

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of
Certain Real Property to the City of
Nelson from Alexandria Township
(MBAU Docket A-8489)

**ORDER DENYING
ANNEXATION**

This matter is pending before Administrative Law Judge Jessica A. Palmer-Denig upon the request of the City of Nelson (City) to annex certain real property (Property) from Alexandria Township (Township). The record closed upon receipt of the parties' final filings on December 20, 2024.


Thomas P. Klecker, Thornton, Dolan, Bowen, Klecker and Burkhammer, P.A., appears on behalf of the City. Jason M. Hill, Town Law Center, PLLP, appears on behalf of the Township.

Based upon the record and for reasons explained in the accompanying Memorandum, the Administrative Law Judge issues the following:

ORDER

The request for annexation is **DENIED**.

Dated: February 5, 2025


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 (2024). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Douglas 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

The City requests approval for annexation of the Property from the Township to the City pursuant to Minn. Stat. § 414.033, subd. 2(3). The Administrative Law Judge determines that the City has not satisfied the statutory requirements for annexation of the Property. Therefore, the request for approval of the proposed annexation is denied.

I. Annexation Under Minn. Stat. § 414.033, subd. 2(3)

Minn. Stat. § 414.033 establishes the circumstances under which a city may adopt an ordinance annexing unincorporated property abutting the municipality. Minn. Stat. § 414.033, subd. 2(3), allows a city to annex land abutting the city upon a petition by the property's owners if the land to be annexed is 120 acres or less, and is not presently served by public wastewater facilities or such wastewater facilities are not otherwise available.¹

Before adopting an ordinance under Minn. Stat. § 414.033, subd. 2(3), the city must hold a public hearing and give 30 days' written notice to the town or towns affected by the proposed ordinance, and to all landowners within and contiguous to the area to be annexed.² The written notice must be sent by certified mail.³ The annexation ordinance must be filed with the Office of Administrative Hearings, the township, the county auditor, and the secretary of state, and is final on the date the ordinance is approved by this tribunal.⁴

A boundary adjustment proceeding is initiated by the filing of a petition.⁵ The petition constitutes prima facie evidence of the facts contained in the petition if not controverted by opposing parties.⁶ This tribunal is authorized to independently verify the accuracy of the facts.⁷ When a city seeks to annex land under Minn. Stat. § 414.033, subd. 2(3), this tribunal's role is limited to determining whether or not the property at issue meets the statutory criteria and whether the city has complied with the procedural requirements for such an annexation.⁸ As the petitioner, the City has the burden to show that it complied with all statutory requirements and that the proposed annexation should be approved.⁹

II. Ordinance No. 60

On May 14, 2024, the owner of the Property executed a petition requesting that the City annex 61.87 acres of unplatted land located in the Township and bordering the

¹ Minn. Stat. § 414.033, subd. 2(3).

² *Id.*, subd. 2b.

³ *Id.*

⁴ *Id.*, subd. 7.

⁵ Minn. R. 6000.0100, subp. 3, .0800 (2023).

⁶ Minn. R. 6000.0600 (2023).

⁷ *Id.*

⁸ *In re Annexation of Real Property to City of Bemidji from Bemidji Township*, 945 N.W.2d 68, 70 (Minn. Ct. App. 2020), *review denied* (Minn. July 23, 2020).

⁹ See Minn. R. 6000.1900, subp. 1, Minn. R. 1400.7300, subp. 5 (2023).

City's boundary to the south and west.¹⁰ The City adopted Ordinance No. 60 on June 28, 2024, to annex the Property by ordinance under Minn. Stat. § 414.033, subd. 2(3).¹¹ Ordinance No. 60 stated that the Property "is not presently served by public sewer facilities or public sewer facilities are not otherwise available."¹² The ordinance also declared that the Property "is or is about to become urban, residential or commercial in nature and the proposed use for said property will require or will need city services, including public sewer facilities."¹³

Ordinance No. 60 stated that 30 days' written notice had been provided to the Township by certified mail.¹⁴ The City had not served the Township, however. Instead of sending notice to the Township, the City mailed the written notice to the last known address for the Township's former clerk.¹⁵ On June 21, 2024, the Township wrote to the City advising the City Council that it had not complied with the notice requirement.¹⁶ The Township requested that the City reschedule its hearing and provide notice to the Township at its correct address and with the required period of notice.¹⁷ The City declined to reschedule. It went forward with the hearing on June 28, 2024, and two members of the Township's Board attended the hearing and presented concerns.¹⁸ During the meeting, the City adopted Ordinance No. 60 annexing the Property, and subsequently filed this case requesting approval of the annexation.

