

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of
Certain Real Property to the City of
Walker from Shingobee Township
(MBAU Docket A-8225)

**ORDER APPROVING
ANNEXATION ORDINANCE**

On November 6, 2019, the City of Richmond (City) adopted Ordinance Number 2019-100 (Ordinance) his matter came before Administrative Law Judge Jessica A. Palmer-Denig upon the filing by the City of Walker (City) of Ordinance No. 2018-02 (Ordinance), requesting annexation of certain, city-owned real property to the City from Shingobee Township (Township) pursuant to Minn. Stat. § 414.033, subd. 2(1) (2018).

John E. Valen, Valen Law Office, appeared on behalf of the City. Andrew J. MacArthur, MacArthur Law Office, appeared on behalf of the Township.

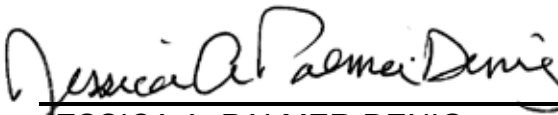
Based upon the record and the arguments of the parties, and for the reasons explained in the accompanying Memorandum, which is incorporated herein, the Administrative Law Judge makes the following:

ORDER

1. Pursuant to Minn. Stat. § 414.033 (2018), the Ordinance is deemed adequate in all legal respects and properly supports this Order.
2. The statutory criteria for annexation by ordinance pursuant to Minn. Stat. § 414.033, subds. 1, 2(1) are satisfied.
3. Pursuant to the terms of the Ordinance and this Order, the Property is **ANNEXED** to the City.
4. As there is no taxable property within the Property, the provisions of Minn. Stat. § 414.036 (2018) do not apply.
5. The City must file a copy of the Annexation Ordinance with the Township,

the appropriate county auditor(s), and the Secretary of State as required by Minn. Stat. § 414.033, subd. 7.

Dated: November 22, 2019


JESSICA A. PALMER-DENIG
Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.033, .07, .09, .12 (2018). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Cass County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of this Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2019). However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

I. Introduction

This case involves the City's annexation of a city-owned parcel of land to it from the Township through adoption of an annexation ordinance. The Township objects to the annexation. The parties agree that there are no facts in dispute. Instead, this case turns upon the interpretation of a statute, which is a question of law.¹ After considering the parties' arguments, and for the reasons expressed herein, the Administrative Law Judge determines that the annexation ordinance should be approved.

II. Factual and Procedural Background

On November 5, 2018, the City adopted the Ordinance in order to annex approximately 144.24 acres of city-owned property (Property) located within the Township.² The City then commenced this case under Minn. Stat. § 414.033, subd. 2(1), by filing the Ordinance, along with the required maps and filing fee, with the Office of Administrative Hearings.

¹ *Binkley v. Allina Health System*, 877 N.W.2d 547, 550 (Minn. 2016).

² City of Walker, Ordinance No. 2018-02 (Ordinance) (Aug. 12, 2019).

The Property is described as follows:

The East Half of the Northeast Quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$) less that part of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) lying southerly of Township Road #19, and the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$), Section Twenty (20), Township One Hundred Forty Two (142), Range Thirty One (31), Cass County, Minnesota.³

The illustration below provides a visual representation of the Property and the surrounding area. The Property is depicted in blue. The current city limits of the City are indicated in red. Land owned by the State of Minnesota located at the northwest edge of the City's current boundary is yellow. Sautbine Road NW is indicated by a dashed black line.⁴



On August 15, 2019, the Township filed a letter with the Office of Administrative Hearings objecting to approval of the annexation ordinance. The Township asserted that the Property does not “abut” the City, as that term is defined in Minn. Stat. § 414.011,

³ *Id.*

⁴ *Id.*

subd. 6 (2018). Therefore, the Township maintained that the City could not satisfy the criteria for annexation of the Property by ordinance under Minn. Stat. § 414.033, subd. 1.

