

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition  
of the City of Bovey for the Annexation of  
Certain Land pursuant to Minnesota  
Statutes 414.031(A-7431)

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

The above entitled matter came on for hearing before Administrative Law Judge Raymond R. Krause at 8:30 a.m. on Monday, June 18, 2007 at Bovey City Hall, 402 Second Street, Bovey, Minnesota. The hearing ended on that day. The hearing was recorded digitally. The final closing statement was received on June 20, 2007 and the record closed on that date.

Chad Sterle and John P. Dimich, Dimich, Swanson & Sterle, 102 N.E. 3<sup>rd</sup> Street, Suite 120, Grand Rapids, Minnesota 55744 appeared on behalf of the Petitioner, City of Bovey.

Mitchell Brunfelt, Colosimo, Patchin, Kearney & Brunfelt, Ltd., Law Center Building, 301 Chestnut Street, Virginia, Minnesota 55792 appeared on behalf of Respondent, Trout Lake Township.

Kent E. Nyberg, Kent E. Nyberg Law Office, Ltd., 20 N.E. Fourth Street, Suite 101, Grand Rapids, Minnesota 55744 appeared on behalf of the City of Taconite and Iron Range Township.

**STATEMENT OF ISSUE**

The issue in this proceeding is whether the Petition for Annexation should be granted based upon the factors set out in statute.<sup>1</sup> The ALJ finds that the Petition should be denied.

Based upon all of the testimony, exhibits and the record in the proceeding, the Administrative Law Judge makes the following:

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<sup>1</sup> Minn. Stat. § 414.031, subd. 4.

## FINDINGS OF FACT

### Procedural History

1. On May 11, 2006, the City of Bovey filed a petition with the Municipal Boundary Adjustment Unit ("MBA") seeking the annexation of approximately 720 acres of property located in Trout Lake Township and Iron Range Township ("Subject Properties"). The area proposed for annexation is described as follows:

The following parcels ("Iron Range Property") in Itasca County, State of Minnesota, Township 56, Range 24:

- (1) Northwest Quarter of the Southwest Quarter (NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ), Section 27
- (2) Southwest Quarter of the Southwest Quarter (SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ), Section 27
- (3) Northwest Quarter of the Southeast Quarter (NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ), Section 28
- (4) Southwest Quarter of the Southeast Quarter (SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ), Section 28
- (5) Northeast Quarter of the Southeast Quarter (NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ ), Section 28
- (6) Southeast Quarter of the Southeast Quarter (SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ ), Section 28
- (7) Northeast Quarter of the Northeast Quarter (NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ), Section 33
- (8) Southeast Quarter of the Northeast Quarter (SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ), Section 33
- (9) Northeast Quarter of the Southeast Quarter (NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ ), Section 33
- (10) Southeast Quarter of the Southeast Quarter (SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ ), Section 33
- (11) Northwest Quarter of the Northwest Quarter (NW  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), Section 34
- (12) Southwest Quarter of the Northwest Quarter (SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ ), Section 34

(13) Northwest Quarter of the Southwest Quarter (NW ¼ SW ¼), Section 34

(14) Southwest Quarter of the Southwest Quarter (SW ¼ SW ¼), Section 34

The following parcels ("Trout Lake Property") in Itasca County, State of Minnesota, Township 55, Range 24:

(1) Northwest Quarter of the Northwest Quarter (NW ¼ NW ¼), Section 3

(2) Southwest Quarter of the Northwest Quarter (SW ¼ NW ¼), Section 3

(3) Northeast Quarter of the Northeast Quarter (NE ¼ NE ¼), Section 4

(4) Southeast Quarter of the Northeast Quarter (SE ¼ NE ¼), Section 4

2. The Petition for Annexation incorrectly described all of the Subject Property as being located in Township 56, which is Iron Range Township. One-hundred-sixty acres of the Subject Property is actually located in Trout Lake Township, which is Township 55. The subsequent notices in this proceeding perpetuated this error.

3. On May 30, 2006, the City of Taconite and Iron Range Township filed with the MBA a joint resolution designating and requesting the immediate annexation, pursuant to Minn. Stat. § 414.0325, of the 560 acres of Iron Range Township included in the A-7431 Bovey docket. The joint resolution, which was signed on May 5, 2006 by the Township Board and on May 8, 2006 by the City of Taconite. The resolution provided that no alteration of the described boundaries or consideration by the Director of Municipal Boundary Adjustments (the Director) was necessary.<sup>2</sup>

4. On June 1, 2006, a Notice of Hearing was issued by the MBA and duly published by the Scenic Range NewsForum for two successive weeks, on June 22, 2006 and June 29, 2006.

5. On June 19, 2006, the Director issued a memorandum stating that he was declining to issue an order pursuant to the City of Taconite and Iron Range Township's joint resolution. Instead, he ordered that the parties to the first petition pursue hearing and deliberative procedures pursuant to Minn. Stat. §§ 414.031 and 414.09.

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<sup>2</sup> Hearing Ex. W (Respondents' hearing exhibits are designated with letters; Petitioner's hearing exhibits are designated with numbers).

6. The hearing was opened on July 6, 2006 and was immediately continued to an indefinite date.

7. On July 7, 2006, the City of Taconite made a formal request to be a party in this proceeding.

8. The parties were unable to resolve the contested issues through mediation.

9. In a letter dated April 16, 2007, Larry C. Minton, the mediator for the parties in this matter, contacted the Municipal Boundary Adjustments Office informing that office that the mediation had reached an impasse.

10. On April 24, 2007, this matter was referred to Administrative Law Judge Raymond R. Krause for a hearing.

11. A pre-hearing conference was held on May 10, 2007. At that time the hearing was scheduled for June 18 and 19, 2007.

12. On May 17, 2006, a Notice of Reconvened Hearing was issued by the Office of Administrative Hearings and duly published by the Scenic Range NewsForum for two successive weeks, on June 7, 2007 and June 14, 2007.

13. The Reconvened Hearing was conducted on June 18, 2007 and the hearing record closed on June 20, 2007 with the receipt of the post hearing briefs submitted by the City of Bovey and the City of Taconite.

