

BEFORE THE MINNESOTA MUNICIPAL COMMISSION
OF THE STATE OF MINNESOTA

Joseph Robbie	Chairman
Robert W. Johnson	Vice-Chairman
Irving R. Keldsen	Secretary
George W. Matthews	Ex-Officio
Robert F. Fitzsimmons	Ex-Officio

IN THE MATTER OF THE APPLICATION FOR THE INCORPORATION
OF A VILLAGE TO BE KNOWN AS THE VILLAGE OF MINNETRISTA,
HENNEPIN COUNTY, MINNESOTA, PURSUANT TO CHAPTER 686,
LAWS 1959.

The above petition for the proposed incorporation of the Village of Minnetrista from the remaining unincorporated area of Minnetrista Township came on for hearing before the Minnesota Municipal Commission in the Commissioners Room of the Court House at Minneapolis, Minnesota on Wednesday, September 23, 1959, at 10 o'clock a.m. Joseph Robbie, Chairman, presided. Robert W. Johnson, Vice-Chairman; Irving R. Keldsen, Secretary; George W. Matthews, Chairman of the Board of Hennepin County Commissioners; and Robert F. Fitzsimmons, Hennepin County Auditor attended. Elizabeth L. Bonham of the law firm of Bonham and Kavanagh, Mound, Minnesota, appeared as counsel for the petitioners. Mayor Harold Larson of Mound, Minnesota and Mayor Robert E. Walker of Island Park appeared to represent their respective villages as their interests might appear. No one appeared as opponent.

The Commission heard testimony and evidence for one day. Briefs were filed for the petitioners and the Village of Mound and Island Park. The hearing was reconvened and additional testimony heard and evidence taken on December 28, 1959, and conferences were held upon due notice to all parties on April 22, 1960 and May 12, 1960.

The Commission having carefully considered all of the evidence, and upon all of the files and records, now makes and files the following Findings of Fact, Conclusions of Law, Order and Memorandum Opinion:

FINDINGS OF FACT

I.

The petition complies with statutory requirements.

II.

Copies of the notice of hearing were served, posted and published as required by law.

III.

The territory proposed for incorporation is legally described as all of Township 117, Range 24, except that part taken for the Villages of St. Bonifacius and Mound (including the former Village of Island Park, now a part of Mound.) The territory proposed was shown on a map attached to the petition and designated as Exhibit "A".

IV.

The name proposed for the new village is the Village of Minnetrista.

V.

The territory proposed for incorporation has 2,076 residents. The population according to previous decennial census enumerations was 1,179 in 1930, 1,302 in 1940 and 1,906 in 1950. These census totals include more land than is included in the petition. The Dreamwood area was annexed by the Village of Mound subsequent to the 1950 census and contained a population of between 400 and 600 persons. The projected population of the proposed area in 1970, according to estimates of the Twin Cities Metropolitan Planning Commission, is 2,800.

VI.

The territory proposed contains a total of 19,005 acres of which 1,346 acres are platted lands and 17,659 acres are unplatted lands.

VII.

There are no commercial buildings within the territory proposed for incorporation except one tavern. Buildings are predominantly residences on platted land and residences and farm buildings on unplatted land.

VIII.

Building permits were issued in 1958 in the total sum of \$237,245.

IX.

The Township has enacted ordinances relating to zoning, building codes, sewage disposal, dumping and nuisances. It has a planning commission.

X.

The unincorporated area on Enchanted Island, commonly known as Douglas Beach, is not contiguous to the remaining area of the proposed incorporation but is contiguous to the present Village of Meund which has not legally acted separately upon a petition to annex it.

XI.

The area proposed for incorporation has gained a population in the area of 30% in nine years, is in the Minneapolis metropolitan area, and is subject to subdividing and developing as residential property.

XII.

The total assessed valuation of the included area is \$924,330 of which the assessed valuation for platted lands is \$299,629 and the assessed valuation for unplatted lands is \$624,701.

XIII.

