

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of
Certain Real Property to the City of
Glenwood from Glenwood Township
MBAU Docket A-8423

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

This matter came before Administrative Law Judge Jessica A. Palmer-Denig for a hearing on April 17, 2023, held by Microsoft Teams and in person at the Glenwood City Hall in Glenwood, Minnesota. The hearing was continued to June 21, 2023, in person at the Glenwood City Hall. The parties filed final submissions on July 21, 2023, and the record closed on that date.

Troy E. Nelson, Obenland & Nelson Law Offices, appeared on behalf of the City of Glenwood (City). Jason M. Hill, Kennedy & Graven, Chartered, appeared on behalf of Glenwood Township (Township).

STATEMENT OF THE ISSUE

Should the City's request for annexation be granted or denied?

SUMMARY OF CONCLUSIONS

The Administrative Law Judge concludes that the City has not met its burden to establish that annexation is warranted under Minn. Stat. §§ 414.031, 414.033 (2022). Therefore, the City's petition for annexation is **DENIED**.

Based upon the files and record in this case, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. The Parties

1. The City is located on the eastern shore of Lake Minnewaska in Pope County, Minnesota.¹
2. The Township is also in Pope County, and it shares a border with the City.²

¹ Exhibits (Exs.) 58, 102; Testimony (Test.) of David Iverson.

² Exs. 57, 102, 104; Test. of D. Iverson, Test. of Matthew Laubach.

II. The Subject Parcels

3. The Subject Parcels are located in the Township, southeast of the City.³ The Subject Parcels have a land area of 38.72 acres, and are 60% or more bordered by land already within the City.⁴

4. The Subject Parcels are legally described as follows:

Tract 1

All that part of the Northwest Quarter of the Northwest Quarter, Section 8, Township 125 North, Range 37 West, described as follows:

Commencing 10 rods north of the Southwest corner of the Northwest Quarter of the Northwest Quarter, Section 8, Township 125 North, Range 37 West; Thence North 20 rods; Thence East 80 rods; Thence South 20 rods; Thence West 80 rods to the place of beginning. Subject to highways, easements, reservations, restrictions, covenants and rights-of-way of record, if any.

Tract 2

The South 5 acres of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$), Section 8, Township 125, Range 37.

That part of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$), Section 8, Township 125, Range 37, lying East of the Alexandria road (now known as 210th Ave) EXCEPT 3.66 acres of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) heretofore conveyed to the Minneapolis, St. Paul and Sault Ste. Marie Railway Company by Deed recorded in Book 17 of Deeds, page 342, and EXCEPT deed to State of Minnesota for highway purposes recorded in Book 84 of Deeds, page 8, and EXCEPT part of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) recorded in Book 99 of Deeds, page 571.

Excepting therefrom: All that part of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Eight (8), Township One Hundred Twenty-five (125), Range Thirty-seven (37) which is described and enclosed within the following boundary line, to-wit:

Beginning at a point where the East line of the said SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 8 intersects the northerly right of way line of Trunk Highway No. 28 as the same is on file and of record in the office of the Clerk of District Court, Pope County, Minnesota; said point being 120.43 feet North 00° 29'29" East from the Southeast corner of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 8; thence North 00° 29'29" East 447.01 feet; thence North 89°30'31" West 1162.94 feet to the center

³ Test. of D. Iverson, Test. of M. Laubach; Exs. 58, 104.

⁴ Stipulation of the Parties (Hearing Digital Recording (June 21, 2023) (on file with the Minn. Office Admin. Hearings)); Notice of Intent for Annexation (Oct. 11, 2022); Test. of D. Iverson; see also Minn. R. 6000.0600 (2023).

line of the public road as the same is laid out and maintained; thence South 23°57'31" East 542 feet more or less to the said northerly right of way line of Trunk Highway No.28; thence in an easterly direction along the said right of way line to the point of beginning. Subject to the public highway as the same is laid out and maintained.

Also excepting therefrom: Lands already within the City of Glenwood.

Also excepting therefrom: All lands lying West of the easterly right of way line of the Alexandria road (now known as 210th Ave).

5. A map depicting the Subject Parcels, outlined in blue, and the immediately surrounding area is below.⁵



6. The Subject Parcels contain two properties, referred to herein as the North Parcel and South Parcel. The North Parcel bears Property Identification Number 09-0248-001 and is owned by Lloyd and Kathryn Pahan.⁶ The boundary of the area proposed for

⁵ Ex. 104. On this map, parcels with property identification numbers beginning with 21 are in the City, while parcels beginning with 09 are within the Township. *Id.*, Test. of D. Iverson.

⁶ Ex. 103 at 1, Ex. 104; Test. of Lloyd Pahan.

annexation bisects the North Parcel.⁷ The South Parcel bears property Identification Number 09-0249-000 and is owned by Jeffrey and Tammie Pahan.⁸

III. Factors Under Minn. Stat. § 414.031, subd. 4(a)

7. Minn. Stat. § 414.031, subd. 4(a), lists 17 factors that must be considered in determining whether to approve a proposed annexation.⁹

A. Population of the City and the Subject Parcels

8. Since 2002, the City's population has been stable and has ranged between approximately 2,500 to just over 2,650 residents.¹⁰ In 2021, the City's population was 2,668.¹¹

9. In 2002, the City had 1,149 households with 2.06 residents per household.¹² In 2021, the City had grown to 1,252 households, an increase of 103 households, and the number of persons per household remained 2.06.¹³

10. The City has had difficulty, as do many smaller communities, with maintaining its population.¹⁴ It does not expect to experience substantial population growth.¹⁵

11. The Subject Parcels include two households. Lloyd and Kathryn Pahan reside in a home on the North Parcel.¹⁶ Jeffrey and Tammie Pahan's son, Jedediah Pahan, resides in a home on the South Parcel.¹⁷ Three people reside on the Subject Parcels.

⁷ Ex. 104.

⁸ Ex. 103 at 3; Ex. 104; Test. of Jeffrey Pahan (hereafter referred to as J. Pahan).

⁹ Depending on the facts of each case, some factors may not be relevant to a particular annexation request, or the record may not contain information as to all portions of each factor. For example, Minn. Stat. § 414.031, subd. 4(a)(1), requires consideration of information from joint informational meetings held under Minn. Stat. § 414.0333 (2022). Because this case is proceeding under Minn. Stat. § 414.033, no such meeting was held. Similarly, the statute lists the implementation of prior annexation agreements and orders as a factor under Minn. Stat. § 414.031, subd. 4(a)(9), but there are no prior annexation agreements or orders related to the Subject Parcels. Based upon the record, the statutory factors and relevant evidence in the record are addressed in this section.

¹⁰ Ex. 107.

¹¹ *Id.* at 2.

¹² *Id.* at 1.

¹³ *Id.*

¹⁴ Test. of D. Iverson.

¹⁵ *Id.*

¹⁶ Test. of L. Pahan; Test. of K. Pahan.

¹⁷ Test. of J. Pahan; Comment of Jedediah Pahan (Hearing Digital Recording (June 21, 2023) (on file with the Minn. Office Admin. Hearings)).

