

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Orderly Annexation
of Certain Real Property to the City of
Belle Plaine from Belle Plaine Township
(MBAU Docket OA-1042-7)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER REQUIRING
RECORD SUPPLEMENTATION, AND
ORDER APPROVING ANNEXATION
WITH CONDITIONS**

Pursuant to Minn. Stat. § 414.0325 (2016), the City of Belle Plaine (City) and Belle Plaine Township (Township) request an Order from the Chief Administrative Law Judge approving the annexation of certain real property presently located within the boundaries of the Township.

Based upon a review of the filings and matters of public record, of which the Chief Administrative Law Judge takes judicial notice as noted below, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

Subject Property

1. This matter involves the efforts of the City and the Township to adjust the boundaries of the municipalities by detaching certain real property (Property) from the Township and annexing the Property into the City pursuant to the orderly annexation process provided in Minn. Stat. § 414.0325 (2016).

2. The Property is located adjacent to the current boundaries of the City and is legally described as follows:

All that part of the West Half of the East Half of the Southwest Quarter of Section 12, Township 113, Range 25, Scott County, Minnesota, lying Northerly of the Northerly right-of-way line of Trunk Highway Number 169, except that part taken as Parcel 6N1 on City of Belle Plaine Road Right of Way Plat No. 1.¹

3. The Property consists of 10.02 acres² of unimproved land³ identified as PID No. 019120110 and currently listed on public tax records as being owned by Sengupta Sabyasachi.⁴

¹ Joint Annexation Resolution, Exhibit (Ex.) A.

² Joint Annexation Resolution at 1.

³ https://gis.co.scott.mn.us/PropertyCardPropertyCard.aspx?pin=019020110&MapPath=https://services.gis.co.scott.mn.us/arcgis/rest/directories/arcgisoutput/Property_Info/PUBLIC_PARCEL_APP_RW_MapServer/_ags_mapb423af6f74734df3b5c9a7bda92c2633.jpg&Title=

⁴ <http://img3.publicaccessnow.com/MN-Scott-Taxbills/2017/2017-TS-019120110.pdf>. The Chief

4. In 2017, the Property generates taxes payable to the Township in the amount of \$49.09.⁵

Orderly Annexation Agreement

5. On April 12, 2004, the Township adopted a “Joint Resolution for Orderly Annexation Between the Town of Belle Plaine and the City of Belle Plaine, Minnesota” (Orderly Annexation Agreement). The City adopted the Orderly Annexation Agreement on April 19, 2004.⁶

6. By its terms, the Orderly Annexation Agreement designates certain real property located within the Township for orderly annexation into the City pursuant to Minn. Stat. § 414.0325 (2002). The Property is part of the area designated within the Orderly Annexation Agreement.⁷

7. On July 7, 2014, the City adopted the “First Amendment to Joint Resolution for Orderly Annexation Between the Town of Belle Plaine and the City of Belle Plaine, Minnesota Pursuant to Minnesota Statutes § 414.0325, Subd. 1” (First Amendment). On July 8, 2014, the Township adopted the First Amendment.⁸

8. As amended by the First Amendment, the Orderly Annexation Agreement includes the following relevant terms:

4. Review and Comment by Boundary Adjustments. The Town and City mutually agree and state that this Joint Resolution and Agreement sets forth all the conditions for annexation of the areas designated and that no consideration by the MBA is necessary. The MBA may review and comment, but **shall, within thirty (30) days, order the annexation in accordance with the terms of this Joint Resolution.**⁹

6. Taxation Reimbursement. To compensate the Township for the permanent loss of taxable property from Township tax rolls, the property owners petitioning for annexation shall pay the Township a per-acre amount (“Taxation Reimbursement”) for all land annexed to the City under this Agreement. Unless agreed otherwise by the parties, said payment shall occur in two equal installments with the first such installment being made at the time the annexation petition is filed with the City and Township and shall be calculated in

Administrative Law Judge takes judicial notice of this public record pursuant to Minn. R. Evid. 201.