Minnetriska Township has more than 2,000 people living in the incorporated area thereof and is presently authorized by law to exercise certain village (municipal) powers.

XIV.

The area proposed for incorporation presently constitutes the body politic known as Township of Minnetrista. The Township of Minnetrista presently provides fire protection service for those within its boundaries through contract with neighboring municipalities. The Township of Minnetrista presently provides police protection service for those within its boundaries through the services of one full-time, trained and experienced officer and two volunteer officers. The Township of Minnetrista owns, and uses exclusively for its police service, a 1956 Mercury Station Wagon, distinctively painted, equipped with radio, siren, rotating flasher light and stretcher.

XV.

The area proposed for incorporation is in transition between agricultural and urban character.

XVI.

The township form of government is not adequate to meet the problems posed by water contamination or other problems of public health raised as a result of people living in close proximity.

XVII.

The township form of government is not adequate to provide for future safeguards and regulations in the subdivision and development of land for residential, industrial and other urban purposes.

XVIII.

Prior to the filing of the petition for the incorporation of Minnetrista, a petition was filed pursuant to Laws 1959, Chapter 686, Section 3, Subdivision 7 to annex the area hereinafter referred to as Halstead Heights to the Village of Mound. The Village Council of Mound has adopted an ordinance to annex this territory.

XIX.

Because of the priority of said petition for annexation, the Commission excludes Halstead Heights from the area approved for incorporation, and the subsequent findings as to total area, platted and unplatted area, population, and assessed valuation must be subtracted from the preceding findings on the same items as to the area proposed for incorporation in order to accurately establish these findings for the area approved for incorporation.

XX.

Halstead Heights contains an area of 28 acres, of which 13 acres are platted and 15 acres unplatted.

XXI.

The population of Halstead Heights is 56. This includes residents of a trailer court.

XXII

The assessed valuation of Halstead Heights is \$14,493.

XXIII.

The deletion of Halstead Heights from the area approved for incorporation does not in any material respect affect the population density or impending suburban character of Minnetrista, or the status of Minnetrista as an urban town under Section 5 of the Municipal Commission Act, or the availability of space to accommodate future Minnetrista expansion, or the feasibility of the incorporation of the remaining part of the area proposed for incorporation.

CONCLUSIONS OF LAW

I.

The area proposed for incorporation is so conditioned as to be properly subjected to municipal government.

II.

The boundaries of the area proposed for incorporation should be altered by reducing therefrom the following described property known as Halstead Heights:

All that part of Section 22, Township 117, Range 24, Hennepin County, Minnesota, described as follows: Commencing at a point on the East line of said Section 22, said point being the west line of the Village of Mound, where said line intersects the center line of County Road No. 110; thence Westerly and Southwesterly along said center line to its intersection with an extension northerly of the west line of Halsted Heights; thence southerly and southeasterly along the most westerly line of Halstead Heights and said extension thereof to its intersection with the northwesterly line of Halsted Avenue; thence southwesterly along said northwesterly line to its intersection with an extension of the southwesterly line of Lot 15 of Halsted Park; thence southeasterly along said southwesterly line and said extension thereof to its intersection with the shore of Lake Minnetonka; thence northeasterly and easterly along said shore to its intersection with the east line of said Section 22; thence northerly along said east line to the point of beginning; and specifically including Lot 1 through 18, inclusive, Halsted Heights, and Lots 15 through 17, inclusive, Halsted Park, according to the map or plat thereof on file or of record in the office of the Register of Deeds.

III.

An election should be ordered on the proposition of whether or not the area proposed for incorporation as altered by Paragraph II of the Conclusions of Law should be incorporated.