B. Quantity of Land within the Subject Parcels and Adjacent Units of Local Government; Natural Terrain Including Recognizable Physical Features, General Topography, Major Watersheds, Soil Conditions and Natural Features

12. The land area of the Subject Parcels is 38.72 acres.¹⁸

13. The Subject Parcels are located within or adjacent to the City's Drinking Water Supply Management Area (DWSMA), which includes an underground aquifer.¹⁹

14. The aquifer consists of a deep aquifer and a superficial aquifer separated by a confining layer of clay.²⁰ The clay layer does not offer complete confinement of the water, and water travels between the two levels of the aquifer.²¹

15. The City and its surrounding land essentially are a "bowl" shape with the City and Lake Minnewaska at the bottom of the bowl.²² The topography of the land in the area surrounding the City generally slopes downward toward the west and Lake Minnewaska.²³

16. The City's engineer is not familiar with the specific topography of the Subject Parcels.²⁴ Any concerns about the Subject Parcels' drainage and wells are general in nature based on the overall topography of the area.²⁵

17. The Subject Parcels are largely flat, and there are no significant physical or natural features within the Subject Parcels.²⁶

C. Degree of Contiguity of the Boundaries Between the City and the Subject Parcels

18. The Subject Parcels are more than 60 percent bordered by land within the City.²⁷

¹⁸ Notice of Intent for Annexation (Oct. 11, 2022); see also Minn. R. 6000.0600.

¹⁹ Ex. 104; Test. of D. Iverson; Test. of Timothy Schoonhoven.

²⁰ Test. of T. Schoonhoven.

²¹ *Id.*

²² Test. of D. Iverson.

²³ *Id.*; Test. of T. Schoonhoven.

²⁴ Test. of T. Schoonhoven.

²⁵ *Id.*; Test. of D. Iverson.

²⁶ Exs. 1-56.

²⁷ Stipulation of the Parties (Hearing Digital Recording (June 21, 2023) (on file with the Minn. Office Admin. Hearings)); Notice of Intent for Annexation (Oct. 11, 2022); Test. of D. Iverson.

D. Present Pattern of Physical Development, Planning, and Intended Land Uses in the Subject Parcels and the City and the Impact of the Proposed Annexation on Those Land Uses

19. When requested by a developer, the City will provide information on sites located within the City that may meet the developer's needs.²⁸

20. The City has been approached by developers seeking parcels that are four to six acres and was unable to locate properties within the City that would meet those developers' needs.²⁹

21. The City seeks to proactively annex parcels of land appropriate for development so that if a developer wishes to pursue a project within the City, land can be found within the City's borders without delay.³⁰

22. The City has an interest in developing additional housing, particularly more affordable, shorter term, multifamily housing options.³¹ Manufacturers and other employers have advised the City that housing needs for their employees are a priority.³² It is difficult for younger residents who are just starting out to afford to build a single-family home in the City.³³

23. The City is currently working with a developer to plan an apartment complex with over 50 apartments; the developer needs a four-to-six-acre parcel to accommodate the development.³⁴

24. The City has identified the Subject Parcels as land appropriate for development.³⁵

25. The Subject Parcels are not served by municipal water and sewer services.³⁶ Currently, it would not be feasible to develop the Subject Parcels for multifamily housing due to the need to drill a large well to supply water, and install a large drain field and septic system to handle waste.³⁷ Most development of this type is undertaken within the City limits, so that the City can supply water and sewer services.³⁸

²⁸ Test. of D. Iverson.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*; Test. of T. Schoonhoven.

³² Test. of D. Iverson.

³³ Test. of T. Schoonhoven.

³⁴ Test. of D. Iverson.

³⁵ *Id.*; Test. of T. Schoonhoven.

³⁶ Test. of D. Iverson; Test. of T. Schoonhoven.

³⁷ Test. of T. Schoonhoven.

³⁸ *Id.*

26. No developer has indicated an interest in developing the Subject Parcels.³⁹ The City is not aware of any development occurring in the area of the Subject Parcels.⁴⁰

27. Properties in areas of the City that are not near the Subject Parcels may also be appropriate for development.⁴¹ Recent development in the City has occurred in areas to the northeast and northwest, which is not the area in which the Subject Parcels are located.⁴²

28. Property along the City's eastern border, in the area to the west and northwest of the Subject Parcels, is zoned for industrial uses and has been developed for industrial and commercial purposes, including a grain elevator, a fuel and oil provider, and railroad tracks.⁴³ There are also some residences in that area.⁴⁴

29. Lloyd Pahan owns a twelve-acre parcel within the City adjacent to the railroad tracks that he may be willing to sell for development.⁴⁵

30. A gravel mining operation, Hancock Concrete, is located to the east of the Subject Parcels within the Township.⁴⁶

31. The Township considered and rejected a proposal to allow gravel mining on a parcel of land in the Township north of the Subject Parcels because the Township considered neighboring houses to be too close to the proposed mine.⁴⁷

32. There are no proposals to develop parcels in the Township located to the south of the Subject Parcels.⁴⁸

33. The City's Notice of Intent for Annexation declares that the nature of the land use in the Subject Parcels is commercial.⁴⁹

34. If annexed, the Subject Parcels would initially be zoned for residential uses, but could be rezoned to permit other uses depending on the City's determination of the highest and best use of the property.⁵⁰

35. The Subject Parcels are currently zoned A-1, which is the zoning category for non-intensive agricultural use.⁵¹

³⁹ Test. of D. Iverson.

⁴⁰ *Id.*; see also Test. of M. Laubach.

⁴¹ Test. of D. Iverson.

⁴² *Id.*

⁴³ Ex. 104; Test. of D. Iverson.

⁴⁴ Ex. 104; Test. of D. Iverson.

⁴⁵ Ex. 104; Test. of L. Pahan (referencing a parcel with Property Identification Number 21-0545-000).

⁴⁶ Exs. 104, 108; Test. of D. Iverson.

⁴⁷ Ex. 104; Test. of M. Laubach.

⁴⁸ Test. of M. Laubach.

⁴⁹ Notice of Intent for Annexation (Oct. 11, 2022).

⁵⁰ Test. of D. Iverson.

⁵¹ Ex. 102.

36. The North Parcel includes a residence and is left in a natural state to promote wildlife.⁵² Lloyd and Kathryn Pahan live in the home on the North Parcel.⁵³ In the past, Kathryn Pahan operated a childcare program at their home and the couple raised farm animals.⁵⁴

37. The South Parcel also includes a residence.⁵⁵ Jedediah Pahan, who currently resides on the South Parcel, has cultivated a large pumpkin patch on the property.⁵⁶ A substantial portion of the South Parcel is leased for farming.⁵⁷

38. The Subject Parcels are currently used for residential and agricultural purposes.⁵⁸ The Subject Parcels are a family farm and have been in the Pahan family for approximately 90 years.⁵⁹ The current owners and residents of the property grew up on the land.⁶⁰ It is important to them to have the property remain in their family.⁶¹

39. The owners of the Subject Parcels do not wish to sell their land and have no plans to develop the properties for a different use.⁶² The property owners object to annexation of the Subject Parcels.⁶³

40. The City did not communicate with the owners of the Subject Parcels or the Township prior to deciding it would annex the Subject Parcels.⁶⁴ The Township notified the property owners of the proposed annexation.⁶⁵

E. The Present Transportation Network and Potential Transportation Issues, Including Proposed Highway Development

41. The Subject Parcels are accessed from 210th Avenue, which runs north-south along the Subject Parcels' western border.⁶⁶ The City and Township share responsibility for maintaining this road.⁶⁷ Currently, the City has no concerns about the condition or future use of 210th Avenue.⁶⁸

⁵² Test. of L. Pahan.