### **Population**

14. According to a 2006 census, the population of Bovey is approximately 715.<sup>3</sup>

15. The population of Taconite is approximately 315.<sup>4</sup>

16. There are no people living in the subject Trout Lake Property.

17. There is one person living in the subject Iron Range Property.

### **Physical Features Generally**

18. The Subject Properties are located in the part of northern Minnesota generally known as the Iron Range. They are in Itasca County, where, beginning in around 1900, iron ore mining became a dominant, prosperous industry.<sup>5</sup>

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<sup>3</sup> Testimony of Tiffany Johnson.

<sup>4</sup> Hearing Ex. X.; Testimony of Michael Troumbly.

<sup>5</sup> Hearing Ex. 3.

19. Much of the land on the Subject Properties is filled with mine pits, tailings piles and wetlands, rendering the land unsuitable for development.

20. Bovey and Taconite are small cities; however, most of the Subject Properties are uninhabited and rural in character.

21. The eastern boundary of Bovey's corporate limits is contiguous with the western boundary of the Subject Properties.<sup>6</sup>

22. The boundary of the platted area of the City of Bovey is approximately 1 mile west of NE ¼ NE ¼, Section 33 and SE ¼ NE ¼, Section 33 of the Iron Range Property.<sup>7</sup>

23. The nearest platted section of the City of Bovey is approximately 1 ½ miles from the western edge of the Trout Lake Property.<sup>8</sup>

24. The southern boundary of Taconite's corporate limits is contiguous with the northern boundary of the Iron Range Property.<sup>9</sup>

25. The boundary of the platted area of the City of Taconite is approximately ¾ mile north of the northern boundary of the Iron Range Property.<sup>10</sup>

26. Minnesota Steel and Excelsior Energy each have proposed projects in the area of the Subject Properties. The Minnesota Steel project would be built in Nashwauk and the Excelsior Energy project would be built in Taconite. If those projects proceed, officials anticipate that the projects and their associated supporting business will require about 6,000 new housing units.<sup>11</sup>

## **TROUT LAKE PROPERTY**

### **Physical Features of Trout Lake Property**

27. The terrain in the Trout Lake Property is composed generally of rough mine dumps, tailings ponds, fields and woods.<sup>12</sup>

28. The soils in the Trout Lake Property are described as "mine dumps and Warba series soil, which consists of deep, well-drained, moderately, slowly permeable soils on glacial moraine and glacial till plains."<sup>13</sup>

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<sup>6</sup> Hearing Ex. 1.

<sup>7</sup> *Id.*

<sup>8</sup> Testimony of Michael Bibich and Hearing Ex. 1.

<sup>9</sup> Test. of M. Troumbly.

<sup>10</sup> *Id.*

<sup>11</sup> Testimony of John Mattonen and Test. of M. Bibich.

<sup>12</sup> Hearing Ex. A.

<sup>13</sup> Hearing Exs. A, G and H.

## Physical Development, Planning and Intended Uses for Trout Lake Property

29. The southwest quarter of the northwest quarter, section 3 (southern quarter of section 3 property) in the Trout Lake Property is used primarily as a disposal site for the sludge by-product created by the nearby waste water treatment facility owned by the Coleraine-Bovey-Taconite Joint Wastewater Commission (Commission).<sup>14</sup>

30. The Commission has used the southern quarter of the section 3 property to dispose of the sludge for approximately 20 years.<sup>15</sup>

31. The northern quarter of the section 3 property is undeveloped and used by some for hunting or other casual recreation.<sup>16</sup>

32. The two properties located in the northeast and southeast quarters of the northeast quarter, section 4 (section 4 properties) in Trout Lake township are owned by RGGS Land & Minerals, Ltd. Aside from an access road from the waste water treatment facility to the sludge disposal site that crosses the RGGS properties, the properties are not developed at all.<sup>17</sup>

33. The City of Bovey initiated the annexation of the Trout Lake Property because it was concerned that Trout Lake Township might change the zoning for the section 3 properties to prevent further disposal of sludge there; or it might begin to charge for the disposal of sludge.<sup>18</sup>

34. An expansion is currently planned for the wastewater treatment plant which will bring the plant into compliance with environmental regulations. The Commission anticipates increased long-term need for the sludge disposal site on both of the section 3 properties.<sup>19</sup>

35. Sludge is transported by manure-spreading truck and spread over approximately 60 acres of the section 3 properties. The section 4 properties are also considered prime land for spreading the sludge.<sup>20</sup>

36. The Minnesota Pollution Control Agency regulates and permits the Commission's disposal of waste water treatment sludge.<sup>21</sup>

37. There are no houses or businesses on the Trout Lake Property.<sup>22</sup>

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<sup>14</sup> Hearing Ex. A, P and Q.; Test of M. Bibich.

<sup>15</sup> Testimony of Kevin Odden.

<sup>16</sup> Test. of T. Johnson.

<sup>17</sup> Hearing Ex. A, N and O; Test of M. Bibich.

<sup>18</sup> Test of M. Bibich.

<sup>19</sup> *Id.*

<sup>20</sup> Test. of K. Odden.

<sup>21</sup> Hearing Ex. A and Test. of M. Bibich.

<sup>22</sup> Hearing Exs. J, K, L and M; Test. of M. Bibich.

38. The City of Bovey's sole reason for annexing the Trout Lake Property is to maintain the section 3 properties as a sludge disposal site.<sup>23</sup>

### **Transportation**

39. There are no transportation issues connected to the Trout Lake Property.

### **Land Use Controls, Planning and Comprehensive Plans**

40. All of the land in the Trout Lake Property is vacant, and currently used only for mine dumps and agricultural purposes.<sup>24</sup>

41. Zoning in Trout Lake Township is currently done by Itasca County. Trout Lake Township has not taken any action to take over the zoning, nor has Trout Lake Township attempted to interfere with or stop the sludge disposal.<sup>25</sup>

42. The City of Bovey has no plans to develop the Trout Lake Property for suburban or urban use.<sup>26</sup>

### **Government Services**

43. Bovey has a police department and has a Joint Powers Agreement with the City of Coleraine, providing for a four-officer rotation between the two cities. Coleraine has two fulltime and several part time officers. Bovey has two fulltime and one part time officer. Together, they provide 24-hour coverage for both cities on weekdays and weekend days and all but an hour Monday morning, when someone is always on call. Each town has its own police cruiser.<sup>27</sup>

44. Primary law enforcement for the Trout Lake Property is currently provided by the Itasca County Sheriff's Department.<sup>28</sup>

45. The Trout Lake Property is in the "east end" of the Itasca County Sheriff's service area. Coverage of this area is generally handled by "up to two" deputies who live within that service area.<sup>29</sup>

46. The "east end" service area is approximately 48 miles long and varies in width from 6 to 24 miles wide, with an average width of about 12 miles.<sup>30</sup>

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<sup>23</sup> Test of M. Bibich.