The Township filed an objection contending that the City had not met the statutory standards required for a valid annexation under Minn. Stat. § 414.033, subd. 2(3). In addition to challenging the City's compliance with the notice requirements, the Township asserted that public wastewater facilities were available to the property.¹⁹ The Administrative Law Judge required the parties to submit additional filings on these issues.

The City decided to hold another hearing to address the proposed annexation after serving notice on the Township.²⁰ On September 20, 2024, the City sent written notice of

¹⁰ Property Owner Petition for Annexation by Ordinance (May 14, 2024).

¹¹ Ordinance No. 60 (June 28, 2024).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* The City did not submit an affidavit or declaration of service or a return receipt supporting the assertion in Ordinance No. 60 regarding service on the Township.

¹⁵ Letter from Jason Hill to the City Council, City of Nelson (June 21, 2024); Letter from Jason Hill to Star Holman (Aug. 1, 2024); Telephone Conference Digital Recording (Aug. 27, 2024) (on file with the Minn. Office Admin. Hearings).

¹⁶ Letter from Jason Hill to the City Council, City of Nelson (June 21, 2024).

¹⁷ *Id.*

¹⁸ Letter from Thomas Klecker to Star Holman (Aug. 23, 2024).

¹⁹ The Township also raised concerns about provision of a notice regarding electric utility service and asserted that the property would be subject to special assessments. Letter from Jason Hill to Star Holman (Aug. 1, 2024). Because the Administrative Law Judge determines that other issues are dispositive, she does not address these concerns beyond noting that this tribunal has previously held that the notice regarding electric utility service need not be provided when the cost of electric utility service will not change. See *In re Annexation of Certain Real Property to the City of Buffalo from Buffalo Township*, OAH 84-0331-33376, 2016 WL 6216497, *3 (Minn. Office Admin. Hearings June 14, 2016).

²⁰ Letter from Thomas Klecker to Administrative Law Judge at 2 (Sept. 27, 2024).

its intent to annex the property to the Township by U.S. Mail.²¹ The City held another hearing on October 21, 2024, and re-adopted an identical Ordinance No. 60.²² The ordinance continued to state that the property is “not presently served by public sewer facilities or public sewer facilities are not otherwise available.”²³

III. Analysis

A. Notice Requirements

The Township asserts that Ordinance No. 60 passed on June 28, 2024, cannot serve as the basis for a valid annexation because the City did not provide notice to the Township as required by law. The Township argues that Ordinance No. 60 did not become effective until it was passed again on October 21, 2024, following appropriate notice to the Township. The City contends that the Township had actual notice of the hearing on the original ordinance, such that Ordinance No. 60 passed in June 2024 should be given lawful effect.

Minn. Stat. § 414.033, subd. 2b, provides that: “[b]efore a municipality may adopt an ordinance under [Minn. Stat. § 414.033, subd. 2(3)], a municipality must hold a public hearing and give 30 days’ written notice by certified mail to the town or towns affected by the proposed ordinance and to all landowners within and contiguous to the area to be annexed.” This notice requirement ensures specific notice to the property owners and adjacent local governments most impacted by the proposed annexation, as well as general notice to the public through the public hearing process. Minn. Stat. § 414.033, subd. 2(3), does not provide a township with the right to make a substantive objection to the annexation, and this tribunal does not conduct an evidentiary hearing to examine whether the proposed annexation meets criteria relevant in other types of annexation proceedings.²⁴ Rather, as described above, this tribunal conducts a limited review to determine compliance with the statutory requirements.²⁵

