 specified that Egan could file a motion with the undersigned Administrative Law Judge requesting that he be allowed to withdraw from the mediation and that his petition be ruled upon. That Order specified that such a motion could not be filed until at least 30 days had passed from the date of the First Prehearing Order.

On June 20, 2003, Egan did file a motion<sup>1</sup> requesting that his land be excluded from Hassan Township's Incorporation Petition so that he could proceed with the Annexation Petition. Egan's request was served upon all the parties in the case, including the attorney for Hassan Township and the Chair of the Hassan Township

---

<sup>1</sup> Actually, Egan filed a request that he be joined in a Motion, previously filed on May 27, 2003, by other landowners, Mitsch and Weber. That Motion seeks the same relief that Egan seeks. There has been no objection to his request.

Board. No objections have been received, and more than ten working days have now passed.

On June 9, 2003, the Hassan Town Board voted to exclude the Egan property from the town's Incorporation Petition.

Based upon all the files and proceedings herein, and for reasons set forth in the attached Memorandum, which is incorporated herein, the Administrative Law Judge makes the following:

### **ORDER**

1. That the 60 acres of land presently owned by Vincent E. Egan, is hereby excluded from the area proposed for incorporation by the Town of Hassan. These lands are:

The North 60 acres, as measured at right angles to the center line of HCSAH No. 144, Plat 52 (141st Avenue North) of those portions of the following parcels lying South of the centerline of HCSAH No. 144, Plat 52 (141st Avenue North) and Westerly of the centerline of HCSAH No. 13, Plat 29 (Brockton Lane North):

Parcel 1:

The North Half of the Northeast Quarter of Section 13, Township 120, Range 23, according to the United States Government Survey thereof, Hennepin County, Minnesota.

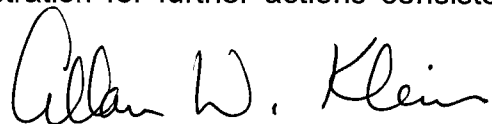
Parcel 2:

That part of the South Half of the Northeast Quarter of Section 13, Township 120, Range 23, lying Westerly of the centerline of HCSAH No. 13, Plat 29, except the South 615.00 feet as measured at right angles to the South line thereof, Hennepin County, Minnesota.

2. That the "stay" of annexation proceedings imposed by Minn. Stat. § 414.033, subd. 6, is hereby lifted with respect to the Egan property identified above.

3. That the Petition for Acceptance of Annexation, Exclusion from Incorporation and Objection to Incorporation is returned to the Municipal Boundary Adjustment section of the Department of Administration for further actions consistent with this Order.

Dated this 1st day of July, 2003.



---

ALLAN W. KLEIN  
Administrative Law Judge

## **MEMORANDUM**

Minn. Stat. § 414.033 sets forth the procedure for a municipality to annex abutting land in an unincorporated area. It provides a variety of procedural steps for the municipality to take including the adoption of an ordinance declaring the land to be annexed. Sometime in the fall of 2002, Egan requested the City of Rogers to annex the subject property. The City did adopt an annexation ordinance in November of 2001.

Minn. Stat. § 414.02 sets forth the procedure for municipal incorporation. It provides that a resolution of the town board may be submitted to the Director of the Office of Strategic and Long-Range Planning. Following a hearing, the Director may order the incorporation, deny the incorporation, alter the boundaries by increasing or decreasing the area to be incorporated or deny the incorporation or a part thereof if any lands would be better served by annexation to an adjacent municipality. Pursuant to Minn. Stat. § 414.02, Hassan Township filed an Incorporation Petition with the Minnesota Office of Strategic and Long-Range Planning on October 17, 2002. The Petition included Egan's land.

Minn. Stat. § 414.033, subd. 6 provides that whenever a proceeding for annexation is initiated under § 414.033 and all or any part of the land is included in another boundary adjustment proceeding pending before the Director, no action on the proceeding for annexation shall be taken by the municipality, unless otherwise provided by an order of the Director, until final disposition has been made of the pending petition. In the case of the Egan property, that means that the proposed incorporation effectively bars any further action on the annexation by ordinance proceeding until the incorporation is resolved. In this particular case, the mediated discussions have been progressing quite successfully, but the volume of detail that needs to be resolved has delayed adoption of any final resolution. While it is hoped that the mediation will result in a successful resolution, the precise timing is unknown. That leaves the Egan property "up in the air".