In order to address the Township's objection and determine whether additional proceedings were necessary, the Administrative Law Judge held a status conference by telephone on August 27, 2019.⁵ Both parties participated in the status conference. During the status conference, the parties agreed that there were no facts in dispute. The parties further agreed that limited, simultaneous briefing would provide them with an opportunity to address the legal issue raised by the Township. The Township also sought additional time to retain counsel. On August 28, 2019, the Administrative Law Judge issued an Order providing time for the Township to obtain representation and requiring the parties to confer and agree to a date for submission of briefs.⁶

The Administrative Law Judge issued a Scheduling Order on September 16, 2019, requiring that the parties file any legal briefs by October 15, 2019.⁷ The City and Township both filed briefs on October 15, 2019, and the record as to this matter closed on that date.

III. Standards for Annexation by Ordinance

Minn. Stat. § 414.033, establishes the circumstances under which property may be annexed by ordinance. Subdivision 1 provides that "[u]nincorporated property abutting a municipality may be annexed to the municipality by ordinance as provided for in this section." Subdivision 2 articulates conditions for such an annexation, stating as follows:

A municipal council may by ordinance declare land annexed to the municipality and any such land is deemed to be urban or suburban in character or about to become so if:

- (1) the land is owned by the municipality;
- (2) the land is completely surrounded by land within the municipal limits;
- (3) the land abuts the municipality and the area to be annexed is 120 acres or less, and the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available, and the municipality receives a petition for annexation from all the property owners of the land. Except as provided for by an orderly annexation agreement, this clause may not be used to annex any property contiguous to any property either simultaneously proposed to be or previously annexed under this clause within the preceding 12 months if the property is or has been

⁵ Order Regarding Prehearing Conference (Aug. 20, 2019); *see also* Minn. Stat. § 414.033, subd. 10 (permitting the Administrative Law Judge to obtain additional information to determine whether a proposed annexation conforms to statutory criteria).

⁶ Order (Aug. 28, 2019).

⁷ Scheduling Order (Sept. 16, 2019).

- owned at any point during that period by the same owners and annexation would cumulatively exceed 120 acres; or
- (4) the land has been approved after August 1, 1995, by a preliminary plat or final plat for subdivision to provide residential lots that average 21,780 square feet or less in area and the land is located within two miles of the municipal limits.

Minn. Stat. § 414.011, subd. 6 defines the terms “abut, abuts, [and] abutting,” indicating: “[t]he terms “abut,” “abuts,” and “abutting” refer to areas whose boundaries at least touch one another at a single point, including areas whose boundaries would touch but for an intervening roadway, railroad, waterway or parcel of publicly owned land.”

IV. Arguments of the Parties

The parties’ dispute centers entirely on whether the Property abuts the City. The Township argues that the Property does not abut the City because the Property is separated from the City’s boundary by two intervening properties: a roadway and a parcel of publicly-owned land. The Township notes that the definition of “abut” in Minn. Stat. § 414.011, subd. 6, uses the term “or” in listing intervening land or water that may be present without precluding a property from abutting another boundary, listing such features as: “an intervening roadway, railroad, waterway *or* parcel of publicly owned land.”⁸ The Township contends that the term “or” should be interpreted to permit only one intervening feature between property to be annexed and a municipality. Because two such intervening features are present here, the Township maintains the Property does not abut the City’s boundary.

The City disagrees with the Township’s interpretation, arguing that a parcel abuts the City’s boundary if any one of the listed intervening properties exists, but that the term “or” does not create an exclusion of the other specified features when one is present. Therefore, the City contends that the requirement that the Property abut the City is satisfied because the Property is separated from the City by two features specifically listed in the statute.

V. Analysis

In cases involving interpretation of a statute, a court’s object is to “ascertain and effectuate the intention of the legislature.”⁹ The first step in statutory interpretation is determining whether a statute is ambiguous.¹⁰ A statute is ambiguous if it is subject to more than one reasonable interpretation.¹¹ If a statute is not ambiguous, the court will

⁸ Emphasis added.

⁹ Minn. Stat. § 645.16 (2018).

¹⁰ *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013).

¹¹ *Id.* at 537.

give effect to the plain meaning.¹² If a statute contains an ambiguity, the court looks to the canons of construction in determining its meaning.¹³

Under Minn. Stat. § 414.011, subd. 6, abutting properties are “areas whose boundaries would touch but for an intervening roadway, railroad, waterway or parcel of publicly owned land.” In the Township’s view, if the Property were separated from the City by only the roadway, or only the parcel of publicly-owned land, the Property would abut the City. However, the Township maintains the statute limits the definition of abutting land to parcels with only one listed intervening feature. In contrast, the City’s interpretation would allow a determination that a parcel abuts the City’s boundary if any one, or more than one, of the listed features in the statute exist.