O R D E R

Upon the petition of the legally required number of freeholders residing in the area proposed for incorporation as the Village of Minnetrista, which came regularly on for hearing in the Commissioner's Room of the County Courthouse, Minneapolis, Minnesota, on September 23, 1959, at 10:00 a.m. and which was thereafter heard at resumed hearings on December 28, 1959, April 22, 1960 and May 12, 1960, at which times testimony was heard and evidence taken, and upon all of the files and records herein, the Commission being fully advised in the premises,

IT IS ORDERED: That such petition for incorporation be, and it is hereby, approved in all things, except that the proposed boundaries are altered by deleting therefrom the following described area commonly known as Halstead Heights:

All that part of Section 22, Township 117, Range 24, Hennepin County, Minnesota, described as follows: Commencing at a point on the east line of said Section 22, said point being the west line of the Village of Mound, where said line intersects the center line of County Road No. 110; thence westerly and southwesterly along said center line to its intersection with an extension northerly of the west line of Halsted Heights; thence southerly and southeasterly along the most westerly line of Halstead Heights and said extension thereof to its intersection with the northwesterly line of Halsted Avenue; thence southwesterly along said northwesterly line to its intersection with an extension of the southwesterly line of Lot 15 of Halsted Park; thence southeasterly along said southwesterly line and said extension thereof to its intersection with the shore of Lake Minnetonka; thence northeasterly and easterly along said shore to its intersection with the east line of said Section 22; thence northerly along said east line to the point of beginning; and specifically including Lots 1 through 18, inclusive, Halsted Heights, and Lots 15 through 17, inclusive, Halsted Park, according to the map or plat thereof on file or of record in the office of the Register of Deeds.

IT IS FURTHER ORDERED that an election be held in the area approved for incorporation, which is all of the remaining unincorporated area of Minnetrista Township except for the area described in the area immediately preceding (which is commonly known as Halstead Heights)

on the question of whether or not the area approved for incorporation should be incorporated as the Village of Minnetrista.

IT IS FURTHER ORDERED: that the effective date of this Order be July 14, 1960.

IT IS FURTHER ORDERED: that such election be held on the 9th day of August, 1960 at the following place within the area proposed for incorporation: Minnetonka Sportsmen's Club, 2 miles West of Mound, on County Highway 15.

and that the polls be open at said polling place from 8:00 a.m. to 8:00 p.m.; that the following three elector residents of the area proposed to be incorporated act as judges, and that such election be conducted insofar as practicable in accordance with the election of town officers: William C. Schilling, Wilmar Luedtke and Arthur Helm; Only voters residing in the territory herein described shall be entitled to vote. The ballot shall bear the words "For Incorporation" and "Against Incorporation" with a square before each of the phrases, in one of which the voter shall make a cross to express his opinion. The ballots and necessary supplies shall be provided by Minnetrista Township.

IT IS FURTHER ORDERED: that the petitioners cause a copy of this Order approving the petition to be posted not less than 20 days before the 9th day of August, 1960 in three public places in the area proposed for incorporation and to be published in the Minnetonka Pilot, a medium of official and legal publication of general circulation in the area proposed for incorporation two weeks before the 9th day of August, 1960.

Dated this 21st day of June, 1960.

MINNESOTA MUNICIPAL COMMISSION

Irving R. Keldsen,
S e c r e t a r y

MEMORANDUM OPINION

This petition to incorporate Minnetrista Township was filed pursuant to Laws 1959, Chapter 686, Section 2, Subdivision 3. This subdivision authorizes the Municipal Commission to approve a petition for incorporation if it finds that the property to be incorporated is so conditioned as to be properly subjected to municipal government using as a guide findings on eight factors therein enumerated. The Commission is authorized by the same provision to alter the boundaries of the proposed incorporation by increasing or decreasing the area to be incorporated so as to include only properly conditioned land.

The petitioners are resident freeholders of Minnetrista Township located in southwestern Hennepin County. The township is bounded on the West and South by Carver County, on the North by the Village of Independence, and on the East by the Villages of Orono and Mound. (Since this petition was filed the Villages of Mound and Island Park have merged and are now both known as the Village of Mound. All references in this opinion to Mound will include the merged area. The former Village of Island Park furnished part of the boundary on the East of the area proposed for incorporation.)