⁵ <http://img3.publicaccessnow.com/MN-Scott-Taxbills/2017/2017-TS-019120110.pdf>. The Chief Administrative Law Judge takes judicial notice of this public record pursuant to Minn. R. Evid. 201.

⁶ The Office of Administrative Hearings received the Orderly Annexation Agreement on May 3, 2004.

⁷ Orderly Annexation Agreement at 1-2.

⁸ The Office of Administrative Hearings received the First Amendment to Orderly Annexation Agreement on July 23, 2014.

⁹ Orderly Annexation Agreement at 2 ¶ 4 (emphasis added).

accordance with the following formula:

A. For all unimproved lands annexed into the City under the Agreement after the date of July 1, 2014, \$310 per acre of annexed land. "Unimproved land" for purposes of this Agreement shall mean any parcel of property except parcels of property ten acres or less in size which contain a principal commercial or industrial structure, or property of forty acres or less which contains a residence.

* * *

Other than the reimbursement outlined above, no other reimbursement or taxes shall be owed to the Township from the City and property owners.¹⁰

* * *

19. **No Further Annexation.** During the term of this Agreement, the City shall not annex any property from the Township except as set out in this Agreement. It is the intent of the parties that this Agreement set the exclusive geographical boundaries of land which may be annexed and **set the exclusive procedures under which annexation from the Township to the City may occur during the term of this Agreement.**¹¹

9. In an earlier filed matter,¹² the Office of Administrative Hearings advised the Township and the City that the Taxation Reimbursement provision of their Orderly Annexation Agreement appears to violate Minn. Stat. § 414.036, which: (1) allows reimbursement only "for all or part of the taxable property" and does not appear to allow a standardized per acre fee no matter the taxable value of the subject property; and (2) defines reimbursement as "between the municipality and the town," not between a township and a petitioner.

10. The Township has not adopted an ordinance related to its imposition of a Taxation Reimbursement fee or assessment.¹³

¹⁰ First Amendment at 1-2.

¹¹ Orderly Annexation Agreement at 10 ¶ 19 (emphasis added).

¹² See *In re the Orderly Annexation Agreement Between the City of Belle Plaine and the Town of Belle Plaine Pursuant to Minn. Statutes 414*, No. OA-1042-5, ORDER (Minn. Office Admin. Hearings Mar. 9, 2006).

¹³ <http://www.belleplainetownship.com/information.htm#ordinances>. The Chief Administrative Law Judge takes judicial notice of this public record pursuant to Minn. R. Evid 201.

Annexation Proceeding

11. The City received a request for annexation of the Property from the owner.¹⁴

12. On March 13, 2017, the Office of Administrative Hearings received Town of Belle Plaine Resolution Number 3.7.17/City of Belle Plaine Resolution Number 17-029 (Annexation Resolution) adopted by the City on March 6, 2017, and by the Township on March 7, 2017.¹⁵

13. The Annexation Resolution recites as fact that “the owner has paid, or will pay, the taxation reimbursement amount due under the Orderly Annexation Agreement prior to submission of this Joint Resolution to the OAH.”¹⁶

14. The Annexation Resolution further provides as follows:

The Orderly Annexation Agreement confers jurisdiction over annexation of the Property to the OAH. The OAH may review and comment but no additional consideration is necessary and annexation of the Property shall be ordered within thirty (30) days without alteration of the boundaries as required by law and provided in the Orderly Annexation Agreement.¹⁷

15. Pursuant to the amended Orderly Annexation Agreement, orderly annexation of the Property would generate a “Taxation Reimbursement” (TR Fee) of approximately \$3,106.20, calculated as 10.02 acres multiplied by \$310/acre.

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

CONCLUSIONS OF LAW

1. Orderly annexations are governed by the provisions of Minnesota Statutes Chapter 414 (Municipal Boundary Adjustment Act) and, most specifically, by Minn. Stat. § 414.0325.