⁵³ *Id.*

⁵⁴ Test. of Kathryn Pahan.

⁵⁵ Ex. 104; Test. of J. Pahan; Comment of Jedediah Pahan (Hearing Digital Recording (June 21, 2023) (on file with the Minn. Office Admin. Hearings)).

⁵⁶ Comment of Jedediah Pahan (Hearing Digital Recording (June 21, 2023) (on file with the Minn. Office Admin. Hearings)).

⁵⁷ Test. of J. Pahan.

⁵⁸ *Id.*; Test. of L. Pahan; Test. of K. Pahan.

⁵⁹ Test. of J. Pahan; Test. of L. Pahan.

⁶⁰ Test. of L. Pahan.

⁶¹ Test. of J. Pahan; Test. of K. Pahan.

⁶² Test. of J. Pahan; Test. of L. Pahan; Test. of K. Pahan; Test. of M. Laubach.

⁶³ Test. of J. Pahan; Test. of L. Pahan; Test. of K. Pahan.

⁶⁴ Test. of D. Iverson; Test. of M. Laubach; Test. of J. Pahan; Test. of K. Pahan.

⁶⁵ Test. of K. Pahan.

⁶⁶ Exs. 57, 104; Test. of T. Schoonhoven.

⁶⁷ Test. of T. Schoonhoven.

⁶⁸ *Id.*

42. State Highway 28 intersects with 210th Avenue to the south of the Subject Parcels.⁶⁹ There are residences and businesses located in that area.⁷⁰

43. Railroad tracks are located to the west of the Subject Parcels, but are not directly adjacent to the Subject Parcels.⁷¹

44. There is no evidence that the annexation will have any impact on the transportation network in the area of the Subject Parcels.

F. Land Use Controls and Planning Presently Utilized in the City and the Subject Parcels, Including Comprehensive Plans for Development in the Area, and Whether There Are Inconsistencies Between Proposed Development and Existing Land Use Controls and the Reasons Therefore

45. The City has adopted a land use ordinance and a shoreland ordinance.⁷² The City also has a property maintenance ordinance.⁷³

46. The City has a Planning Commission focused on land use planning.⁷⁴

47. The City adopted a Comprehensive Plan in 1979.⁷⁵ That plan remains the operative plan for the City at this time.⁷⁶ In 1979, residential development to the northwest area of the City was considered the best option.⁷⁷

48. The City has concerns about stormwater management related to the topography of the area surrounding the City.⁷⁸ The City has experienced flooding in the past and seeks to control erosion and the movement of sediment toward Lake Minnewaska.⁷⁹

49. The City has adopted a stormwater management ordinance controlling new developments.⁸⁰ The City's stormwater ordinance is more stringent than required by state standards.⁸¹ The stormwater management ordinance addresses various aspects of new development, including the surface area that is impervious to water, retention of water at higher elevations, and inspections.⁸²

⁶⁹ Exs. 57, 104.

⁷⁰ Ex. 104; Test. of D. Iverson.

⁷¹ Ex. 104; Test. of D. Iverson.

⁷² Test. of D. Iverson.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*; Ex. 59.

⁷⁶ Test. of D. Iverson.

⁷⁷ Ex. 59 at 4.

⁷⁸ Test. of D. Iverson; Test. of T. Schoonhoven.

⁷⁹ Test. of D. Iverson; Test. of T. Schoonhoven.

⁸⁰ Test. of D. Iverson; Test. of T. Schoonhoven.

⁸¹ Test. of T. Schoonhoven.

⁸² *Id.*

50. Pope County and the Township currently exercise land use control over the Subject Parcels.⁸³ As noted in more detail below, the Township exercises independent planning and zoning authority.⁸⁴ The Township's land use regulation of the Subject Parcels must be at least as strict as Pope County's regulation, and may be more strict than required by the County.⁸⁵

51. In past annexation matters, the Township did not oppose annexation of Township land to the City when the annexation was accomplished at the request of the property owner so that property could be developed.⁸⁶ The City has also annexed City-owned land within the Township.⁸⁷

52. There are no present plans for development of the Subject Parcels.⁸⁸

G. Existing Levels of Governmental Services Provided in the City and to the Subject Parcels including Water and Sewer Service, Fire Rating and Protection, Law Enforcement, Street Improvements and Maintenance, Administrative Services, and Recreational Facilities and the Impact of the Proposed Action on the Delivery of Services

53. The City has a Public Works Department that provides water and sewer service within the City.⁸⁹

54. The City maintains a system of water treatment ponds located northeast of the Subject Parcels, northeast and east of the Hancock Concrete gravel operation on the Subject Parcels' eastern border.⁹⁰

55. The City has extended water service to properties located approximately one-quarter mile from the Subject Parcels to the northwest.⁹¹

56. City sewer services have been extended to commercial and residential properties in the City.⁹² City sewer service extends to approximately one-half to three-fourths of a mile from the Subject Parcels.⁹³

57. The City maintains a fire department that provides services to City residents and the City also contracts to provide firefighting services to townships.⁹⁴

⁸³ Test. of M. Laubach.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Test. of D. Iverson; Test. of M. Laubach.

⁸⁹ Test. of D. Iverson.

⁹⁰ Ex. 104; Test. of D. Iverson.

⁹¹ Ex. 104; Test. of D. Iverson.

⁹² Test. of D. Iverson.

⁹³ *Id.*

⁹⁴ *Id.*

58. The City's police department provides services to City residents and to the surrounding areas if requested by the County or the Minnesota State Patrol.⁹⁵ Police services are available twenty-four hours per day, seven days per week.⁹⁶

59. The City maintains a City Hall where staff are available to the public.⁹⁷

60. The City engages in land use planning and zoning work internally, and it also contracts with an outside provider to receive these services.⁹⁸ The City receives engineering services from an outside consultant.⁹⁹

61. The City updates a street condition survey annually and utilizes a five-year maintenance plan to address street maintenance, and also has shared line roads with townships.¹⁰⁰ The City plans street and curb projects around extension of water and sewer services.¹⁰¹

62. For new development, the developer typically builds new streets to the City's standards.¹⁰² Public water and sewer mains to serve the development would be built under the new streets.¹⁰³

63. The Subject Parcels do not currently receive services directly from the City, though the City provides fire department services to Township residents under a contract with the Township, and City police may patrol along 210th Avenue because it is a shared road.¹⁰⁴

H. Existing or Potential Environmental Problems and Whether the Proposed Action is Likely to Improve or Resolve These Problems

64. The City's DWSMA extends below a portion of the Subject Parcels.¹⁰⁵ The recharge area that serves as the source of the City's water supply is within the DWSMA.¹⁰⁶

65. The DWSMA is categorized as "vulnerable."¹⁰⁷

66. The water supply for the City originates in an aquifer within the DWSMA.¹⁰⁸ The aquifer is a "drift" aquifer in which water migrates toward the west and works its way

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Test. of T. Schoonhoven.