The Township’s objection falls within the scope of review provided under Minn. Stat. § 414.033 and goes to whether the City satisfied the procedural prerequisites for adoption of a valid annexation ordinance. There is no dispute that the City did not provide notice to the Township in the manner required by Minn. Stat. § 414.033, subd. 2b, prior to adopting Ordinance No. 60 in June 2024. The City sent the notice to a former employee of the Township who no longer had a formal role with, or any authority on behalf of, the Township. At the time of its hearing on June 28, 2024, the City knew that

²¹ Affidavit of Service of Kristine Gobel (Sept. 20, 2024). As noted above, Minn. Stat. § 414.033, subd. 2b, provides that the notice is to be sent by certified mail. The Township has not presented an objection regarding the use of U.S. Mail for this notice.

²² Ordinance No. 60 (Oct. 21, 2024).

²³ *Id.*

²⁴ See Minn. Stat. § 414.031 (2024) (providing for an evidentiary hearing and a more extensive review when the annexation is requested pursuant to an order of the Chief Administrative Law Judge, including consideration of 17 factors and multiple legal standards stating when an annexation may or must be approved or denied).

²⁵ *In re Annexation of Real Property to City of Bemidji*, 945 N.W.2d at 70 (recognizing the limited review conducted under Minn. Stat. § 414.033, subds. 2, 2b).

the Township disputed the City's compliance with the statutory prerequisites for adoption of the ordinance. Nevertheless, the City adopted an ordinance expressly declaring that it had provided 30 days' written notice to the Township by certified mail, even though it had not done so.

The City argues that the Township was not prejudiced by the lack of notice, as two members of the Township's Board had an opportunity to present concerns at the hearing.²⁶ The City argues that actual notice was sufficient to meet the procedural requirements. The Administrative Law Judge disagrees.

First, the language of the statute does not support this argument. Courts interpret statutory language by looking to the common and approved usage of the statute's words.²⁷ The plain meaning of a statute is determined by looking to the statute's text and textual context.²⁸ Further, courts look to the language of a statute in determining whether to require strict compliance with a statutory notice requirement.²⁹ The goal of all statutory interpretation is to effectuate the intent of the legislature.³⁰ The legislature has provided rules of construction to aid in this inquiry, including the direction that the word "must" is mandatory.³¹ Minn. Stat. § 414.033, subd. 2b, states that the annexing city "must" provide 30 days' written notice by certified mail to a town affected by the proposed ordinance "before [it] may adopt an ordinance." On its face, then, the statute's language suggests a mandatory notice requirement.

Second, caselaw supports reading the notice requirement as a mandatory prerequisite for adoption of an annexation ordinance. In *Annexation of Real Property to the City of Bemidji*, the Minnesota Court of Appeals considered a challenge to the city's annexation of land under Minn. Stat. § 414.033, subd. 2(3), the same statute at issue here. The Court noted that a review by the Office of Administrative Hearings did not include a full evidentiary hearing or consideration of substantive factors relevant in other types of annexation proceedings.³² Instead, the Court noted that this tribunal had determined that the property met the criteria for annexation under the statute and that the city had "fully complied with the procedural requirements of Minn. Stat. § 414.033, subd. 2b," which required the municipality to hold a public hearing and to "provide appropriate notice to the town or towns affected."³³ Therefore, the Court affirmed the order approving the city's annexation ordinance.

²⁶ Letter from Thomas Klecker to Star Holman (Aug. 23, 2024).

²⁷ Minn. Stat. § 645.08 (2024).

²⁸ *Wocelka v. State*, 9 N.W.3d 390, 394 (Minn. 2024).

²⁹ *Safety Signs, LLC v. Niles-Wiese Constr. Co.*, 840 N.W.2d 34, 38 (Minn. 2013).

³⁰ Minn. Stat. § 645.16 (2024).

³¹ Minn. Stat. § 645.44, subd. 15a (2024). Minn. Stat. § 645.44, subd. 1 (2024) provides that terms "shall have the meanings given them in this section, unless another intention clearly appears." In this instance, the statute does not clearly offer another intention.

³² 945 N.W.2d at 71.