Except for the territory incorporated by Mound and St. Benifacius, this is a full geographical township containing approximately 30 sections of land. (19,005 acres, of which 1346 acres are platted and 17,659 acres are unplatted.) The total assessed valuation is \$924,330. Of this, the platted valuation is \$299,629, and the unplatted valuation is \$624,700.)

The population as indicated by the census provided by the petitioners is 2,076. The 1950 federal decennial census was 1956 persons but this included the Dreamwood area whose population at that time was from 400 to 600. Dreamwood was annexed to the Village of Mound in April, 1959, and petitioners' census does not include the Dreamwood area. Hence, the population increase is in the area of 30% in the nine years between the 1950 census and the date of the petition.

Minnetrista Township is an urban town under the definition of MSA 368.01 which permits the exercise of village powers by townships which remain unincorporated but are, nevertheless, urban in character. It is likewise within the class of urban towns described in Laws 1959, Chapter 686, Section 5 (the Municipal Commission Act) which codifies Minnesota laws relating to incorporation, annexation and municipal boundary changes.

This section requires the Commission after each decennial census to review townships containing more than 2,000 persons in their unincorporated area to determine whether the residents thereof would be better served by incorporation as a village or by annexation to a contiguous municipality.

Prior to the enactment of the Municipal Commission Act, the Minnesota Supreme Court has, on many occasions, defined the test of what land is properly conditioned for municipal government. In determining suitability for municipal government in this and future proceedings, the Commission will apply the tests enunciated by the Minnesota Supreme Court in the light of the specific findings required by the new incorporation procedure, and all other material evidence as to the urban or suburban character of the land sought to be incorporated, having in mind the legislative directive of Section 5 as to entire townships meeting the population requirement thereunder which seek to incorporate.

The Supreme Court had before it in State ex rel (Ghilds) vs. Minnetonka Village, et al., 57 Minn. 526, 59 N.W. 972, 25 LRA 755, the question of the constitutionality of the annexation statute contained at Laws 1885, Chapter 145. There the Court, in order to sustain constitutionality, held that an area to be incorporated must be so conditioned as to be properly subjected to municipal government. The statute contained no such requirement. This is the apparent origin of the properly conditioned test now contained in Section 3 relating to

new incorporations in the Municipal Commission Act. The Court said that any other construction would leave to the petitioners, subject only to statutory limitations as to population, the amount of land platted into lots and blocks, and an election, the whole question of incorporation. The Court said that any 30 petitioners "might include a rural territory of 50 or 100 miles square, provided 'they did not skip over any as they advanced'". The Court intimated that if such was the legislative intent the act would be unconstitutional.

The Court went on to say, "the law evidently contemplates, as a fundamental condition to a village organization, a compact center or nucleus of population on platted lands and, in view of the expressed purposes of the act, it is also clear that by the term lands adjacent thereto is meant only those lands lying so near and in such close proximity to the platted portion as to be suburban in character, and to have some unity of interest with the platted portion in the maintenance of a village government. It was never designed that remote territory, having no natural connection with the village, and no adaptability to village purposes, should be included."

The inference was clear that were this not the intent of the legislature the act would not be upheld.

The test established in the Minnetonka Village decision as refined in subsequent opinions and partially modified by Section 5 of the Municipal Commission Act is still the law in Minnesota. The fact that this decision was written in 1894 does nothing to change its application. In fact, there was better reason in the rural era of 1894 for a liberal rule as to what land is properly conditioned for municipal government than now where land has become part of a vast metropolitan complex.

We would not hesitate to deny the incorporation of Minnetrista based upon the present record were this not an effort to incorporate an entire township lying within the metropolitan area, presently exercising special village powers, in the direct path of future developers

and subdividers and in a metropolitan climate where the urgent issue of the day is the purity of the water supply and the choice of weapons of government necessary to protect the public health and safety.