¹⁰⁰ *Id.*; Test. of T. Schoonhoven.

¹⁰¹ Test. of D. Iverson.

¹⁰² Test. of T. Schoonhoven.

¹⁰³ *Id.*

¹⁰⁴ *Id.*; Test. of M. Laubach.

¹⁰⁵ Exs. 57, 104; Test. of D. Iverson.

¹⁰⁶ Test. of D. Iverson.

¹⁰⁷ Ex. 57.

¹⁰⁸ *Id.*

to lower elevations.¹⁰⁹ The “travel time” of water in the aquifer to the City’s wells is estimated to be ten years.¹¹⁰

67. The City maintains two public wells to provide water to its residents.¹¹¹ Any potential contamination of the water supply is of great concern to the City.¹¹² If the City’s water supply became contaminated, the City would need to find a way to treat the water, or would need to drill alternate wells.¹¹³ Any new well that is drilled in the DWSMA is a potential source of new contaminants.¹¹⁴

68. The City does not have a water treatment plant.¹¹⁵ The City treats its water supply to chlorinate and fluoridate the water, and adds a chemical to address sediment, but the City does not have a filtration system.¹¹⁶

69. The City exercises control over the use of land within the area of the City’s water supply to limit the risk of contamination.¹¹⁷ The City is unable to control the use of property outside its borders to ensure water safety.¹¹⁸ The City seeks to annex additional land to give it greater control over the areas within the DWSMA.¹¹⁹

70. Prior to the commencement of this case, Hancock Concrete requested that the Township allow it to expand its operations at the gravel mine on the Subject Parcels’ eastern border.¹²⁰ The City has concerns about the impact of the gravel mine on the DWSMA.¹²¹ The City consulted with an expert and brought its concerns to Pope County and the Township.¹²² The City requested that a monitoring well be installed to monitor the impact on the DWSMA, including contamination and migration toward the water supply.¹²³

71. The Township Board discussed the City’s concerns at its meeting to consider the mine expansion on October 11, 2022.¹²⁴ The Township understood that the City had concerns about its water supply.¹²⁵ The Township Board heard information obtained from a hydrologist with the Minnesota Department of Health and discussed the

¹⁰⁹ *Id.*

¹¹⁰ Test. of T. Schoonhoven.

¹¹¹ Test. of D. Iverson.

¹¹² Test. of T. Schoonhoven.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*; Test. of D. Iverson.

¹¹⁶ Test. of T. Schoonhoven.

¹¹⁷ *Id.*; Test. of D. Iverson.

¹¹⁸ Test. of D. Iverson.

¹¹⁹ *Id.*

¹²⁰ *Id.*; Exs. 104, 108.

¹²¹ Test. of D. Iverson.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Ex. 108.

¹²⁵ Test. of M. Laubach.

City's water usage and possible mitigation efforts.¹²⁶ Ultimately, the Board voted to approve a conditional use permit with the following condition:

A minimum of Two pair of monitor wells will be constructed on the west side of the pit. The wells will intersect the water table, one at the top of the water table and the other at the surface aquifer. There will be a yearly joint City/Township committee to review water quality. Should there be a change in the water quality, then there will be a reevaluation of the permit.¹²⁷

72. The Township's approval further provided that the City would pursue grant funding, but that if it was unable to obtain a grant, the City and Hancock Concrete would split the cost of wells and water testing.¹²⁸ Hancock Concrete was also required to grant the City an easement on the west side of the gravel pit for the monitoring wells.¹²⁹

73. The conditions imposed on the Hancock Concrete expansion were more restrictive than required by Pope County.¹³⁰

74. The Hancock Concrete gravel mine is not included within the Subject Parcels.¹³¹ The area into which Hancock Concrete intends to expand its operations is not located within the Subject Parcels.¹³²

75. While the City is generally concerned about the use of properties in its DWSMA, the City has not identified any specific concerns about the current use of the Subject Parcels or the impact of current uses on the DWSMA.¹³³ There is no evidence that annexation of the Subject Parcels will have any effect on the DWSMA or the City's wells.

I. The City's Plans and Programs for Providing Needed and Enhanced Governmental Services to the Subject Parcels in a Cost-Effective and Feasible Manner Within a Reasonable Time

76. If annexed, the Subject Parcels would receive municipal services from the City. If the current use of the Subject Parcels is maintained, the City does not intend to extend water and sewer service to the Subject Parcels.¹³⁴

¹²⁶ Ex. 108 at 1.

¹²⁷ *Id.* at 2.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Test. of M. Laubach.

¹³¹ *Id.*; Test. of D. Iverson; Ex. 104.

¹³² Test. of M. Laubach; Test. of D. Iverson; Ex. 104

¹³³ Test. of D. Iverson; Test. of T. Schoonhoven.

¹³⁴ Test. of D. Iverson.

J. An Analysis of the Fiscal Impact on the Annexing Municipality, the Subject Area, and Adjacent Units of Local Government, and Local Tax Rates

77. The tax rate for property tax in the City is 54.532.¹³⁵

78. If the Subject Parcels are annexed to the City, the City's property tax for both parcels would be approximately \$3,500 per year.¹³⁶

79. Obtaining additional tax revenue in that amount would not have a significant impact on the City's financial health.¹³⁷

80. The property tax rate in the Township is 5.856.¹³⁸

81. Before special assessments, the total annual property tax bill for the North Parcel in 2022 was \$796, of which \$68.01 was attributable to the Township's property tax.¹³⁹ In 2023 the total bill was \$1,150, before special assessments, with \$102.64 payable to the Township.¹⁴⁰

82. For the South Parcel, before special assessments, the annual tax bill in 2022 was \$424, \$33.97 of which was payable to the Township.¹⁴¹ For 2023, before special assessments, the bill is \$742, with taxes to the Township of \$63.64.¹⁴²

83. The Township's tax base includes lake homes along Lake Minnewaska in the Township and valuable agricultural land.¹⁴³ The Township estimates that annexation of the Subject Parcels and loss of associated tax revenue would have a minimal impact on its finances.¹⁴⁴

84. Because the Subject Parcels are located near areas zoned for commercial uses, the Subject Parcels have particular value to the Township due to their potential for development.¹⁴⁵

85. The owners of the North Parcel, Lloyd and Kathryn Pahan, are retired and live on a fixed income.¹⁴⁶ They fear that they will need to sell the North Parcel if the property is annexed because they will be unable to afford paying the increased tax amount.¹⁴⁷ Lloyd Pahan has returned to working a few days per week driving a medical

¹³⁵ *Id.*

¹³⁶ Test. of D. Iverson.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Ex. 103 at 1.

¹⁴⁰ *Id.* at 7.

¹⁴¹ *Id.* at 4.