³³ *Id.* at 70. See also *Township of Midway v. City of Proctor*, No. A12-1272, 2013 WL 1943010, *2 (Minn. Ct. App. May 13, 2013) (affirming an order approving annexation by ordinance under Minn. Stat. § 414.033, subd. 2(3), noting that the municipality must give notice to affected towns before adopting the ordinance and that there was no dispute that the property owners and city "met all of the statutory requirements for annexation by ordinance.").

That decision was consistent with another opinion issued by the Court of Appeals almost two decades before. In *Gilbert v. Minn. State Office of Strategic and Long-Range Planning*, the Court of Appeals considered an annexation decision made by a planning board with jurisdiction over boundary adjustment matters at that time.³⁴ The Court explained that the legislature had adopted a streamlined procedure for annexation by ordinance under certain circumstances.³⁵ If the property qualified for annexation by ordinance, two further procedural requirements must be met: (1) the municipality was required to hold a hearing with written notice; and (2) the city was required to file the ordinance with the planning board, the township, the county auditor, and the secretary of state.³⁶ The Court further stated that the board's review was conducted "to ensure that at least one of the conditions enumerated in Minn. Stat. § 414.033, subd. 2, has been met and *all of the procedural requirements* of Minn. Stat. § 414.033, subd. 2b, have been met."³⁷

Finally, reading the notice requirement strictly is consistent with the longstanding practice of this tribunal. Municipal boundary adjustment matters are consequential proceedings impacting community borders, population, and tax revenue, as well as the form of representative government and services available to property owners. Under Minn. Stat. § 414.033, subd. 2(3), a city may bypass an evidentiary hearing and annex land without any opportunity for a township to obtain a merits-based adjudication. This tribunal has required strict compliance with the statutory requirements in these cases because, in many matters, the record supporting the final order contains only the petition for annexation and the other filings required by Minn. R. 6000.0800 (2023) and does not include any document providing proof of service. Final orders are often issued without any participation in the proceeding by an impacted township. Under these circumstances, it is imperative that this tribunal be able to rely on the annexing city's strict compliance with the statutory requirements.

The City did not cite any prior decision, either by this tribunal or an appellate court, allowing annexation by ordinance in the absence of full compliance with the statutory notice provision. After diligent research, the Administrative Law Judge has been unable to identify any case doing so. The Administrative Law Judge determines that 30 days' written notice to the Township was required before the City passed Ordinance No. 60. The version of the ordinance enacted in June 2024 did not meet this requirement. The amended Ordinance No. 60 passed on October 21, 2024, which cured the deficient notice, is the operative ordinance subject to review in this proceeding.

³⁴ No. CX-01-1221, 2002 WL 109313 (Minn. Ct. App. Jan. 29, 2002).

³⁵ *Id.* at *2.

³⁶ *Id.*

³⁷ *Id.* at *3 (emphasis added).

B. Public Wastewater Facilities

On May 3, 2021, the owner of the Property approached the Township's Board with a request that the Property be rezoned from Rural Conservation Residential to Commercial-Rural so that the Property could be developed for the construction of "shouses," which are commercial buildings with an attached residential unit.³⁸ The Township approved the zoning change on that date.³⁹ At that time, the Township recognized that the planned development required extension of sewer lines and service to the Property.⁴⁰

Public sewer infrastructure and services within the Township are provided by the Alexandria Lake Area Service Region (ALASR) and Alexandria Lake Area Sanitary District (ALASD).⁴¹ The ALASD was established in the 1970s by the Minnesota Legislature due to concerns about water pollution and sewage disposal.⁴²

In September 2023, the ALASR ordered a feasibility study for expansion of public wastewater infrastructure to the Property and approved a scope of services engineering agreement for an extension of sewer service.⁴³ The ALASR Board of Directors held a public hearing in December 2023 for an expansion of sewer service to the area of the Property.⁴⁴ On January 20, 2024, the ALASR passed a resolution ordering the completion of the sewer expansion project, and the assessment for parcels within the Township was capped at \$25,000.⁴⁵ The ALASR awarded the construction contract to a contractor, Kuechle Underground, Inc., in a contract effective June 14, 2024.⁴⁶ Construction adjacent to the Property began on July 15, 2024.⁴⁷ As of September 26, 2024, the stub for one of the parcels in the Property was completed, and the second stub was expected to be installed in early October 2024.⁴⁸

Annexation by ordinance under Minn. Stat. § 414.033, subd. 2(3), may only be used when the "area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available." The City and Township disagree about whether this statutory term is satisfied.