<sup>24</sup> Hearing Ex. A.

<sup>25</sup> Test. of M. Bibich.

<sup>26</sup> *Id.*

<sup>27</sup> Testimony of William Hollom.

<sup>28</sup> Test. of M. Bibich.

<sup>29</sup> Test. of W. Hollom, Hearing Ex. 3 (the "east end" service area is denoted as area "1" on the map which is Ex. 3.).

<sup>30</sup> Hearing Ex. 3.

47. Bovey police coverage extends to the corporate limits of Bovey in the east, which form the western boundary of the Trout Lake Property.<sup>31</sup>

48. Bovey police have responded to calls involving vandalism and car accidents over the years in the eastern edges of their coverage.<sup>32</sup>

49. If police presence is required in the area of the Trout Lake Property, the Itasca County Sheriff is called. Depending on the nature of the call, a Sheriff's Deputy will be called; if the matter is urgent, a police officer from Bovey or Coleraine will be called because they are generally closer and can arrive in that area more quickly than an Itasca County Deputy can.<sup>33</sup>

50. In his 11 years as a police officer and chief for the City of Bovey, William Hollom has responded a few times to incidents of partying or grass fires in the Trout Lake Property. Those responses occurred in conjunction with members of the Itasca County Sheriff's Department and were in the nature of mutual aid responses.<sup>34</sup>

51. Bovey's water and sewer services end at the boundary of Bovey's current edge of business and residential development, approximately 1 ½ miles from the edge of the Trout Lake Property.<sup>35</sup>

52. Bovey has its own fire department with sufficient equipment to provide fire protection for itself as well as to provide services for Trout Lake Township.<sup>36</sup>

53. Bovey currently provides fire protection services for the Trout Lake Property through a contract with Trout Lake Township.<sup>37</sup>

#### **Plans for Providing Services within Reasonable Time after Annexation**

54. The City of Bovey has not engaged in any discussions with RGGS about any plans it has for continued use of the access road through the section 4 properties to the section 3 properties; or about any possible plans Bovey might have for future use of RGGS land.<sup>38</sup>

55. The City of Bovey has no plans to provide sewer, water, or roads in the Trout Lake Township property.<sup>39</sup>

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<sup>31</sup> Test. of W. Hollom.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Test. of M. Bibich.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Test. of K. Odden.

<sup>39</sup> Test. of M. Bibich.

## **Fiscal Impact**

56. Currently, Trout Lake Township receives approximately \$65 per year in taxes from the Trout Lake Property which it would lose if Bovey's petition is granted.<sup>40</sup>

## **Adequacy of Town Government to Deliver Services**

57. Trout Lake Township has no zoning authority or ownership interest in the Trout Lake Property.<sup>41</sup>

58. Trout Lake Township currently provides fire service to the Trout Lake Property through a contract with the same service provider that would provide the service if the property was annexed.<sup>42</sup>

59. The City of Bovey is not currently the primary provider of police service to the Trout Lake Property, but Bovey's police department would have to assume that responsibility if the property were annexed.

## **IRON RANGE PROPERTY**

### **Transportation**

60. State Highway 169 currently runs along the southern edge of the platted area of the City of Bovey.<sup>43</sup>

61. State Highway 169 is being re-routed further to the south of Bovey. The new Highway 169 is expected to open in the fall of 2007. The entrance to the City of Bovey off the new 169 will be about 1 ½ miles east of Bovey, just beyond Dead Man's Curve about ¾ of a mile within the Iron Range Property.<sup>44</sup>

62. The old Highway 169 will become a county road and will be the access road from new Highway 169 into Bovey.<sup>45</sup>

63. The City of Taconite currently only has access via one road, which includes a railroad crossing. Taconite needs a second access road for traffic and safety purposes. Such an access road into Taconite would go south from the City of Taconite into the Iron Range Property.<sup>46</sup>

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<sup>40</sup> Testimony of Karen Burthwick .

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Hearing Ex. 1.

<sup>44</sup> Hearing Ex. 1 and Test. of T. Johnson, Test of M. Bibich and Test of K. Odden.

<sup>45</sup> Hearing Ex. 1 and Test of T. Johnson.

<sup>46</sup> Test. of M. Troumbly.

## Physical Features of Iron Range Property

64. All of Iron Range Township is rural in character, except the cities of Taconite and Bovey.<sup>47</sup>

65. Two 40-acre quarters in the southern part of the Iron Range Property may be suitable for future development because they are on high ground. Bovey is not certain who owns these two 40-acre quarters or whether the land is or could be available for development.<sup>48</sup>

66. It is possible that some of the land north and west of the old Highway 169 within the Iron Range Property could be developed. Most of that land is owned by mining interests or their successors.<sup>49</sup>

67. Because of wetlands, a large swamp, tailings ponds and railroad tracks, the remainder of the Iron Range Property is largely not susceptible to development.<sup>50</sup>

68. There are two structures in the Iron Range Property. They are houses at the northern end of the Iron Range Property, just north of the part of old Highway 169 known as "Dead Man's Curve" and just south of the southern end of the City of Taconite. The only road access to these houses is through Taconite.<sup>51</sup>

69. An unused railroad bed extends south from the new location of Highway 169 within the Iron Range property. That railroad bed provides a stable foundation that could be used as the base for a road or as a site for running water distribution or sewer pipes.<sup>52</sup>

70. There is a second railroad grade within the corporation limits of Bovey. That railroad grade goes south of the new Highway 169 about  $\frac{3}{4}$  of a mile east of the southeastern corner of the platted area of the City of Bovey. The land between that grade and the Iron Range Property cannot be developed because it is mainly swamp land and tailings ponds.<sup>53</sup>

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<sup>47</sup> Testimony of Edward Johnson.