Minnetrista Township has no places of business except a tavern. In this respect it is no different from many other villages constructed from entire townships or large tracts within the metropolitan area. Indeed it is several times larger in population than many villages incorporated under prior law. This alone would not justify its incorporation because Section 3 of the Municipal Commission Act is designed to prevent senseless and uneconomic incorporations.

But Section 3 is qualified as to urban towns by Section 5 and we now hold that different criteria apply to the incorporation of urban towns as defined in Section 5 than to other attempted incorporations.

This is true because the underlying philosophy of Section 5 is that the township form of government is no longer adequate to the needs of local government in a metropolitan setting or in any township where the density of population indicates a transition from rural to urban characteristics. The reference in Section 5 to 2,000 persons living in the unincorporated portion of the township represents an effort by the legislature to establish the transition point between a rural and an urban community. We have said here that such an urban town is not per se territory properly conditioned for municipal government. Yet we must add that an urban town as defined in Section 5, already exercising special village powers under prior legislation, must be presumed to be urban in character and properly conditioned for municipal government in the absence of evidence that such population is so dispersed as to leave the township predominantly agricultural.

We think that Section 5 has modified the Minnetonka Village decision and supporting opinions where an urban town, as defined in Section 5, now exercising special village powers, attempts to incorporate.

There is no constitutional question involved here as there was in the Minnatanka Village case because the Court dealt with a law permitting the petitioners to describe the area proposed for incorporation and to submit the proposition to a vote without administrative review. The Court held, in effect, that this would be an improper delegation of legislative authority to any 30 petitioners unless they imposed the test of properly conditioned land set out in this decision. Here the constitutional problem is met by a proper delegation of legislative authority to this Commission, as an arm of the legislature, to pass on the suitability for municipal government of an area proposed for incorporation, before the election is held, under discretionary standards prescribed by the legislature.

But we affirmatively assert that the test propounded in the Minnatanka Village opinion, as affirmed and refined in the decisions during the intervening 66 years, not only remains the law as to all other situations but also serves as a guide to determine if the presumption holds that an urban town as defined in Section 5, is truly urban in character and properly conditioned for municipal government.

We have dealt at length with our understanding of the legislative history and meaning of Section 5 in the Commission Opinion "In the Matter of the Petition of Freeholders for Annexation of Adjoining Unincorporated Property . . . to the City of White Bear Lake" (A-22-60, April 4, 1960.) We there traced the judicial history of the Minnatanka Village decision, including the refinements to make it applicable to present urban growth and development in the metropolitan area. We reconciled the three-factor formula of the Minnatanka Village decision with current urban development in metropolitan areas.¹

¹ (The three factors are: (1) that the land contain a compact center for the nucleus of the population; (2) that the adjoining unplatted lands are suburban in character; and (3) that the unplatted lands have with with platted portion a unity of interest in the maintenance of the village government.)

While the White Bear case involved annexation, its principles are virtually the same. It is not necessary to comment here on the problem of whether certain lands might be suitably conditioned to be annexed to an existing nucleus of population in the adjoining village but not properly conditioned for municipal government.

It is crucial here that the legislature by Section 5 of the Municipal Commission Act has declared its intent to bring those urban towns which are probed to be urban or suburban in character under village government when the population requirement of Section 5 is coupled with the present exercise of village powers under prior law, in the absence of compelling reason why they should remain townships. See also Report of the Commission on Municipal Annexation and Consolidation submitted to the 1959 legislature, pages 17-19, under the title "Proposal as to Urban Towns, and Problems of Urban Towns (Townships) in Minnesota, Minnesota Legislative Research Committee, Publication No. 58, November, 1953.

We would approve the incorporation of Minnetrista with less enthusiasm were it not for the threatened boundary situation which arises as a result of a petition under Section 3, Subdivision 7 of the law we administer. This subdivision provides that a municipality may annex not to exceed 200 acres of unplatted land by ordinance without Commission review if the owner or a majority of the owners in number petition the governing body of the municipality to have such land included therein.