¹⁴² *Id.* at 4, 9.

¹⁴³ Test. of M. Laubach.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Test. of L. Pahan; Test. of K. Pahan.

¹⁴⁷ Test. of L. Pahan.

transport van, and they anticipate that he may need to take on increased hours or Kathryn Pahan may need to obtain employment to cover their expenses.¹⁴⁸

K. Relationship and Effect of the Proposed Annexation on Adjacent School Districts and Communities

86. There is no evidence in the record indicating that annexation of the Subject Parcels would have any effect on adjacent school districts and communities.

L. Adequacy of Town Government to Deliver Services to the Subject Parcels

87. The Township adopted urban powers, pursuant to Minn. Stat. § 368.01 (2022), within the last two years.¹⁴⁹ As such, the Township may exercise regulatory authority over health and safety issues as well as infrastructure for streets, sewers, and the water supply.¹⁵⁰

88. The Township has a Zoning Board and Planning Commission.¹⁵¹ The Township's zoning ordinance was adopted in 1993, and then repealed and replaced by its current zoning ordinance on January 28, 2021.¹⁵² The Township adopted a Comprehensive Land Use Plan in 1993, which was revised and readopted on January 12, 2021.¹⁵³ The Township works with Pope County to engage in zoning and planning for development.¹⁵⁴

89. In connection with the readoption of its Comprehensive Land Use Plan, the Township surveyed residents to determine their priorities and concerns.¹⁵⁵ Township residents were concerned about additional annexations of Township land to the City, and the effect of such annexations on the Township's finances and rural nature.¹⁵⁶

90. The Township's land use priorities include preserving the "urban" residential area near Lake Minnewaska and agricultural land uses, while encouraging business development closer to several highways running through the Township.¹⁵⁷

91. Properties within the Township have been developed for residential use, including seasonal cabins and year-round homes, and the Township also includes land

¹⁴⁸ Test. of K. Pahan.

¹⁴⁹ Test. of M. Laubach.

¹⁵⁰ See Minn. Stat. § 368.01.

¹⁵¹ Test. of M. Laubach.

¹⁵² Ex. 101.

¹⁵³ Ex. 100.

¹⁵⁴ Test. of M. Laubach.

¹⁵⁵ *Id.*

¹⁵⁶ Ex. 100 at 3.

¹⁵⁷ Test. of M. Laubach.

used for agricultural purposes.¹⁵⁸ There are also properties developed for commercial and industrial uses within the Township.¹⁵⁹

92. The Township has considered mining permits and applications for the development of solar gardens, as well as routine requests for changes to structures on Township property.¹⁶⁰ The Township has approved proposals to develop townhouses, but it has not approved any proposals for development of apartment buildings.¹⁶¹

93. The Township has entered into a contract for professional planning services.¹⁶² The Township has begun the process to contract for engineering services related to planning.¹⁶³

94. The Township contracts for fire department services with the City and the fire department in Starbuck, Minnesota.¹⁶⁴ The service area for each fire department is based on proximity to the fire station.¹⁶⁵

95. The Pope County Sheriff provides law enforcement protection to the Township, though the City has jurisdiction to patrol shared roads.¹⁶⁶

96. Using urban powers, the Township could decide to provide water and sewer services, but it would need to develop infrastructure to do so.¹⁶⁷ The Township does not currently provide these services.¹⁶⁸

97. Town Board members do not maintain offices at the Township's town hall, but Board members are available to residents by telephone.¹⁶⁹

98. The owners of the Subject Parcels have no concerns about the level of governmental services provided by the Township.¹⁷⁰

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Test. of J. Pahan; Test. of L. Pahan; Test. of K. Pahan.

M. Analysis of Whether Necessary Governmental Services Can Best be Provided Through the Proposed Action or Another Type of Boundary Adjustment

99. There is no evidence in the record supporting a determination that another type of boundary adjustment will better provide necessary governmental services to the Subject Parcels.

N. If Only a Part of a Township Is to be Annexed, the Ability of the Remainder of the Township to Continue or the Feasibility of it Being Incorporated Separately or Being Annexed to Another Municipality

100. There is no evidence in the record showing that the Township will be unable to continue its governmental operations if the Subject Parcels are annexed.

101. There is no basis in the record to incorporate the Township or to annex its lands to another municipality.

O. Information Received by The Administrative Law Judge From the Tour Under Subdivision 3a.

102. The parties waived the tour contemplated by Minn. Stat. § 414.031, subd. 3a.¹⁷¹ The parties stipulated to admission of 56 photographs of the Subject Parcels and adjacent area, and they agreed that these photographs accurately depict the Subject Parcels.¹⁷²

IV. Procedural History and Statutory Requirements

103. The Notice of Intent for Annexation was filed December 9, 2022.¹⁷³ The City submitted the required filing fee on December 12, 2022. The Township timely filed an Objection to Annexation on February 22, 2023.¹⁷⁴

104. The City amended its Notice of Intent for Annexation twice to address issues with its description of the Subject Parcels. The City filed an Amended Notice of Intent for Annexation on April 12, 2023.¹⁷⁵ The City filed the final amendment, the Second Amended Notice of Intent for Annexation, on June 7, 2023.¹⁷⁶

105. On March 6, 2023, the Administrative Law Judge issued a Prehearing Order scheduling the hearing in this matter on April 17, 2023.¹⁷⁷

¹⁷¹ Hearing Digital Recording (June 21, 2023) (on file with the Minn. Office Admin. Hearings).

¹⁷² *Id.*; Exs. 1-56.

¹⁷³ Notice of Intent for Annexation (Oct. 11, 2022).

¹⁷⁴ Objection to Annexation (Feb. 22, 2023).

¹⁷⁵ Amended Notice of Intent for Annexation (Apr. 12, 2023).

¹⁷⁶ Second Amended Notice of Intent for Annexation (June 2, 2023).

¹⁷⁷ Prehearing Order (Mar. 6, 2023).

106. Notice of the evidentiary hearing was published in the Pope County Tribune on March 30 and April 6, 2023.¹⁷⁸

107. The Administrative Law Judge convened the hearing on April 17, 2023, in person at the Glenwood City Hall and via Microsoft Teams.¹⁷⁹ The parties requested a continuance of the hearing and waived their right to proceed with the hearing within 60 days of the filing of the case.¹⁸⁰

108. The hearing was continued to a date certain, June 21, 2023, as ordered in the Third Prehearing Order issued on April 18, 2023.¹⁸¹

109. The Administrative Law Judge convened the hearing at the Glenwood City Hall in Glenwood, Minnesota on June 17, 2023. The hearing location is in the county where the Subject Parcels are located.¹⁸²

110. Both parties offered sworn testimony and the Administrative Law Judge received the City's Exhibits 1 through 61, and the Township's Exhibits 100 through 108. Members of the public also attended the hearing and were offered an opportunity to provide comments for the record.

111. The parties waived the tour of the area proposed for annexation and stipulated to the admission of photographs in Exhibits 1 through 56, which the parties agree accurately and fairly represent the Subject Parcels.