<sup>48</sup> Test. of M. Bibich.

<sup>49</sup> Test. of M. Troumbly.

<sup>50</sup> Test. of M. Bibich.

<sup>51</sup> Test. of K. Odden.

<sup>52</sup> Test of M. Bibich and Test. of K. Odden.

<sup>53</sup> Test. of M. Bibich.

## Land Use Controls, Planning and Comprehensive Plans

71. The City of Bovey is discussing plans to engage in commercial and residential development along the new Highway 169 within the corporation limits of Bovey.<sup>54</sup>

72. Bovey has its own zoning authority and utilizes residential, industrial and commercial districts.<sup>55</sup>

73. Iron Range Township does not have its own independent zoning authority, but relies on Itasca County for zoning.<sup>56</sup>

74. Bovey's biggest concern at the current time is the new eastern entrance to Bovey from the re-routed Highway 169. Bovey does not own or otherwise control that land, but sees it as the "front door" to the city and is concerned about how that entrance will be developed. They are particularly concerned about lighting, signage and development.<sup>57</sup>

75. Itasca County is getting some state funding for the eastern Bovey entrance from the new Highway 169. The county plans to turn over money and responsibility to Iron Range Township for lighting the entrance.<sup>58</sup>

76. The Bovey City Council approached the Iron Range Township town board, asking Iron Range Township to pay \$75 per year toward lighting of the new Highway 169 entrance to Bovey. Iron Range Township agreed to the annual payment.<sup>59</sup>

77. Taconite has not indicated in any way that it wants to prevent Bovey from being involved in the development of its eastern entrance from the new Highway 169.<sup>60</sup>

78. Within the corporate limits of Bovey, Hoffman Developers have proposals for both commercial and residential development along the new Highway 169. Hoffman Developers are planning two exits for residential properties and five exits on each side of the highway for commercial properties. It is unclear whether the highway will be limited access.<sup>61</sup> Hoffman is getting permits in place for development along new 169 in Bovey, but is not apparently planning to start building anything before 2008.<sup>62</sup>

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<sup>54</sup> Test. of K. Odden.

<sup>55</sup> *Id.*

<sup>56</sup> Test. of E. Johnson.

<sup>57</sup> Testimony of James Gareri.

<sup>58</sup> Test. of M. Bibich.

<sup>59</sup> Test. of E. Johnson.

<sup>60</sup> Test. of M. Troumbly.

<sup>61</sup> Test. of M. Bibich.

<sup>62</sup> Test. of E. Johnson.

79. Bovey's options for growth are limited by physical restrictions. There has been some housing development in the past five years to the north and northwest. Other than that development, Bovey cannot grow to the north because of railroad tracks, a large mine pit and mining dumps. It cannot grow to the west because it is bounded by the City of Coleraine, a large dump and a mining pit. It cannot grow to the south because of the city of Coleraine and the re-routing of Highway 169. There is limited room for development of about 18.75 acres to the east of the city which are owned by the city. In addition, the city is currently negotiating with the county about possibly purchasing an additional 20 acres to the northeast.<sup>63</sup>

80. Over the past five years, the City of Bovey has developed two new residential additions, the Northeast Addition and the Trailview Addition. These two additions have about twenty lots on them. While some of the lots have homes on them, others have been sold but not yet developed. If they are not developed soon, they will revert back to the city. The city has a waiting list for those lots.<sup>64</sup>

81. To the north of Highway 169 within its corporate limits, Bovey plans to develop the 18.75 acres it owns and the 20 acres it hopes to acquire from the county. This development is still in the planning stages and is the next phase of development for Bovey.<sup>65</sup>

82. Bovey officials think that, once they develop the 18.75 acres they own and the county's 20 acres, development of 80 acres in the Iron Range Property "might be the direction [they] are going" to accommodate future growth.<sup>66</sup>

83. If the Minnesota Steel and Excelsior Energy projects are approved and are built, Bovey anticipates that the portion of Iron Range Property that can be developed could become urban or suburban in character.<sup>67</sup>

84. Excelsior Energy's new plant, if built, is planned for an area north of the platted limits of the City of Taconite.<sup>68</sup>

### **Government Services**

85. A sewer line, owned by the Commission, takes waste water from the City of Bovey to a lift station and then to the waste water treatment plant. The line follows Highway 10 out of Coleraine.<sup>69</sup>

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<sup>63</sup> Test. of M. Bibich, Test. of K. Odden and testimony of Test. of J. Gareri.

<sup>64</sup> Test. of M. Bibich.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Test. of E. Johnson.

<sup>69</sup> Test. of M. Bibich and Test. of K. Odden.

86. Based on existing locations of water and sewer lines, Bovey anticipates that potential future sanitary sewer lines could be brought to within ¼ mile of the Iron Range Property.<sup>70</sup>

87. It would cost about 1.5 million dollars to run water and sewer into the Iron Range Property for at most 80 acres of development.<sup>71</sup>

88. Initial review of soil, topography and environmental factors show that there may be some constraints to sewer and water development in the Iron Range Property.<sup>72</sup>

89. Iron Range Township and Taconite have a cooperative agreement for providing fire protection. Iron Range township owns the equipment and two fire stations, one in Taconite and the second about four miles north of Taconite. Taconite provides the manpower, maintains the equipment and maintains the fire relief association.<sup>73</sup>

90. Bovey occasionally responds to fire department calls in the Iron Range Property area. Such calls are in a mutual aid situation, two or three times per year, for car accidents, generally in the "Dead Man's Curve" area of old Highway 169, or west of that point along Highway 169. Taconite generally responds to calls from "Dead Man's Curve" and to the east.<sup>74</sup>

91. Taconite would respond to a fire call at either of the two structures in the Iron Range Property.<sup>75</sup>

92. If Bovey were to be called to a fire at either of the structures in the Iron Range Property, its fire trucks would have to travel east from Bovey along Highway 169, continuing southeast of the burning structures, then travel north and west through Taconite, past the Taconite fire station and finally south into the Iron Range Property area where the structures are located.<sup>76</sup>

93. Itasca County will have the responsibility to maintain old Highway 169 once it becomes a county road. Specifically, the county will have snowplowing responsibility. In the past, Bovey has often plowed the Bovey section of old Highway 169 just because it gets done sooner than if they wait for the county.<sup>77</sup>

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<sup>70</sup> Hearing Ex. 1 and Testimony of John Mattonen (the green lines on Ex. 1 indicating sewer and water lines are potential future lines not lines currently in existence).