Disputes regarding the meaning of the word “or” in statutes are not uncommon.¹⁴ In *Am. Family Ins. Grp. v. Schroedl*, the Minnesota Supreme Court held that “or” functioned as a disjunctive to make clear that two separate acts were prohibited, the issuance *or* renewal of a plan of reparation security providing coverage for wage loss under certain circumstances.¹⁵ The Court also noted the particular difficulty of interpreting the word “or,” stating:

Moreover, ‘every use of ‘and’ or ‘or’ as a conjunction involves some risk of ambiguity.’ Both ‘and’ and ‘or’ are equally ambiguous because both are subject to multiple interpretations, some of which may be the same. For instance, “and” can have a joint or a several meaning while “or,” commonly thought to be exclusive, can also be inclusive, depending on the context.¹⁶

The Administrative Law Judge determines that the statute is ambiguous because it could reasonably be read in the manner urged by both the Township and the City. However, the canons of construction in Minnesota law provide guidance to determine the statute’s meaning. The canons advise that non-technical “words and phrases are construed according to rules of grammar and according to their common and approved usage.”¹⁷ Further, the “singular includes the plural; and the plural the singular.”¹⁸ Finally, the Legislature has instructed that it “does not intend a result that is absurd.”¹⁹

¹² *Aaron Carlson Corp. v. Cohen*, 933 N.W.2d 63, 69 (Minn. 2019).

¹³ *General Mills, Inc. v. Comm’r of Revenue*, 931 N.W.2d 791, 795 (Minn. 2019).

¹⁴ See, e.g., *State v. Bakken*, 883 N.W.2d 264, 268 (Minn. 2016) (citing *State v. Loge*, 608 N.W.2d 152, 155 (Minn. 2000) (stating that “or” is generally considered disjunctive and holding that separate counts could be brought against a defendant under a child pornography statute criminalizing possession of a pornographic work “or” a computer containing a pornographic work); *State v. Rossow*, 310 Minn. 399, 401-402, 247 N.W.2d 398, 400 (1976) (holding that the term “or” indicated that evidence was admissible on two separate grounds).

¹⁵ 616 N.W.2d 273, 281 (Minn. 2000).

¹⁶ *Id.* at 281, n.4.

¹⁷ Minn. Stat. § 645.08(1) (2018).

¹⁸ Minn. Stat. § 645.08(2) (2018).

¹⁹ Minn. Stat. § 645.17(1) (2018).

Applying these rules, the statute must be interpreted to define an abutting property as one separated from a municipality by an intervening roadway, railroad, waterway or parcel of publicly owned land, or by intervening roadways, railroads, waterways or parcels of publicly owned land. As such, the definition in Minn. Stat. § 414.011, subd. 6, already contemplates that more than one intervening feature may be present between an abutting property and a municipality. It would be an absurd reading to permit more than one intervening parcel of publicly owned land or more than one roadway, but not to allow a roadway and a parcel of publicly owned land to intervene between a parcel to be annexed and the municipality.

Further, adopting the Township's interpretation would essentially require adding words to the statute, for example by defining abutting properties to include properties with boundaries that would touch "but for the presence *of any one of the following*," before listing the intervening land features. Courts may "not add words to the statute that the Legislature did not supply."²⁰

The Township cautions that, by permitting more than one intervening feature to exist, annexation by ordinance could be accomplished even if the abutment crosses a roadway, railroad, waterway, *and* a parcel of publicly owned land. The Township also raises a concern that, because no hearing is required for this type of annexation, the scope of such an annexation should be limited. Even if these are valid concerns, the proper scope and procedures for annexation by ordinance of city-owned land abutting the municipality is within the Legislature's domain to determine or alter, not the domain of this tribunal.

The Administrative Law Judge concludes that the Property abuts the City pursuant to Minn. Stat. § 414.011, subd. 6. Therefore, the annexation of the Property is **APPROVED** pursuant to Minn. Stat. § 414.033, subds. 1, 2(1).

J. P. D.

²⁰ *Depositors Ins. Co. v. Dollansky*, 919 N.W.2d 684, 688 (Minn. 2018).