112. Both parties timely filed their final submissions by July 21, 2023.

V. Public Comments

113. The Notice of Hearing advised the public that interested persons could submit written data, statements, or arguments concerning this matter prior to the hearing. The Notice of Hearing requested that public comments be submitted by 4:30 p.m. on April 17, 2023, and advised that members of the public could be heard at that hearing. The Third Prehearing Order also advised the public that public comments would be accepted at the hearing on June 21, 2023.

114. The Administrative Law Judge heard comments from three members of the public at the initial hearing on April 17, 2023, Jeffrey Pahan, Jedediah Pahan, and Tammie Pahan.¹⁸³ Jeffrey Pahan is opposed to the annexation, he wonders why the Subject Parcels were chosen for annexation, and he is concerned about the extension of the City's regulations to the Subject Parcels.¹⁸⁴ Jedediah Pahan expressed opposition to

¹⁷⁸ Affidavit of Publication (Apr. 3, 2023).

¹⁷⁹ Hearing Digital Recording (Apr. 17, 2023) (on file with the Minn. Office Admin. Hearings).

¹⁸⁰ *Id.*; Prehearing Conference Digital Recording (Mar. 3, 2023).

¹⁸¹ Third Prehearing Order (Apr. 18, 2023).

¹⁸² See Minn. Stat. § 414.09, subd. 1(b) (2022).

¹⁸³ Hearing Digital Recording (Apr. 17, 2023) (on file with the Minn. Office Admin. Hearings).

¹⁸⁴ *Id.*

the annexation and questioned whether there was a plan for providing infrastructure to the Subject Parcels.¹⁸⁵ Tammie Pahan opposed the annexation.¹⁸⁶

115. At the hearing on June 21, 2023, the Administrative Law Judge heard comments from Lloyd Pahan and Jedediah Pahan,¹⁸⁷ and received a written comment from Lloyd Pahan into the record.¹⁸⁸ Lloyd Pahan is opposed to the annexation and is angry that the City pursued the annexation without notice to the property owners.¹⁸⁹ He fears he will be unable to pay the increased taxes for the property.¹⁹⁰ Jedediah Pahan noted that he resides on the South Parcel and has cultivated the property for agriculture, which is the long-standing use of the property.¹⁹¹ He opposes the annexation.¹⁹²

VI. Incorporation by Reference

116. Any Conclusion of Law more properly considered to be a Finding of Fact is adopted herein.

117. Any portion of the accompanying Memorandum that is properly considered to be a Finding of Fact is incorporated as such.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction over this matter pursuant to Minn. Stat. § 414.01, .031, 033, .12 (2022).

2. The Office of Administrative Hearings provided notice of the hearing as required Minn. Stat. § 414.09, subd. 1(c) (2022), and notice of the hearing date was published in compliance with Minn. Stat. § 414.09, subd. 1(d) (2022). All required notice having been given, this matter is properly pending before the Administrative Law Judge.

3. Under Minn. Stat. § 414.033, subd. 3, a municipality may annex property if the property is 40 acres or less and 60 percent or more bordered by land within the municipality. The Subject Parcels meet these criteria.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Hearing Digital Recording (June 21, 2023) (on file with the Minn. Office Admin. Hearings).

¹⁸⁸ Written Comment of L. Pahan.

¹⁸⁹ *Id.*; Hearing Digital Recording (June 21, 2023) (on file with the Minn. Office Admin. Hearings).

¹⁹⁰ Written Comment of L. Pahan; Hearing Digital Recording (June 21, 2023) (on file with the Minn. Office Admin. Hearings).

¹⁹¹ Hearing Digital Recording (June 21, 2023) (on file with the Minn. Office Admin. Hearings).

¹⁹² *Id.*

4. The Notice of Intent for Annexation was served on the Township and filed with this tribunal as required by Minn. Stat. § 414.033, subd. 3, and the Township filed a timely objection.

5. Minn. Stat. § 414.031, subd. 4, .033, subd. 3, require consideration of 17 factors in determining whether a petition for annexation should be approved. The factors are:

- (1) recordings and public documents from joint informational meetings under section 414.0333, relevant to other factors listed in this subdivision;
- (2) 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;
- (3) quantity of land within the subject area and adjacent units of local government; and natural terrain including recognizable physical features, general topography, major watersheds, soil conditions and such natural features as rivers, lakes and major bluffs;
- (4) degree of contiguity of the boundaries between the annexing municipality and the subject area;
- (5) present pattern of physical development, planning, and intended land uses in the subject area and the annexing municipality including residential, industrial, commercial, agricultural and institutional land uses and the impact of the proposed action on those land uses;
- (6) the present transportation network and potential transportation issues, including proposed highway development;
- (7) land use controls and planning presently being utilized in the annexing municipality and the subject area, including comprehensive plans for development in the area and plans and policies of the Metropolitan Council, and whether there are inconsistencies between proposed development and existing land use controls and the reasons therefore;
- (8) existing levels of governmental services being provided in the annexing municipality and the subject area, including water and sewer service, fire rating and protection, law enforcement, street improvements and maintenance, administrative services, and recreational facilities and the impact of the proposed action on the delivery of said services;
- (9) the implementation of previous annexation agreements and orders;
- (10) existing or potential environmental problems and whether the proposed action is likely to improve or resolve these problems;

- (11) plans and programs by the annexing municipality for providing needed and enhanced governmental services to the subject area in a cost-effective and feasible manner within a reasonable time from the date of the annexation;
- (12) an analysis of the fiscal impact on the annexing municipality, the subject area, and adjacent units of local government, including net tax capacity and the present bonded indebtedness, and the local tax rates of the county, school district, and township;
- (13) relationship and effect of the proposed action on affected and adjacent school districts and communities;
- (14) adequacy of town government to deliver services to the subject area;
- (15) analysis of whether necessary governmental services can best be provided through the proposed action or another type of boundary adjustment;
- (16) if only a part of a township is annexed, the ability of the remainder of the township to continue or the feasibility of it being incorporated separately or being annexed to another municipality; and
- (17) information received by the presiding administrative law judge from the tour required under subdivision 3a.

6. Based upon these factors, under Minn. Stat. § 414.031, subd. 4(b), annexation may be ordered if: (1) the property proposed for annexation is now, or is about to become, urban or suburban in character; (2) municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare; or (3) annexation would be in the best interest of the subject area.

7. The City bears the burden of proof to establish by a preponderance of the evidence that the proposed annexation should be approved.¹⁹³

8. The City has not shown by a preponderance of the evidence that the Subject Parcels are now or are about to become urban or suburban in character; that municipal government in the area of the Subject Parcels is necessary to protect public health, safety, and welfare; or that annexation is in the best interest of the Subject Parcels.

9. Under Minn. Stat. § 414.12, subd. 3, if the parties do not agree to a division of the costs of the proceeding before a hearing commences, the costs must be allocated on an equitable basis.

10. For the reasons described in the accompanying Memorandum, which are incorporated herein, the Administrative Law Judge concludes that it is equitable to require the City to pay 70 percent of the costs of the Office of Administrative Hearings in this matter, and for the Township to be assessed 30 percent of the costs.

¹⁹³ Minn. R. 1400.7300, subp. 5 (2023).