<sup>71</sup> Test. of J. Gareri.

<sup>72</sup> Test. of J. Mattonen.

<sup>73</sup> Test. of E. Johnson and Test. of M. Troumbly.

<sup>74</sup> Test. of K. Odden

<sup>75</sup> Test. of K. Odden and Test. of M. Troumbly.

<sup>76</sup> Test. of M. Troumbly.

<sup>77</sup> Test. of K. Odden and Test. of M. Bibich.

94. Bovey officials are concerned that, once old Highway 169 is turned over to the county, the portion where the eastern Bovey entrance is located, which is about  $\frac{3}{4}$  of a mile into the Iron Range Property, will be on the "end of [the county's] agenda" for plowing. The nearest county maintenance garages are in Warba, which is 16-17 miles away; or in Balsam, which is 12-14 miles away.<sup>78</sup>

95. Bovey's street department is prepared to service any new roads which may be built in the Iron Range Property.<sup>79</sup>

96. Bovey offers a variety of recreational services and facilities: ball fields, tennis courts and a hockey rink. More ball fields are planned for the future in the northwest section of the city.<sup>80</sup>

97. If Bovey's annexation petition is granted, it is prepared to provide infrastructure and fire and police protection to the Iron Range Property.<sup>81</sup>

98. A forced water main goes from Taconite through the Iron Range Property and continues south of the City of Bovey to the lift station. This could be tapped into to provide service for development in the Iron Range Property.<sup>82</sup>

99. Taconite does not have its own police department, so the Itasca County sheriff provides police protection for Taconite.<sup>83</sup>

100. Iron Range Township has police protection through Itasca County.<sup>84</sup>

101. In anticipation of development accompanying the Excelsior Energy project, Taconite has had a water distribution analysis and sanitary sewer study done for the area within its corporate limits. The studies did not specifically include the needs of the Iron Range Property.<sup>85</sup>

102. Taconite's water distribution plan extends to the northern boundary of the Iron Range Property. The current water line extends to about  $\frac{1}{2}$  mile away from that boundary. The sanitary sewer goes right past the northern boundary of the Iron Range Property and could easily be tapped to go into the Iron Range Property.<sup>86</sup>

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<sup>78</sup> Test. of M. Bibich.

<sup>79</sup> Test. of J. Gareri.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Test. of K. Odden.

<sup>83</sup> Test. of W. Hollom.

<sup>84</sup> Test. of E. Johnson.

<sup>85</sup> Hearing Exs. Y and Z; Test. of M. Troumbly.

<sup>86</sup> Test. of M. Troumbly.

103. Taconite's water and sewer systems are adequate for now, but would need to be upgraded if the Excelsior project moves forward.<sup>87</sup>

104. Taconite has a park, ball field and an ice rink. Iron Range Township pays for Gibbs Park in Taconite.<sup>88</sup>

105. Taconite has also developed a comprehensive plan, which includes the annexation of Iron Range Township. It invited neighboring cities to have input as it developed the plan. An official from Bovey attended one meeting during the plan development process.<sup>89</sup>

106. Taconite is not opposed to commercial development along the old Highway 169 and has the ability to provide municipal services to such potential development.<sup>90</sup>

### **Previous Annexation Agreements and Orders**

107. Iron Range Township and Taconite have an agreement for a 5-year plan for Taconite to annex all of Iron Range Township.<sup>91</sup>

108. With the cooperation of Iron Range Township, Taconite has already annexed the land on which the Excelsior Energy plant is to be built into the city of Taconite.<sup>92</sup>

109. Iron Range Township and Taconite have filed a joint resolution for annexation of the land that is identified as the Iron Range Property in the petition under consideration in this matter.<sup>93</sup> The joint resolution was signed by Iron Range Township on May 5, 2006 and on May 8, 2006 by Taconite.<sup>94</sup>

### **Environmental Problems**

110. As part of its planning process for further development, Taconite has engaged in a wellhead protection study required by the state. This study determines how water flows into the city well and what areas are especially sensitive as the city attempts to protect the quality of its water. For the study, the Minnesota Department of Health consulted with the Taconite street commission, did soil samples, studied aquifers, and determined what areas were in need of protection to protect the water supply. In Taconite, most of the water supply comes from the southwest, including a significant section of the Iron Range Property. The need for wellhead protection will affect possible development of

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<sup>87</sup> Hearing Exs. Y and Z.

<sup>88</sup> Test. of E. Johnson.

<sup>89</sup> Hearing Ex. X; Test. of M. Troumbly.

<sup>90</sup> Test. of M. Troumbly.

<sup>91</sup> Test. of E. Johnson, Hearing Ex. X.

<sup>92</sup> Test. of E. Johnson.