The Egan property abuts the City of Rogers. The property is approximately 60 acres in size.

The property is better served by annexation to the City of Rogers than remaining a part of Hassan, regardless of whether or not Hassan becomes an incorporated city. Rogers has an operational wastewater treatment facility, and both the sewer system and the treatment facility have the capacity to incorporate flows that might come from the subject property. Hassan, on the other hand, is unsewered (with the exception of a small area served under a joint powers agreement with the City of Rogers) and there is no prospect that the Hassan will be sewerred at any time in the near future unless service comes from the City of Rogers.

The City of Rogers has its own water supply system, consisting of three working wells, with a fourth under construction. The City's water system has adequate capacity to serve the subject property, both in terms of water storage and water delivery.

Hassan, on the other hand, is served by private well systems. Again, at least for the subject property, it is more likely than not that any water service in the near future will come from the City of Rogers.

I am exercising the authority granted by § 414.033, subd. 6 to lift the "stay" imposed by that subdivision to allow for further proceedings on the annexation of the subject property. I am altering the boundaries of the area proposed for incorporation by excluding the subject property because the subject property is better served by the City of Rogers, as provided for in Minn. Stat. § 414.02 subd. 3(d).

I am granting this Motion without an evidentiary hearing because of the substantial material already in the files. Furthermore, I have delayed ruling on this Motion in order to give Hassan Township plenty of time to object to it. No objection has been received from the Township, or any other party. Instead, on June 9, the Hassan Town Board voted to exclude this property from its Petition for Incorporation. Under all the circumstances, it is appropriate to grant the Motion.

**A.W.K.**

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF ADMINISTRATION  
OFFICE OF MUNICIPAL BOUNDARY ADJUSTMENTS

In the Matter of the Petition for  
Exclusion from Incorporation  
and Objection to Incorporation,  
Egan (January 16, 2003).

**ORDER ON MOTION**

On January 16, 2003, landowner Vincent E. Egan filed his Petition for Exclusion from Incorporation and Objection to Incorporation with the Office of Strategic and Long-Range Planning, Boundary Adjustments Division. The Petition requested that an additional 40 acres of his land be excluded from the area proposed for incorporation by the Town of Hassan.<sup>1</sup> He also requested that the matter be assigned to the Office of Administrative Hearings for further proceedings.

On January 30, 2003, the Acting Director of the Office of Strategic and Long-Range Planning delegated the Petition, along with other matters relating to Hassan Township and the City of Rogers, to the Office of Administrative Hearings. The delegation, made pursuant to Minn. Stat. sec. 414.12, subd. 2 (2002) included authority to hold hearings and issue orders, including final orders, in the delegated matters.

On March 27, 2003, a status conference was held before the undersigned Administrative Law Judge. As a result of that status conference, all matters relating to the proposed incorporation and proposed annexations by ordinance were referred to the Honorable Beverly Jones Heydinger for mediation. However, the First Prehearing Order issued by the undersigned Administrative Law Judge on March 31 specified that Egan could file a motion with the undersigned Administrative Law Judge requesting that he be allowed to withdraw from the mediation and that his petition be ruled upon. That Order specified that such a motion could not be filed until at least 30 days had passed from the date of the First Prehearing Order.

On June 20, 2003, Egan did file a motion requesting that all 100 acres of his land be excluded from Hassan Township's Incorporation Petition. Egan's motion was served upon all the parties in the case, including the attorney for Hassan Township and the Chair of the Hassan Township Board. No objections have been received, and more than ten working days have now passed.

---

<sup>1</sup> Earlier, on January 8, 2003, Egan had filed a Petition for Acceptance of Annexation, Exclusion from Incorporation and Objection to Incorporation with respect to the north 60 acres of his 100 acre parcel. The January 16, 2003 filing covered the south 40 acres of the 100 acre parcel.

On June 9, 2003, the Hassan Town Board voted to exclude all 100 acres of the Egan property from the town's Incorporation Petition.