2. The Chief Administrative Law Judge is authorized to review and approve an orderly annexation pursuant to Minnesota Statutes §§ 414.01-.12 (2016) and Minnesota Rules 6000.0100-.3400 (2015).

3. The Municipal Boundary Adjustment Act (Act) authorizes the Chief Administrative Law Judge to scrutinize proposed municipal boundary changes “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.”¹⁸

¹⁴ Annexation Resolution at 1.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 1 ¶ 1.

¹⁸ Minn. Stat. § 414.01, subd. 1b(3).

4. The City, as the party submitting the Annexation Resolution, bears the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for orderly annexation have been met.¹⁹

5. A municipality's attempt to annex property by orderly annexation is final on the effective date specified in the Order of Annexation approved by the Chief Administrative Law Judge.²⁰

6. Minnesota Statutes, section 414.036, sets forth the following with regard to statutorily authorized payments to townships as compensation for the lost value of property annexed into an adjoining municipality:

Unless otherwise agreed to by the annexing municipality and the affected town, when an order or other approval under this chapter annexes part of a town to a municipality, the order or other approval must provide a reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order. The reimbursement shall be completed in substantially equal payments over not less than two nor more than eight years from the time of annexation. The municipality must reimburse the township for all special assessments assigned by the township to the annexed property, and any portion of debt incurred by the town prior to the annexation and attributable to the property to be annexed but for which no special assessments are outstanding, in substantially equal payments over a period of not less than two or no more than eight years.

7. “[M]unicipalities have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.”²¹

8. Townships and cities are legislatively authorized to generate revenue by tax assessment or by fee.²²

9. To enact an administrative fee in support of a statutorily authorized municipal action, a municipality is statutorily required to enact an ordinance after allowing the public to comment at a duly noticed and open hearing.²³

¹⁹ Minn. R. 1400.7300, subp. 5 (2015).

²⁰ Minn. Stat. § 414.0325, subd. 4.

²¹ *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 820 (Minn. 1966); *N. States Power Co. v. City of Granite Falls*, 463 N.W.2d 541, 543 (Minn. Ct. App. 1990); see also *Country Joe, Inc. v. City of Eagan*, 548 N.W.2d 281, 286 (Minn. Ct. App. 1996), *aff'd*, 560 N.W.2d 681, 683-84 (Minn. 1997).

²² See Minn. Stat. §§ 366.01-.27, 412.251, 462.353, subd. 4(a) (2016).

²³ Minn. Stat. § 462.353, subds. 4, 4a (2016).

10. As the amended Orderly Annexation Agreement provides that the City and the Township have agreed that no reimbursement is due from the City to the Township,²⁴ the requirements of Minn. Stat. § 414.036 with respect to the provision for reimbursement from the City to the Township have been sufficiently addressed for purposes of this Order.²⁵

11. Pursuant to Minn. Stat. § 414.12, subd. 3, the Chief Administrative Law Judge must apportion the Office of Administrative Hearings' costs of contested case proceedings in boundary adjustment matters to the parties in an equitable manner if the parties have not otherwise agreed to a division of the costs.

Based upon these Findings of Fact and Conclusions of Law, and for the reasons set forth in the Memorandum below, the Chief Administrative Law Judge issues the following:

ORDER

1. **On or before 4:30 p.m. on April 19, 2017**, the Township and/or the City are required to supplement the record to identify the following facts with regard to the Tax Reimbursement already collected by the Township with respect to the annexation of the Property: (a) what amount, if any, was paid; (b) when the payment(s) were made; (c) by whom; and (d) whether any further Tax Reimbursement payment(s) are expected and/or required by the Township related to the annexation of the Property.

2. The Property legally described in Finding No. 2 above is hereby annexed into the City effective on the date that the Township submits to the Office of Administrative Hearings evidence that the Township has adopted, pursuant to Minn. Stat. §§ 365.10, subd. 17, 365.125, 415.021 (2016) or other statutory or lawful governmental authority, an ordinance, administrative fee schedule, property tax assessment or other tax assessment memorializing the Township's legal authority to collect a Tax Reimbursement payment with respect to the annexation of the Property, on which date the Chief Administrative Law Judge will issue a supplemental Order confirming the filing.