The language of the statute is the starting point for an analysis of whether the Property satisfies the criteria for annexation under Minn. Stat. § 414.033, subd. 2(3). Minn. Stat. ch. 414 (2024) does not define the terms "presently served" or "otherwise available." To effect the intent of the legislature as to an undefined statutory term, a court may consider dictionary definitions to determine the words' common and ordinary

³⁸ Affidavit (Aff.) of Rod Eldevik (Eldevik Aff.) at ¶ 2, Exhibit (Ex.) A at 3.

³⁹ *Id.* at Ex. A at 3.

⁴⁰ *Id.* at ¶ 4.

⁴¹ Aff. of Scott Gilbertson (Gilbertson Aff.) at ¶ 3.

⁴² *Id.* at ¶ 3, Ex. B at 1.

⁴³ *Id.* at ¶ 2.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

meaning.⁴⁹ Dictionary definitions used to interpret undefined terms must also fit within the context of the statute.⁵⁰

The term “presently” is defined to mean “in a little while,” or “soon,” “at the present time,” or “now,”⁵¹ and “without undue delay,” or “before long.”⁵² Among the definitions of “serve” are “to furnish or supply with something needed or desired,” and “to answer the needs of,” “to provide services that benefit or help,” and “to provide with a regular or continuous supply of something.”⁵³ “Otherwise” is defined to include “in a different way or manner” and “in different circumstances,” and “in other respects.”⁵⁴ Finally, “available” is defined to mean “suitable or ready for use,” “at hand,” “present or ready for immediate use,” “readily obtainable” and “accessible.”⁵⁵

Further, the statute’s context includes the juxtaposition of the terms “presently served” and “otherwise available.” The presumptions used in ascertaining legislative intent include that the legislature “intends the entire statute to be effective and certain.”⁵⁶ Whenever possible, a statute is interpreted to give effect to all of its provisions and “no word, phrase or sentence should be deemed superfluous, void, or insignificant.”⁵⁷ A court “should construe statutes to avoid absurd results and unjust consequences.”⁵⁸ To adhere to these principles, the Administrative Law Judge also considers the context of public wastewater infrastructure and service. Providing public wastewater services is a substantial public works project that requires planning, government approvals, and the appropriation and expenditure of funds, before construction even begins. The extension of public wastewater infrastructure to new areas is a lengthy and expensive undertaking.

Additionally, this tribunal has previously considered circumstances related to the availability of public wastewater facilities under Minn. Stat. § 414.033, subd. 2(3), and the Administrative Law Judge considers that decision instructive. In *In re Annexation of Certain Real Property to the City of Proctor from Midway Township*, there was no dispute that the property proposed for annexation was not presently served by public wastewater facilities, but the parties disputed whether such services were otherwise available.⁵⁹ The judge found that no governmental entity had any current plan, or had articulated any future

⁴⁹ *State v. Johnson*, 995 N.W.2d 155, 160 (Minn. 2023).

⁵⁰ *State v. Scovel*, 916 N.W.2d 550, 555 (Minn. 2018).

⁵¹ *Presently*, DICTIONARY.COM, <https://www.dictionary.com/browse/presently> (last visited Jan. 27, 2025).

⁵² *Presently*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/presently> (last visited Jan. 27, 2025).

⁵³ *Serve*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/served> (last visited Jan. 27, 2025); *Serve*, DICTIONARY.COM, <https://www.dictionary.com/browse/serve> (last visited Jan. 27, 2025).

⁵⁴ *Otherwise*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/otherwise> (last visited Jan. 27, 2025); *Otherwise*, DICTIONARY.COM, <https://www.dictionary.com/browse/otherwise> (last visited Jan. 27, 2025).

⁵⁵ *Available*, DICTIONARY.COM, <https://www.dictionary.com/browse/available> (last visited Jan. 27, 2025); *Available*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/available> (last visited Jan. 27, 2025).