In the present case, prior to the filing of the petition to incorporate all of Minnetrista, a petition was filed with the Mound Village Council to annex 28 acres of property on the South Side of Highway 110. This is a gerrymandered annexation. It may have been partially motivated by a desire to bring a trailer camp under village regulation. Dispute arose as to whether the required number of land owners signed the petition for this annexation pursuant to subdivision 7. It is clear to us that the reason the property on the other side of Highway 110 was not included in the petition is that the required land owners could not be persuaded to sign the petition. One of the fundamental purposes of the 1959 law

was to avoid this type of gerrymandered annexation but Subdivision 7, which was added in the Senate in the final hours of the session to expedite annexations where common consent exists, leaves open the type of gerrymandered annexation evidenced by this proposed annexation of Halstead Heights to Mound.

It may be that this petition for annexation triggered the Minnetrista petition for incorporation. It is not in the public interest that such annexations occur but this is one over which the Municipal Commission has no jurisdiction. The Mound Village Council has passed a resolution approving the annexation. If, because the petition for annexation was filed prior to the petition for incorporation of Minnetrista, the proposed annexation takes priority, then the enactment of this resolution precludes us from including this property in the proposed incorporation area.

While the Municipal Commission Act was established to avoid races to the Court House to establish priority of petitions, this Commission has grave legal doubt as to its authority to include Halstead Heights in the area proposed for incorporation even though such territory was included in the area proposed in the petition. We do not think it would be to the best interest of the people living in the affected area to include it here and thus to furnish the basis for lengthy litigation. If litigation is nevertheless initiated by challenging property owners living within Halstead Heights, this Commission has done what it can to avoid it. (The Village Council of Mound agreed to hold off filing the ordinance annexing Halstead Heights until these proceedings are completed while reserving its claim to the area.) The Commission has decided to exercise its authority under Section 2, Subdivision 3 to alter the boundary of the area proposed for incorporation by deleting the property commonly referred to as Halstead Heights, which is the subject of the prior petition for annexation to Mound. This removes any question of priority of claim as to this tract.

We note that Douglas Beach, which is included in the petition for incorporation, is not contiguous to the remaining portion of Minnetrista Township. The Commission suggested at several hearings that this be annexed to Mound. This has not been accomplished to date, although a petition has been filed with the Mound Village Council by requisite land owners of the Douglas Beach area. We have no choice but to include Douglas Beach in the area approved for incorporation as the Village of Minnetrista. If Mound enacts an ordinance to annex Douglas Beach before the effective date of this order, July 14, 1960, the Commission will modify the order to delete Douglas Beach from the area approved for incorporation.

This Commission has withheld a decision on the petition to incorporate Minnetrista in an effort to permit a complete solution of all of the complex boundary difficulties in this lake area. As a result, the merger of Island Park and Mound was accomplished to mutual benefit of both communities. We were hopeful that Douglas Beach could then be annexed to the newly merged village since it is now contiguous to Mound. If Douglas Beach is annexed to Mound the remaining portion of Shady Isle and Enchanted Island now a part of Shorewood, will be contiguous to the expanded Village of Mound.

This logically should later become part of Mound. These are the considerations the Commission had in its deliberations. The constructive results at this point have made the delay worthwhile.

The petition to incorporate the proposed Village of Minnetrista from the unincorporated area of Minnetrista Township is, therefore, approved, with the deletion of the Halstead Heights area legally described in the attached Findings of Fact, including Douglas Beach and all remaining unincorporated property in the township.

We note the cooperation of everyone involved in these proceedings in a constructive solution of the boundary problems in this part of Lake Minnetonka in Hennepin County. Much good has been accomplished

by negotiations between local people and local units of government in the Minnetrista area. The absence of rancor or high feeling as these problems have been discussed attests to the good will of all concerned and proves the value of administrative hearings in review of controversial boundary situations, an area of government which too often in the past has been a combatant arena.

BY THE FULL COMMISSION:

Joseph Rebbie,
C h a i r m a n