3. In the alternative and if the Township determines that it will not lawfully enact an ordinance, administrative fee schedule, property tax assessment or other tax assessment as described immediately above, the Property legally described in Finding No. 2 above is hereby annexed into the City effective on the date that the Township submits to the Office of Administrative Hearings evidence that the TR Fee has been returned to the Property owner, on which date the Chief Administrative Law Judge will issue a supplemental Order confirming the filing.

4. The costs of this matter, billed as required by law at the approved hourly rates of the Office of Administrative Hearings, are ordered paid by the parties in the following percentages: 50% by the City; and 50% by the Township. Invoices for the billed

²⁴ First Amendment at 1-2.

²⁵ Annexation Resolution at 2 ¶ 4.

amounts will be sent under separate cover.

Dated: April 12, 2017



TAMMY L. PUST
Chief Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.0325, .07, .09, .12. Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Scott 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. However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

Orderly annexation is a statutory process. As defined by the Act and specified in Minn. Stat. § 414.0325, municipal boundary adjustment through the orderly annexation of property is available to cities and townships upon compliance with the criteria specified in the Act and other applicable law.

In this case, the City and the Township have, to date, failed to comply with the requirements of Minnesota law in their collection of a TR Fee without the adoption of an ordinance allowing for such. While the Township may believe that its action is a lawful exercise of its authorized contracting power, this belief is unsupported by law as set forth below.

I. The Township Lacks Sufficient Legal Authority to Impose and Collect the Taxation Reimbursement Fee.

“[M]unicipalities have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.”²⁶ Recognizing this legal principle, the Minnesota Association

²⁶ *Mangold*, 143 N.W.2d at 820; *N. States Power Co.*, 463 N.W.2d at 543; see also *Country Joe*, 548 N.W.2d at 286 (declining to uphold a city’s “road unit connection charge” by finding that such “would set a precedent

of Townships publicly advises that “[a]s creations of the legislature, towns only have those powers granted them by the legislature.”²⁷

A. The Township has not Adopted a Taxation Reimbursement Fee Ordinance.

The Minnesota legislature has authorized municipalities to generate revenue by tax assessment or by fee.²⁸ With respect to levying taxes, municipalities only have the authority “granted to them by Constitution or the statutes.”²⁹ While “[t]he legislature has broad discretion in selecting subjects for taxation and in granting tax exemptions,”³⁰ the

allowing statutory cities virtually unlimited authority to impose funding measures not otherwise permitted by statute in connection with any service they provide.”).

²⁷ TROY GILCHRIST, TOWN ORDINANCES (The Minnesota Association of Townships, Information Library 2002), available at <http://www.mntownships.org/vertical/sites/%7BD45B3299-B0BE-4D08-8A42-B7053B4AE74F%7D/uploads/%7B0B550A5B-CD01-4D52-BC8A-F4845A7250B5%7D.PDF>.

²⁸ See Minn. Stat. §§ 366.01-.27, 412.251, 462.353, subd. 4(a). A general overview of municipal revenue generation options is set forth in *SDCO St. Martin, Inc. v. City of Marlborough*, 5 F.Supp.3d 139, 142-43 (D. Mass. 2014), as follows:

“Cities and towns have no independent power of taxation.” *Opinion of the Justices*, 378 Mass. 802, 393 N.E.2d 306, 310 (1979). “A municipality does not have the power to levy, assess, or collect a tax unless the power to do so in a particular instance is granted by the Legislature.” *Silva v. City of Attleboro*, 454 Mass. 165, 908 N.E.2d 722, 725 (2009).