⁵⁶ Minn. Stat. § 645.17(2) (2024).

⁵⁷ *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

⁵⁸ *Schroedl*, 616 N.W.2d at 278.

⁵⁹ OAH 84-0330-32416, 2016 WL 6216495 (Minn. Office Admin. Hearings Oct. 10, 2016).

intent, to provide public wastewater services to the property.⁶⁰ For any entity to provide services depended on several future events including extending service boundaries, amending land use planning documents, obtaining right-of-way access from parties not related to the proceeding, and earmarking public funds in the amount of approximately \$1.5 to \$2.5 million, none of which was then contemplated.⁶¹ The court found that public wastewater services were not otherwise available under these circumstances.

Given all of this background, the Administrative Law Judge determines that the best reading of the statute requires interpreting “presently served” to mean that public wastewater infrastructure has been extended to a property. Even if the property has not yet actually connected to the sewer line, public wastewater infrastructure has been furnished to the property at that time. The Administrative Law Judge determines that public wastewater facilities are “otherwise available” when the service provider has undertaken the activities necessary to support the extension of infrastructure to a property and has a sufficiently concrete plan for the extension such that the property can readily obtain service.

As originally passed in June 2024, Ordinance No. 60 declared that the Property was not presently served by public wastewater services and that such services were not otherwise available.⁶² In a letter to the Administrative Law Judge dated September 27, 2024, the City’s counsel stated:

I have spoken with the director of the Alexandria Area Sanitary District (ALASD), Scott Gilbertson. This individual would be most knowledgeable about the service of waste water service to the subject property. I cannot have him submit an Affidavit stating that the property does not currently have waste water service, as that was recently installed along County Road 82 to the South of both parcels.⁶³

Despite this acknowledgement that the Property was served by public wastewater facilities, the City readopted Ordinance No. 60 a few weeks later declaring again that no wastewater service was available.⁶⁴ It is clear that by the time the City amended Ordinance No. 60 in October 2024, the Property was “presently served” by public wastewater facilities, making it ineligible for annexation under Minn. Stat. § 414.033, subd. 2(3).

The City argues that the availability of public wastewater services should be assessed as of the date the ordinance originally passed in June. Even if that version of Ordinance No. 60 is considered valid, it does not save the City’s proposed annexation. The ALASR began taking steps to extend service to the Property many months before the City passed Ordinance No. 60 in June 2024. By the time the City originally adopted the ordinance, the ALASR had passed a resolution ordering the service extension, set

⁶⁰ *Id.* at *15.

⁶¹ *Id.* at *16.

⁶² Ordinance No. 60 (June 28, 2024).

⁶³ Letter from Thomas Klecker to Administrative Law Judge at 1 (Sept. 27, 2024).

⁶⁴ Ordinance No. 60 (Oct. 21, 2024).

the assessment for the parcels to which service would be provided, and had awarded a construction contract for the extension.⁶⁵ Construction adjacent to the Property began on July 15, 2024, approximately two weeks after the City passed its ordinance.⁶⁶ On these facts, the Administrative Law Judge determines that public wastewater services were readily obtainable for the Property as of June 2024, making them “otherwise available” under Minn. Stat. § 414.033, subd. 2(3).

IV. Conclusion

The City has not shown that it may annex the Property using the mechanism in Minn. Stat. § 414.033, subd. 2(3).⁶⁷ The version of Ordinance No. 60 passed in June 2024 did not satisfy the procedural notice requirements or meet the statutory criteria regarding whether public wastewater services were otherwise available. The version of Ordinance No. 60 passed in October 2024 remedied the procedural deficiency, but contrary to the language of the ordinance and by the City’s own admission, the Property was presently served by wastewater facilities at that time. Therefore, the request for approval of Ordinance No. 60 is **DENIED**.

J. P. D.

⁶⁵ Gilbertson Aff. at ¶ 2.

⁶⁶ *Id.*

⁶⁷ This decision does not foreclose the City from seeking to annex the Property using another boundary adjustment procedure. See Minn. Stat. §§ 414.031, .033, subd. 5.