<sup>93</sup> *Id.*

<sup>94</sup> Test. of M. Troumbly T.

buildings as well as any possible industrial development in that area. Taconite's city well is just north of the Iron Range Property and the protection area extends southwest about 1 ½ miles.<sup>95</sup>

### **Plans for Providing Services within Reasonable Time after Annexation**

111. Bovey has done no studies to determine whether the land Bovey wants to annex is developable or whether wetlands, or natural or man-made obstacles would prohibit or limit development.<sup>96</sup>

112. Bovey has no comprehensive plan for development.<sup>97</sup>

113. Bovey has not approached DM&IR or other rail companies to inquire about getting rail crossing permits, or even the procedure or cost for getting such crossing rights, to get access to land on the north side of the railroad tracks in the Iron Range Property.<sup>98</sup>

114. The City of Bovey has made no specific development plans for the southern section of the Iron Range Property which appears most amenable to development, including how the city would get access or permission to use the old railroad bed which runs south of the new Highway 169.<sup>99</sup>

115. City of Bovey is not certain who owns the 80 acres in the Iron Range Property which is most likely to be able to be developed or what limits there might be on development of it.<sup>100</sup>

116. Much needs to be done before Bovey can develop the land it already owns or is negotiating for within its corporate limits. No water or sewer studies have been done yet for development of 18.75 acres which are just to the east of city. There is no developer with a contract or agreement to develop the land, and no engineering study for the 18.75 acres or the 20 acres the city hopes to acquire from the county. There is no firm agreement to purchase the county's 20 acres.<sup>101</sup>

117. To get services to the 18.75 acres to be developed, Bovey will need to borrow money, but no financing is yet in place.<sup>102</sup>

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<sup>95</sup> Hearing Ex. CC and Test. of M. Troumbly.

<sup>96</sup> Test. of K. Odden.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Test. of M. Bibich.

<sup>101</sup> Test. of J. Gareri.

<sup>102</sup> *Id.*

118. Iron Range Township has never asked Taconite how Taconite plans to develop the Iron Range Property.<sup>103</sup>

119. Iron Range Township has not received anything in writing from Taconite saying that Taconite will get access to cross the railroad tracks to gain access to the southern part of the Iron Range Property.<sup>104</sup>

120. Taconite is working with the railroad to get a crossing between Taconite junction, where the single resident of the Iron Range Property lives, and Highway 169.<sup>105</sup>

121. Neither Bovey nor Taconite presented any evidence that either has any immediate plans to develop the Iron Range Property.<sup>106</sup>

### **Fiscal Impact**

122. Bovey's 2005 audited financial statement shows investments and cash on hand of approximately \$700,000 and bonded indebtedness of approximately \$500,000. The bonded indebtedness includes two outstanding bonds, both for residential development: bonds for the Trailview Addition were taken out in 2003 and will be paid back over 15 years; and bonds for the North Addition Second were taken out in 2005 and will also be paid over 15 years. The bonds are paid by a combination of special assessments, tax levy and ratepayer collection. None of this indebtedness includes the development anticipated within the current corporation limits or any potential development within the Iron Range Property.<sup>107</sup>

123. All taxes levied by Iron Range Township are paid by Taconite residents, except road, bridge and fire protection.<sup>108</sup>

124. Because Taconite pays taxes to Iron Range Township but Bovey does not, Iron Range Township supports its joint resolution with Taconite for annexation and the accompanying petition. The township will receive tax benefits from Taconite's annexation, but it will lose funds if Bovey's petition for annexation is granted.<sup>109</sup>

125. Iron Range Township currently has a financial surplus but it is dwindling.<sup>110</sup>

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<sup>103</sup> Test. of E. Johnson.

<sup>104</sup> *Id.*

<sup>105</sup> Test. of M. Troumbly.

<sup>106</sup> *Id.*

<sup>107</sup> Test. of T. Johnson and Hearing Ex. 4.

<sup>108</sup> Test. of M. Troumbly.

<sup>109</sup> Test. of E. Johnson.

<sup>110</sup> *Id.*

## Whether Services are Best Provided through Petition or Alternative

126. Taconite and Iron Range Township have a long and positive history of working cooperatively together and wish to continue to do so.<sup>111</sup>

127. In 2005, Iron Range Township developed a "Problem Statement" because Taconite and Iron Range Township depend on each other, work together "like an arm and a leg" of a single body and were concerned that others were coming in to split them up. They are working together to protect their tax capacity.<sup>112</sup>

128. The residents of Taconite vote in Iron Range Township elections, but the residents of Bovey do not, although both cities are located within Iron Range Township.<sup>113</sup>

129. Iron Range Township is opposed to Bovey's annexation petition.<sup>114</sup>

130. The only resident of the Iron Range Property lives just north of Dead Man's Curve. The area where that resident lives has long been known as Taconite junction.<sup>115</sup> The only access to that property is through Taconite on a township road which is maintained jointly by Taconite and Iron Range Township.<sup>116</sup>

131. Conversations between Taconite and Iron Range Township about annexation began in 2005 in connection with Excelsior Energy's proposed plant. At that time, the two entities talked about an eventual total annexation of Iron Range Township into Taconite.<sup>117</sup>

132. Iron Range Township's joint annexation agreement with Taconite was spurred by the possible Excelsior Energy development, but Iron Range Township would prefer to be annexed by Taconite rather than Bovey, regardless of the Excelsior development.<sup>118</sup>

133. The sole resident of the Iron Range Property has lived in his house in the Iron Range Property for 14 years. Taconite and Iron Range Township have maintained the road to that property all of his life. Taconite treats him as though he were a resident. He is permitted to bring his trash there and is invited

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<sup>111</sup> Hearing Ex. AA and Test. of E. Johnson.

<sup>112</sup> Test. of M. Troumbly.

<sup>113</sup> Test. of E. Johnson.

<sup>114</sup> *Id.*

<sup>115</sup> Test. of M. Troumbly.

<sup>116</sup> Test. of E. Johnson.

<sup>117</sup> Test. of E. Johnson and Test. of M. Troumbly T.

<sup>118</sup> Test. of E. Johnson.

to participate in city functions. He is close to the city services he needs. He does not think it would be helpful to be in Bovey.<sup>119</sup>

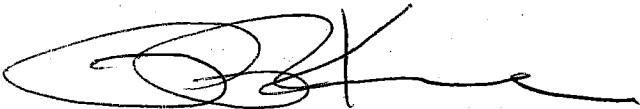
## CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter through the MBA under Minn. Stat. §§ 414.09, 414.02, 414.031, and 414.12.
2. The proper notice of the hearing in this matter has been given.
3. The subject areas described in the Petition A-7431 are not urban or suburban in character and are not likely to be in the foreseeable future.
4. Annexation of the subject areas in Trout Lake Township and Iron Range Township by the City of Bovey is not in the best interests of the subject areas.
5. Annexation by the City of Bovey is not required to protect the public health, safety, and welfare.
6. The ALJ makes no finding or conclusion as to whether the Iron Range Township property would be better served by annexation to the City of Taconite.