In addition to general taxes, a municipality may also charge fees for the use of specific municipally provided services or as an exercise of police power. See *Denver St. L.L.C. v. Town of Saugus*, 462 Mass. 651, 970 N.E.2d 273, 274 (2012). “There are two kinds of fees, ‘user fees based on the rights of the entity as proprietor of the instrumentalities used’ and ‘regulatory fees,’ ‘founded on police power to regulate particular businesses or activities.’” *Id.* (quoting *Emerson College v. City of Boston*, 391 Mass. 415, 462 N.E.2d 1098, 1105 (1984)). Sewer charges would be an example of a lawful user fee. See *Town of Winthrop v. Winthrop Housing Authority*, 27 Mass. App. Ct. 645, 541 N.E.2d 582, 583–84 (1989).

Whether a charge is a lawful fee or an unlawful tax “must be determined by its operation rather than its specifically descriptive phrase.” *Denver Street*, 970 N.E.2d at 275. In *Emerson College*, the Supreme Judicial Court identified the three traits that distinguish fees from taxes.

Fees “[1.] are charged in exchange for a particular government service which benefits the party paying the fee in a manner ‘not shared by other members of society’ [...] [2.] are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge” [...] “and” [3.] ... are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. *Denver St.*, 970 N.E.2d at 275 (alteration in original) (quoting *Emerson College*, 462 N.E.2d at 1105).

²⁹ *State v. City of Ely*, 151 N.W. 545, 546 (Minn. 1915) (citing *Sewall v. City of St. Paul*, 20 Minn. 511 (Gil. 459); *State v. District Court*, 44 Minn. 244, 46 N. W. 349; 27 Am. & Eng. Enc. (2d Ed.) 869)).

³⁰ *Rio Vista Non-Profit Hous. Corp. v. Ramsey County*, 335 N.W.2d 242, 245 (Minn. 1983) (citing *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S. Ct. 1001, 35 L.Ed.2d 351 (1973)).

fact remains that a tax must be legislatively authorized.³¹ The Minnesota legislature has never authorized the Township to assess a tax for purposes of tax reimbursement related to annexation proceedings.

The Act, at Minn. Stat. § 414.036, does authorize the Township to collect a TR Fee within appropriate parameters, and so serves as sufficient statutory authority for the Township to enact an ordinance specifying when, from whom and in what amounts it can collect a TR Fee. But the fact remains, as a fundamental matter of municipal law, that a municipality's having statutory authority to impose an administrative fee does not, in and of itself, constitute a sufficient legal basis for the action. The law requires a municipality to enact an ordinance, after allowing the public to comment at a duly noticed and open hearing, to specify the parameters under which the administrative fee will be imposed.³² The Township has not adopted an ordinance relative to the TR Fee. Therefore, the record does not support a finding that the Township has legal authority to impose the TR Fee against the Property owner in this matter.

This legal deficiency is easily cured. The Township can, and should if it intends to continue to impose TR Fees in annexation proceedings, enact an administrative fee ordinance memorializing its intent for the public it serves. The Township is well acquainted with the legal process for ordinance adoption, as evidenced by the fact that it has adopted ordinances in the past.³³ Once it does so with regard to the TR Fee, it can avoid in the future any further delays and record supplementation or similar orders in orderly annexation matters.

B. The Township has not Contracted with the Property owner.

The Township may seek to avoid the public hearing process necessary to adopt an ordinance and continue to assert that its TR Fee is authorized as a matter of contract under Minn. Stat. § 365.025 (2016).³⁴ This statute provides as follows: "Notwithstanding other law, a town board may enter into any contract it considers necessary or desirable to use any town power." It is similar to Minn. Stat. § 365.02(b)(3) (2016), which authorizes a Minnesota township to "enter into any contract that is necessary for the town to use any of its powers...."

Neither of these statutes provide the Township with any legal authority to impose a \$310 per acre TR Fee in this matter. It is clear that the Property owner is not a party to any contract with the Township evidenced in the record in this matter: the owner is not a signator to the amended Orderly Annexation Agreement or the Annexation Resolution. The Township and the City are legally entitled to agree to negotiated terms between themselves as parties to the amended Orderly Annexation Agreement and the Annexation Resolution. However, the record provides no evidence of any legal power they possess to bind the Property owner, a non-contracting party, to compliance with the

³¹ *Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681, 686-87 (Minn. 1997).