11. Any Finding of Fact more properly considered to be a Conclusion of Law is adopted herein.


12. Any portion of the accompanying Memorandum that is properly considered a Conclusion of Law is incorporated as such.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, which is incorporated herein, the Administrative Law Judge issues the following:

ORDER

1. The City's petition for annexation of the Subject Parcels is **DENIED**.
2. Pursuant to Minn. Stat. § 414.12, subd. 3, the costs of this proceeding are allocated 70% to the City and 30% to the Township. An itemized invoice for costs will be sent to the parties under separate cover.

Dated: September 28, 2023


JESSICA A. PALMER-DENIG
Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.031, .033, .07, .09, .12 (2022). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Pope 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 (2023). However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

I. Introduction

Property is eligible for annexation under Minn. Stat. § 414.033, subd. 3, if it is 60 percent or more bordered by the municipality and the area proposed for annexation is 40 acres or less. The Subject Parcels meet those criteria. That is a threshold inquiry,

however, and because the Township objected to the petition for annexation, a hearing was required to determine if the annexation should be ordered.¹⁹⁴ The City must establish that: (1) the property proposed for annexation is now, or is about to become, urban or suburban in character; (2) municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare; or (3) annexation would be in the best interest of the subject area.¹⁹⁵ The City failed to meet its burden.

II. Analysis

A. Urban or Suburban

The City has not shown that the Subject Parcels are urban or suburban, or that they are about to become so. The terms “urban” and “suburban” are not defined in the municipal boundary adjustment statutes. Courts interpret words in statutes according to their plain meaning, and often look to dictionary definitions in interpreting statutory terms.¹⁹⁶ “Urban” means “of, relating to, characteristic of, or constituting a city.”¹⁹⁷ A “suburb” is defined as “an outlying part of a city or town,” and as “a smaller community adjacent to or within commuting distance of a city.”¹⁹⁸

The legislative findings and goals underlying the municipal boundary adjustment statutes also provide context for determining whether an area is urban or suburban. In Minn. Stat. § 414.01, subd. 1a (2022), the legislature found that “municipal government most efficiently provides governmental services in areas *intensively developed for residential, commercial, industrial, and governmental purposes*; and township government most efficiently provides governmental services in areas used or *developed for agricultural, open space, and rural residential purposes*.”¹⁹⁹ In Minn. Stat. § 414.01, subd. 1b (2022), The legislature also expressly established three goals for the promotion and regulation of municipal development:

- (1) to provide for the extension of municipal government to areas which are developed or are in the process of being developed for intensive use for residential, commercial, industrial, institutional, and governmental purposes or are needed for such purposes; and
- (2) to protect the stability of unincorporated areas which are used or developed for agricultural, open space, and rural residential purposes and are not presently needed for more intensive uses; and
- (3) to protect the integrity of land use planning in municipalities and unincorporated areas so that the public interest in efficient local government will be properly recognized and served.

¹⁹⁴ Minn. Stat. § 414.033, subd. 3 (providing that the municipality must give notice to the town, and if the town objects, the matter must proceed to a hearing).

¹⁹⁵ Minn. Stat. § 414.031, subd. 4(b)

¹⁹⁶ *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016).

¹⁹⁷ *Urban*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/urban>.

¹⁹⁸ *Suburb*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/suburban>.

¹⁹⁹ Emphasis added.

While the City identified the area of the Subject Parcels as commercial in nature, the Subject Parcels are used for residential and agricultural purposes, and the South Parcel is currently actively farmed. The area to the west and northwest of the Subject Parcels in the City has been developed for commercial and industrial uses, but the Subject Parcels are also located near rural, agricultural land.

The City has identified the Subject Parcels as appropriate for development, in large part to meet the City's need for more multifamily housing.²⁰⁰ The City characterized the petition for annexation as a proactive attempt to ensure that developers can find suitable properties that are already available within the City.²⁰¹ The record shows, however, there is no particular plan to develop the Subject Parcels, no developer interested in the Subject Parcels, and no similar development in the area around the Subject Parcels.²⁰² The City has not updated its Comprehensive Plan for land use since 1979, leaving it without a current, comprehensive assessment of its land use needs.²⁰³ Much of the more recent development in the City has occurred in areas other than the one near the Subject Parcels.²⁰⁴ At this time, the Subject Parcels are "agricultural, open space, and rural residential" properties that are "not presently needed for more intensive uses."²⁰⁵ Based on this record, the Subject Parcels are not urban or suburban or about to become so.

B. Municipal Government Required to Protect Public Health, Safety, and Welfare

The City also has not shown that municipal government for the Subject Parcels is required to protect the public health, safety, and welfare. Environmental issues are a factor requiring serious consideration in boundary adjustment matters.²⁰⁶ The City has legitimate concerns about controlling stormwater and protecting its water supply from contamination. Yet, while the City identified its concerns about the water supply as a basis for the annexation, it did not establish that the proposed annexation will address any of those environmental issues.

The City's engineer testified he is not familiar with the topography of the Subject Parcels.²⁰⁷ Neither of the City's witnesses could identify any specific concerns about the impact of the Subject Parcels' current use on its water supply.²⁰⁸ The City noted the

²⁰⁰ Test. of D. Iverson.

²⁰¹ *Id.*

²⁰² *Id.*; Ex. 104.

²⁰³ Ex. 59; Test. of D. Iverson.

²⁰⁴ Test. of D. Iverson.

²⁰⁵ Minn. Stat. § 414.01, subd. 1b(2).

²⁰⁶ Minn. Stat. § 414.031, subd. 4(10); see also *In the Matter of the Petition for the Incorporation of Credit River Township*, OAH 71-0330-37133, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Minn. Office Admin. Hearings Jan. 29, 2021) (considering environmental concerns related to septic systems in incorporating a city), *In re the Matter of the Petition for the Detachment of Certain Real Property from the City of Trosky to Elmer Township*, OAH 84-0330-32407, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING DETACHMENT (Minn. Office Admin. Hearings Sept. 30, 2015) (considering environmental concerns relating to the remediation of faulty septic systems in a detachment matter).

²⁰⁷ Test. of T. Schoonhoven.

²⁰⁸ *Id.*; Test. of D. Iverson.

expansion of Hancock Concrete, located to the east of the Subject Parcels, as a concern because operations of the gravel mine could impact its DWSMA.²⁰⁹ The Township provided evidence that it had heard the City's concerns, and responded by ensuring that monitoring wells were part of the project.²¹⁰ At the hearing, the City's Administrator Dave Iverson, was unclear about the ultimate outcome of the mine expansion permit, and he conceded that the City had not engaged with the Township about this issue after the permit proceedings concluded.²¹¹ Further, the gravel mine is not within the Subject Parcels and the City would not gain any regulatory control over the mine if annexation of the Subject Parcels is approved. There is no evidence that annexation of the Subject Parcels will have any impact on the City's DWSMA.