Based upon all the files and proceedings herein, and for reasons set forth in the attached Memorandum, which is incorporated herein, the Administrative Law Judge makes the following:

### ORDER

1. That the 40 acres of land presently owned by Vincent E. Egan, is hereby excluded from the area proposed for incorporation by the Town of Hassan. These lands are:

The South 40 acres, as measured at right angles to the center line of HCSAH No. 144, Plat 52 (141st Avenue North) of those portions of the following parcels lying South of the centerline of HCSAH No. 144, Plat 52 (141st Avenue North) and Westerly of the centerline of HCSAH No. 13, Plat 29 (Brockton Lane North):

Parcel 1:

The North Half of the Northeast Quarter of Section 13, Township 120, Range 23, according to the United States Government Survey thereof, Hennepin County, Minnesota.

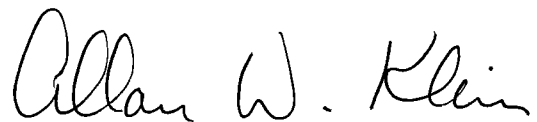
Parcel 2:

That part of the South Half of the Northeast Quarter of Section 13, Township 120, Range 23, lying Westerly of the centerline of HCSAH No. 13, Plat 29, except the South 615.00 feet as measured at right angles to the South line thereof, Hennepin County, Minnesota.

2. That the "stay" of annexation proceedings imposed by Minn. Stat. § 414.033, subd. 6, is hereby lifted with respect to the Egan property identified above.

3. That the Petition for Exclusion from Incorporation and Objection to Incorporation is returned to the Municipal Boundary Adjustment section of the Department of Administration for further actions consistent with this Order.

Dated this 1st day of July, 2003.



ALLAN W. KLEIN  
Administrative Law Judge

## MEMORANDUM

Minn. Stat. § 414.02 sets forth the procedure for municipal incorporation. It provides that a resolution of the town board may be submitted to the Director of the Office of Strategic and Long-Range Planning. Following a hearing, the Director may order the incorporation, deny the incorporation, alter the boundaries by increasing or decreasing the area to be incorporated or deny the incorporation or a part thereof if any lands would be better served by annexation to an adjacent municipality. Pursuant to Minn. Stat. § 414.02, Hassan Township filed an Incorporation Petition with the Minnesota Office of Strategic and Long-Range Planning on October 17, 2002. The Petition included all 100 acres of Egan's land.

Minn. Stat. § 414.033, subd. 6 provides that whenever a proceeding for annexation is initiated under § 414.033 and all or any part of the land is included in another boundary adjustment proceeding pending before the Director, no action on the proceeding for annexation shall be taken by the municipality, unless otherwise provided by an order of the Director, until final disposition has been made of the pending petition. In the case of the Egan property, that means that the proposed incorporation effectively bars any further action on the annexation by ordinance proceeding until the incorporation is resolved. In this particular case, the mediated discussions have been progressing quite successfully, but the volume of detail that needs to be resolved has delayed adoption of any final resolution. While it is hoped that the mediation will result in a successful resolution, the precise timing is unknown.

The Egan property abuts the City of Rogers. The property is approximately 40 acres in size.

The property is better served by annexation to the City of Rogers than remaining a part of Hassan, regardless of whether or not Hassan becomes an incorporated city. Rogers has an operational wastewater treatment facility, and both the sewer system and the treatment facility have the capacity to incorporate flows that might come from the subject property. Hassan, on the other hand, is unsewered (with the exception of a small area served under a joint powers agreement with the City of Rogers) and there is no prospect that the Hassan will be sewerred at any time in the near future unless service comes from the City of Rogers.

The City of Rogers has its own water supply system, consisting of three working wells, with a fourth under construction. The City's water system has adequate capacity to serve the subject property, both in terms of water storage and water delivery. Hassan, on the other hand, is served by private well systems. Again, at least for the subject property, it is more likely than not that any water service in the near future will come from the City of Rogers.

I am exercising the authority granted by § 414.033, subd. 6 to lift the "stay" imposed by that subdivision to allow for further proceedings on the subject property. I am altering the boundaries of the area proposed for incorporation by excluding the

subject property because the subject property is better served by the City of Rogers, as provided for in Minn. Stat. § 414.02 subd. 3(d).

I am granting this Motion without an evidentiary hearing because of the substantial material already in the files. Furthermore, I have delayed ruling on this Motion in order to give Hassan Township plenty of time to object to it. No objection has been received from the Township, or any other party. Instead, on June 9, the Hassan Town Board voted to exclude this property from its Petition for Incorporation. Under all the circumstances, it is appropriate to grant the Motion.

**A.W.K.**