³² Minn. Stat. § 462.353, subds. 4, 4a.

³³ <http://www.belleplainetownship.com/information.htm#ordinances>. The Chief Administrative Law Judge takes judicial notice of this public record pursuant to Minn. R. Evid 201.

³⁴ *Id.*

terms of those contracts.

II. Required Supplementation of the Record

The Property currently generates \$49.09 per year in property taxes to the Township. Upon annexation of the Property to the City, the Township will lose \$49.09 per year of revenue. Nevertheless, the preponderance of evidence in the record, consisting solely of the amended Orderly Annexation Agreement's requirement of a \$310/acre TR Fee for the annexation of unimproved property and the Annexation Resolution's recitation that the Property owner has or will be required to pay the TR Fee as set by the Orderly Annexation Agreement, indicates that the Township has charged the Property owner \$3,106.20 (10.02 acres X \$310/acre) in order to proceed with the annexation request. At the rate of \$49.09 per year, it would take over 63 years for the Township to "lose" \$3,106.20 due to its loss of the Property to the City.

Given the sparsity of the record, it may be that these recited facts are incorrect. Supplementation of the record may establish that the Township collected less than the \$310/acre TR Fee provided for in the amended Orderly Annexation Agreement, or that it collected the TR Fee from some entity other than the Property owner. To the contrary, the required supplementation may establish that the Township in fact collected a TR Fee of \$3,106.20 from the Property owner, which may well raise other legal concerns grounded in the Township's authority to do so in light of the dictates of Minn. Stat. § 414.036.³⁵ For this reason, the current Order requires the parties to supplement the

³⁵ The parties are well aware of the recent decisions of the Office of Administrative Hearings regarding the interplay between Minn. Stat. §§ 414.0325 and 414.036 and the lawful calculation of tax reimbursement fees relative to orderly annexation proceedings. In summary, recent decisions provide statutory analysis and support for the following agency determinations:

- (1) In orderly annexation proceedings, the Office of Administrative Hearings has authority to require compliance with Minn. Stat. § 414.036 notwithstanding the provisions of Minn. Stat. § 414.0325, subd. 1(h);
- (2) Minnesota Statutes, section 414.036, requires that statutorily authorized payments to townships as compensation for the lost value of property annexed into an adjoining municipality be appropriately related to the loss of tax value suffered by the Township through annexation, payable in accordance with statutory terms;
- (3) Minn. Stat. § 414.036, in and of itself and without enactment of an implementing ordinance, does not provide legal authority for a Township to impose upon a landowner a per acre tax reimbursement charge in order to obtain the Township's support for a requested annexation of the owned land;
- (4) Although Minn. Stat. § 414.0325 authorizes municipalities to contractually agree to negotiated terms and conditions regulating the orderly annexation of property, the statute does not authorize the parties to contractually agree to tax reimbursement terms that violate the criteria set forth in Minn. Stat. § 414.036; and
- (5) Nothing in Minn. Stat. § 414.0325 allows parties to an orderly annexation agreement to preempt the applicability or operation of Minn. Stat. § 414.036 in orderly annexation proceedings.

To the extent that the parties to this proceeding seek further explanation and analysis of these issues, they are advised to review the agency's recent determinations in order to avoid any additional unnecessary delays in this or future matters. See *In the Matter of the Orderly Annexation Agreement Between the City of Belle Plaine and the Town of Blakeley Pursuant to Minnesota Statutes 414*, No. 84-0331-33920, FINDINGS

record on this salient point.