C. Best Interest of the Subject Parcels

Finally, the City has not shown that annexation is in the best interest of the Subject Parcels. The Township either provides or contracts for key services for the Subject Parcels, including police and fire protection, and zoning and land use controls.²¹² The Township has adopted urban powers under Minn. Stat. § 368.01, which allow it to exercise greater regulatory control within its borders, and it already receives or is in the process of obtaining professional planning and engineering services.²¹³ The Township has recently revisited its Zoning Ordinance and Comprehensive Land Use Plan.²¹⁴ The owners and residents of the Subject Parcels have no concerns about the level of services provided by the Township.²¹⁵ There is no basis to find that the Township is unable to provide necessary services to the Subject Parcels.

The City does not currently provide any City services directly to the Subject Parcels. The nearest water and sewer connections are located one-quarter to three-quarters of a mile away from the Subject Parcels.²¹⁶ The City has no plan to provide municipal water and sewer services to the Subject Parcels while they are in the Township, and even if the parcels are annexed, the City does not intend to extend water and sewer lines to serve them.²¹⁷ The City would extend water and sewer service to the Subject Parcels only if it served a developer of the properties.²¹⁸ The current owners of the Subject Parcels have no desire to develop their land, however, and no developer has indicated any interest in developing these properties.²¹⁹ The City also articulated its desire to obtain greater clarity about its boundary lines with townships as a basis for annexation, but did

²⁰⁹ Test. of D. Iverson.

²¹⁰ Test. of M. Laubach; Ex. 108.

²¹¹ Test. of D. Iverson. It is worth nothing that the Notice of Intent for Annexation is dated October 11, 2023, which is the same date that the Township met to consider the Hancock Concrete mine expansion permit. See Notice of Intent for Annexation (Oct. 11, 2022); Ex. 108.

²¹² Test. of M. Laubach.

²¹³ *Id.*

²¹⁴ *Id.*; Exs. 100-101.

²¹⁵ Test. of J. Pahan; Test. of L. Pahan, Test. of K. Pahan.

²¹⁶ Test. of D. Iverson; Test. of T. Schoonhoven.

²¹⁷ Test. of D. Iverson.

²¹⁸ *Id.*

²¹⁹ *Id.*; Test. of J. Pahan; Test. of L. Pahan; Test. of K. Pahan.

not identify any problem with the boundary lines in the area of the Subject Parcels.²²⁰ The record does not support finding that City services are required for these parcels, or that the Subject Parcels will actually receive greater benefit from the services provided by the City.

While the Subject Parcels would not receive enhanced services from the City upon annexation, the property taxes for the Subject Parcels would increase substantially. If the Subject Parcels are annexed to the City, the City's property tax for both parcels would be approximately \$3,500 per year.²²¹ In contrast, the Township's property tax amounts for both parcels over the last few years have ranged from approximately \$102 to \$166 per year.²²² The City would not gain any meaningful financial benefit from annexation of the Subject Parcels, but the owners would bear a much higher tax burden without a commensurate increase in services.²²³

III. Equitable Division of Costs

The City pursued annexation of the Subject Parcels without communicating with the property owners or the Township. The City was not required by law to provide the Notice of Intent for Annexation to the property owners.²²⁴ Under Minn. Stat. § 414.033, subd. 3, the City was required to serve the Township, and if the Township had not objected, the City could have annexed the Subject Parcels by ordinance without ever contacting the property owners directly.

As a result of the Township's objection, however, the City was required to prove that annexation should be ordered, and the hearing process revealed substantial gaps in the City's case. Among these, the City pursued annexation for the purposes of development without any plan for that development or the extension of services necessary to support such development. The City based the annexation request on its water quality and control concerns, but it sought to annex property that does not have any significant impact on those issues. The City was concerned about the Township and Pope County's response to the Hancock Concrete expansion, but the City's resolution for notice of annexation was dated the same day that the Township voted on the permit conditions, and the City did not follow up with the Township or Pope County regarding the outcome of the project.²²⁵ Further, the proposed annexation will not impact that expansion and the City will gain no greater regulatory control over the gravel mine as a result of this case. The City continued pursuing the annexation proposal notwithstanding these considerations.

Under Minn. Stat. §§ 14.53, 414.12, subd. 3(c), (e) (2022), the Office of

²²⁰ Test. of D. Iverson.

²²¹ *Id.*

²²² Ex. 103.

²²³ Test. of D. Iverson; Test. of L. Pahan.

²²⁴ See Minn. Stat. 414.033, subd. 3 (requiring service of a notice of intent for annexation on a town, but not requiring notice to the owners of a property proposed for annexation). Even if not legally required, as a practical matter, advance communication with the owners of the Subject Parcels likely would have been beneficial.

²²⁵ Exs. 105, 108; Test. of D. Iverson.

Administrative Hearings assesses the costs of boundary adjustment hearing matters to the parties. The parties may agree to a division, but in the absence of an agreement, the Administrative Law Judge must equitably apportion the costs.²²⁶ The parties did not agree to a division in this case, and the Township requests that a substantially greater share of the costs be apportioned to the City.²²⁷ After serious consideration, the Administrative Law Judge determines that it is equitable to divide the cost of the proceeding to assess the City 70 percent of the costs, and the Township 30 percent.

In reaching this result, the Administrative Law Judge has considered that the City bore the burden of proof in this matter, and continued to pursue annexation after the Township objected, leading to the assessment of costs for a hearing. The City did so even though there were fairly clear and obvious gaps in the evidence supporting its case that prevented it from meeting its burden. Under those circumstances, it is appropriate to assess a greater share of the hearing costs to the City. At the same time, the Township has its own land use plans and has an interest in retaining land within its borders, particularly given that its citizens have identified annexation of land to the City as a key concern. The Township determined that it would object to the annexation and participate as a party to vindicate those interests at the hearing, ultimately with success. It is appropriate for the Township to bear some of the costs associated with the hearing. The Administrative Law Judge determines that the 70-30 split equitably addresses the parties' responsibility for the costs of the hearing.

IV. Conclusion

The Administrative Law Judge encourages the City, Township, and property owners to engage in thoughtful discussions about the City's need for housing and desire to find appropriate land for development, as well as the City's concerns about protecting its water supply.²²⁸ Opportunities for economic development within the City, and a clean water supply for residents and businesses in the City, undoubtedly lead to benefits extending beyond the City's borders. The Administrative Law Judge hopes that the participants in this matter will move forward from this process in a manner that allows them to meet their individual and community needs. In the meantime, however, the City's present request for annexation of the Subject Parcels is **DENIED**.

J. P. D.

²²⁶ Minn. Stat. § 414.12, subd. 3(c), (e).

²²⁷ Closing Argument Letter from Jason M. Hill to the Administrative Law Judge at 6 (July 21, 2023).

²²⁸ The legislature has strongly encouraged local units of government to reach agreements about municipal boundary adjustment matters. See Minn. Stat. §§ 414.01, subd. 1a(5), 414.12, subd. 5 (2022). The Administrative Law Judge notes that Minn. Stat. § 414.12, subd. 3(d) (2022), allows parties to contract with the Office of Administrative Hearings for the provision of alternative dispute resolution services outside the context of a municipal boundary adjustment petition, if the participants believe that a mediation or another type of facilitated discussion would assist the parties in reaching an agreement in the future.