## ORDER

1. IT IS HEREBY ORDERED that the Petition for Annexation be DENIED.
2. IT IS FURTHER ORDERED that the costs of this proceeding are divided as follows: 60 percent to the City of Bovey, 30 percent to the Township of Iron Range, and 10 percent to the Township of Trout Lake.

Dated: July 5, 2007



RAYMOND R. KRAUSE  
Chief Administrative Law Judge

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<sup>119</sup> Test. of M. Troumbly.

## NOTICE

This is the final administrative decision in this case under Minn. Stat. §§ 414.061, 414.09, and 414.12. Any person aggrieved by this Order may appeal to Itasca County District Court by filing an Application for Review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within 7 days from the date of the mailing of the Order.<sup>120</sup> However, no request for amendment shall extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

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<sup>120</sup> Minn. Stat. § 414.07, subd. 2.

## MEMORANDUM

This is a petition for annexation of portions of Trout Lake Township and Iron Range Township by the City of Bovey. The City of Bovey is clear about its reasons for wanting to add these properties to the municipal boundaries of the city. First, Bovey wishes to ensure that it will continue to be able to spread the solid waste sludge from the Commission on the property in Trout Lake Township. Second, Bovey wishes to have control over the zoning and development of the land around the planned new exit from the rerouted Highway 169. Lastly, Bovey is anticipating the need for more housing based on expectations that the Minnesota Steel and Excelsior Energy projects will come to fruition.

### **Analysis of Statutory Factors**

Annexation of township property by a city is governed by Minn. Stat. § 414.031. In arriving at a determination in such a case, sixteen factors are to be considered. The following discussion relates these factors to the evidence in this hearing record.

- a. **Present population and number of households, past population and projected population growth of the annexing municipality and subject area and adjacent units of local government.**

The population of Bovey is 715. The city has grown very slowly over the past 20 years. But for the possibility of the Minnesota Steel and Excelsior Energy projects, there would be little growth projected for Bovey. Neither of these industrial projects is confirmed and at least one has significant legal hurdles to overcome before it is approved.

There is currently no one living in the portion of Trout Lake Township that is subject to these proceedings and only one person in the portion of Iron Range Township subject to annexation. Consequently, there is no demand for annexation from within the subject area.

The Excelsior Energy project, if built, will be in the City of Taconite. Taconite is to the northeast of Bovey and is also in Iron Range Township. The population of Taconite is 315. The Minnesota Steel project is to be in Nashwauk, several miles to the northeast of Bovey and Taconite. If either of these projects come on line there is expected to be demand for new housing in the area.

- b. **Quantity of land within the subject area and adjacent units of local government; and natural terrain.**

The petition delineates a subject area of 720 acres within both Trout Lake and Iron Range Townships for annexation. Of that amount, 160 acres is in Trout Lake Township. The land is flat to hilly and is largely made up of mine pits, slag dumps and tailings ponds. Some of it is wooded and suitable for hunting. Both

Bovey and Taconite are small cities, both in population and in useable, undeveloped land area.

**c. Degree of continuity of the boundaries between the annexing municipality and the subject area.**

The eastern boundary of the City of Bovey's corporate limits is contiguous with the western boundary of the Subject Properties. The southern boundary of the City of Taconite's corporate limits is contiguous with the northern boundary of the Iron Range Subject Property.

**d. Present pattern of physical development, planning, and intended land uses in the subject area.**

There is little planned development in the surrounding area that is more than speculative at this time. Bovey has no plan to develop any of the property it wishes to annex. Bovey has no comprehensive plan for the city and no expectation that much of the subject area could ever be developed. Some development may be possible along the route of the new Highway 169 and possibly some of the property in the southern portion of the Iron Range Township parcel may be developable. Bovey has not, however, done any planning or even information gathering to see whether development is practical or even who owns much of the land.

The prospect of any of these Subject Properties being available for development as housing in the relatively short term in order to meet demand from Excelsior or Minnesota Steel is remote. Furthermore, Bovey has several parcels within its current city boundaries that are available for development.

**e. The present transportation network and potential transportation issues.**

Highway 169 is the main arterial in the area. It is currently undergoing significant changes. The route, which currently runs through the center of Bovey is being moved to arc south of the downtown area to the northeast past Taconite. It is possible, although not official, that Highway 169 as rerouted will become four-lane, limited access. If so, the highway exit for Bovey is likely to be outside its corporate limits.

**f. Land use controls and planning presently being utilized in the annexing municipality.**

The City of Bovey has no Comprehensive Plan and has no specific plans for changes to the land uses of the subject area. The City of Taconite has a Comprehensive Plan. This plan calls for the progressive annexation of all of Iron Range Township over a period of years ending in 2012. Taconite and Iron Range Township have entered into an orderly annexation agreement and have presented that agreement to the MBA where it is pending.

**g. The impact of the proposed annexation on the delivery of government services.**

Bovey has its own police department that operates jointly with the police department of Coleraine. Both townships depend on the Itasca County Sheriff for police protection. Under current mutual aid agreements Iron Range and Trout Lake Townships will be serviced by Bovey police if a Bovey officer is closer than a deputy sheriff and if the call is time sensitive. This basic arrangement would remain in place after the proposed annexation, although Bovey would become the primary provider of police services for both the Trout Lake and Iron Range Properties. In fact, because of the nature of this undeveloped land, there are few needs for police services in the subject area.

Bovey has a fire department as does the City of Taconite. The City of Taconite is well-suited from a response time perspective to the needs of the Iron Lake Subject Properties. For example, if the annexation were to take place, the Bovey Fire Department would have to drive through the City of Taconite, past its fire station, to get to the only structure in the Iron Range Subject Property.

Water and sewer are provided through the Bovey-Coleraine-Taconite Joint Wastewater Commission. There would be no impact on the subject area since all three cities have access to the same services. Currently, the nearest water and sewer connection to the subject property would be from Taconite.