III. Apportionment of Costs is Statutorily-Required.

Minn. Stat. § 414.12, subd. 3, requires the Office of Administrative Hearings to allocate equitably between the parties the costs of administrative law judge time spent on boundary adjustment matters. This legislative directive is mandated by the fact that the Office of Administrative Hearings operates primarily³⁶ as an “enterprise fund” within the executive branch of Minnesota state government. As such, Minn. Stat. §§ 14.53 and 14.55 (2016) direct the Office of Administrative Hearings to assess its costs to the state agencies and other political subdivisions to which it provides the services of administrative law judges. Each fiscal year, Minnesota Management & Budget approves a billable rate for the billable time expended by administrative law judges in all matters that come before the agency, known as “contested case proceedings” pursuant to the Minnesota Administrative Procedures Act.³⁷ Whether or not cases are settled, result in default or are tried through a full hearing, all “contested case proceedings” filed with the Office of Administrative Hearings are invoiced for the hours of judicial time expended pursuant to the approved hourly rate.³⁸

Some history is instructive.³⁹ Legislatively created in 1959, the Municipal Boundary Board operated until 1999 when it was legislatively dissolved. During the Board’s 40-year tenure, the appointed board members issued final decisions and the costs of the agency were legislatively funded. In 1999, the functions of the board were transferred to the Office of Strategic and Long Range Planning, commonly referred to as Minnesota Planning, and in 2003 the functions were again transferred, this time to the Minnesota Department of Administration. Since 1999, administrative law judges at the Office of Administrative Hearings have presided over all contested case proceedings related to municipal boundary adjustment matters. In accord with Minn. Stat. § 14.53 and 14.55, the costs of the services provided by administrative law judges⁴⁰ have been equitably apportioned to the parties to boundary adjustment matters under the authority of Minn. Stat. § 414.12 for over a decade.

In recognition of the legislature’s funding scheme pertinent to the state agency, Chapter 414 specifically provides that the Office of Administrative Hearings “is not liable

OF FACT, CONCLUSIONS OF LAW, AND ORDER (Minn. Office Admin. Hearings Nov. 15, 2016) and FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER REGARDING CONSOLIDATED RECORD AND ORDER APPROVING ANNEXATION (Minn. Office Admin. Hearings Apr.10, 2017); *In the Matter of the Orderly Annexation of Certain Real Property to the City of Carver from Dahlgren Township*, No. 84-0331-33356, AMENDED ORDER APPROVING ANNEXATION (Minn. Office Admin. Hearings June 15, 2016). Copies of relevant decisions and analysis will be provided upon request.

³⁶ The Office of Administrative Hearings receives different funding for the work of its Workers’ Compensation Division and for contested cases related to data privacy matters.

³⁷ Minn. Stat. §§ 14.001-.70.

³⁸ See Minn. Stat. §§ 14.53, .54.

³⁹ See Office of Administrative Hearings’ website at <http://www.mba.state.mn.us/History.html>.

⁴⁰ Parties are not and have not been billed for the costs of the administrative staff in the Municipal Boundary Adjustment Unit, which remain funded through a general fund appropriation from the legislature.

for [its] costs”⁴¹ but instead “the costs must be allocated on an equitable basis” by the Chief Administrative Law Judge unless otherwise agreed to by the parties.⁴² In this orderly annexation action, the record is silent as to any agreement of the parties relative to cost-splitting.

The Chief Administrative Law Judge has allocated equally to the parties the costs of the agency’s judicial time expended in this matter. While only the City formally appeared in the matter, the Township is also a party to the proceeding as a matter of law.⁴³

The ordered 50/50 split of the invoiced time is based on the fact that both parties executed the Orderly Annexation Agreement and the Annexation Resolution, and both thereby jointly sought the requested annexation. Though only the City submitted the proceeding for agency action, that submission was based upon the documentation which both public bodies had authorized and executed. Additionally, both entities are well advised as to the Office of Administrative Hearings’ legal analysis on relevant issues in recent decisions. The record does not provide any factual basis to differentiate the necessitated use of judicial time between the City and the Township, but rather supports the conclusion that both parties equally contributed to the development of the record eventually submitted by the City, and both stood to gain equally in the resulting order, one benefitting from the Property and one benefitting financially through the collected TR Fee. The judicial time expended in the matter has been allocated to the tenth of a billable hour and valued at the agency’s current approved rate of \$170 per hour.