**h. The implementation of previous annexation orders.**

A prior annexation order allowed the annexation of part of Iron Range Township by Taconite. This was done to provide space for the proposed Excelsior Energy project. There are no other previous annexation orders that impact this matter.

**i. Existing or potential environmental problems.**

The environmental issue that is driving this annexation petition, at least in part, is the need to continue to have a site available upon which the sludge from the water treatment facility may be spread. The Trout Lake Town Board has taken no action to prevent the sludge spreading in their township. They have not charged for the right to do this. Trout Lake town officials testified that the town has no plans to hinder the spreading and would pass a resolution to that effect.

Apparently, according to Mr. Bibich, the street commissioner of Bovey, the concern that led to the petition for annexation arose from a rumor that Trout Lake wanted to take over its own zoning which heretofore had been done by Itasca County. This rumor proved to be false. There is no evidence that there is a realistic threat to the Commission's ability to continue to spread sludge on the subject property in Trout Lake Township.

The other environmental issue in this matter is the need by the City of Taconite to protect its primary source of water. The wellhead protection study shows that the area that is most sensitive from a pollution standpoint is the area south of the city and southwest of the wellhead. This is the area Bovey wishes to annex. Taconite has a legitimate interest in controlling the zoning and land uses in this area.

**j. Plans and programs by the annexing municipality for providing needed and enhanced governmental services to the subject area.**

There are few services needed in such an uninhabited and undeveloped area. Those that are needed are currently being provided by largely the same entities that would provide them if annexation were approved. Bovey has no plans to provide enhanced services to this area. In fact, the sole resident in the subject area feels strongly that he already receives more services from Taconite than he would from Bovey.

**k. Analysis of the fiscal impact.**

There is little fiscal impact. The total property tax on the 720 acres is estimated to be less than \$1000. If Bovey were to annex the subject area and attempt to bring sewer and water to the developable portions, it would have to significantly increase its bonded indebtedness.

**l. Effect on School District**

All of the subject area and both cities are in the same school district. No impact on the district is anticipated due to annexation.

**m. Adequacy of town government to deliver services to the subject area.**

Few services are needed for this vacant land. Those services that are needed are adequately provided by the respective towns, usually via the county or by contract.

**n. Analysis of whether necessary government services can best be provided through the proposed action or another type of boundary adjustment.**

Because the needs of the subject area are few, annexation to Bovey is not required to provide services now. Should either or both of the proposed industrial developments occur, there may be pressure on these communities to provide more housing, more amenities and more services such as sewer and water. Should that be the case, Taconite is better positioned to deal with the service demands than is Bovey. Taconite would be the home to one of the projects and would be closer to the other. Because Excelsior Energy would be in

Taconite, Taconite will have the property tax resources to respond to the demands new development will place on it.

In addition, Taconite has done a Comprehensive Plan that anticipates the development needs in Iron Range Township. The plan lays out a staged process by which the township would become part of the city. This planful approach is to be favored over a petition that simply states that it has no plan yet but will develop one someday.

Although the ALJ did not have before him enough evidence to make a recommendation, it would seem likely that orderly annexation of Iron Range Township by mutual agreement would make more sense than a partial annexation by Bovey.

- o. **If only a part of a township is annexed, the ability of the remainder to continue or the feasibility of it being incorporated or annexed to a different municipality.**

The Subject Property is not critical to the survival of either township. The land has little value currently or for the foreseeable future. There is no serious proposal to incorporate; however, there is a petition to have an orderly annexation to Taconite of the Iron Range Township property. This seems quite feasible and likely.

### **Annexation Standard**

Based upon an analysis of the factors, Minn. Stat. § 414.031 allows annexation upon a finding,

- 1) That the subject area is now, or is about to become, urban or suburban in character;
- 2) That municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare; or
- 3) That annexation would be in the best interest of the subject area.

The subject area does not meet any of these criteria. The subject is raw, undeveloped land. It is uninhabited, save for one lone resident. Furthermore, it is likely to stay undeveloped and uninhabited. Much of the area is unusable due to mine pits, tailings ponds, tailing dumps and wetlands. Bovey's real interest is not in this land's development potential, but rather to protect its sludge dumping ability and control the access to the city from Highway 169 once completed. The land is never likely to become urban and unlikely to be suburban in the foreseeable future.

Given the state of the subject area, annexation is not necessary for the public health, safety or welfare. The services that ensure those goals will largely be the same regardless of annexation. Because it is virtually uninhabited, there are few public health and safety needs and the lone resident would be safer, from a fire standpoint, as part of the City of Taconite than as part of Bovey.

On the whole, it cannot be said that annexation of the subject area is in the best interest of the subject area. Although the petition for orderly annexation between Taconite and Iron Range Township is not before this ALJ, there is at least a colorable case to be made from this record that the interests of the subject area could be better served by annexation to Taconite.

### **Failure of Notice**

Trout Lake Township correctly points out that the petition incorrectly describes the location of what is known as the Trout Lake subject property. The error was repeated in the published notices of the hearing. Trout Lake argues that the portion of the petition relating to Trout Lake Township should be dismissed for lack of proper notice.

Bovey argues that this was a mere clerical oversight and that Trout Lake was well aware of the area in question. Bovey argues that throughout the process, including lengthy mediation efforts, Trout Lake did not raise this issue but participated as if the error was not there.

Because of the decision to deny the petition on the merits, there is no need to reach this issue.

### **Conclusion**

Bovey expressed some understandable reasons for its desire to annex portions of two townships. Unfortunately, protecting the ability to spread sludge, protecting the esthetics of the highway entrance to the city, and vague thoughts of someday perhaps needing to expand beyond their current borders are not statutory reasons to allow annexation.

Bovey has not shown that the subject land is, or is about to become, urban or suburban in character nor that annexation is necessary for the health, safety and welfare of the area. These are the statutorily allowable reasons for annexation. There are no facts on this record to support a conclusion that annexation by Bovey is in the best interests of the subject area. The petition must, therefore, be denied.

**R.R.K.**