T. L. P.

⁴¹ Minn. Stat. § 414.12, subd. 3(b).

⁴² *Id.*, subd. 3(a), (c).

⁴³ *Id.*, subd. 4(2).

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1. This matter involves the efforts of the City and the Township to adjust the boundaries of the municipalities by detaching certain real property (Property) from the Township and annexing the Property into the City pursuant to the orderly annexation process provided in Minn. Stat. § 414.0325 (2016).

2. The Property is located adjacent to the current boundaries of the City and is legally described as follows:

All that part of the West Half of the East Half of the Southwest Quarter of Section 12, Township 113, Range 25, Scott County, Minnesota, lying Northerly of the Northerly right-of-way line of Trunk Highway Number 169, except that part taken as Parcel 6N1 on City of Belle Plaine Road Right of Way Plat No. 1.¹

3. The Property consists of 10.02 acres² of unimproved land³ identified as PID No. 019120110 and currently listed on public tax records as being owned by Sengupta

¹ Joint Annexation Resolution, Exhibit (Ex.) A.

² Joint Annexation Resolution at 1.

³ https://gis.co.scott.mn.us/PropertyCardPropertyCard.aspx?pin=019020110&MapPath=https://services.gis.co.scott.mn.us/arcgis/rest/directories/arcgisoutput/Property_Info/PUBLIC_PARCEL_APP_RW_MapServer/_ags_mapb423af6f74734df3b5c9a7bda92c2633.jpg&Title=

Sabyasachi.⁴

4. In 2017, the Property generates taxes payable to the Township in the amount of \$49.09.⁵

Orderly Annexation Agreement

5. On April 12, 2004, the Township adopted a “Joint Resolution for Orderly Annexation Between the Town of Belle Plaine and the City of Belle Plaine, Minnesota” (Orderly Annexation Agreement). The City adopted the Orderly Annexation Agreement on April 19, 2004.⁶

6. By its terms, the Orderly Annexation Agreement designates certain real property located within the Township for orderly annexation into the City pursuant to Minn. Stat. § 414.0325 (2002). The Property is part of the area designated within the Orderly Annexation Agreement.⁷

7. On July 7, 2014, the City adopted the “First Amendment to Joint Resolution for Orderly Annexation Between the Town of Belle Plaine and the City of Belle Plaine, Minnesota Pursuant to Minnesota Statutes § 414.0325, Subd. 1” (First Amendment). On July 8, 2014, the Township adopted the First Amendment.⁸

8. As amended by the First Amendment, the Orderly Annexation Agreement includes the following relevant terms:

4. Review and Comment by Boundary Adjustments. The Town and City mutually agree and state that this Joint Resolution and Agreement sets forth all the conditions for annexation of the areas designated and that no consideration by the MBA is necessary. The MBA may review and comment, but **shall, within thirty (30) days, order the annexation in accordance with the terms of this Joint Resolution.**⁹

6. Taxation Reimbursement. To compensate the Township for the permanent loss of taxable property from Township tax rolls, the property owners petitioning for annexation shall pay the Township a per-acre amount (“Taxation Reimbursement”) for all land annexed to the City under this Agreement. Unless agreed otherwise by the parties, said payment shall occur in two equal installments with the

⁴ <http://img3.publicaccessnow.com/MN-Scott-Taxbills/2017/2017-TS-019120110.pdf>. The Chief Administrative Law Judge takes judicial notice of this public record pursuant to Minn. R. Evid. 201.

⁵ <http://img3.publicaccessnow.com/MN-Scott-Taxbills/2017/2017-TS-019120110.pdf>. The Chief Administrative Law Judge takes judicial notice of this public record pursuant to Minn. R. Evid. 201.

⁶ The Office of Administrative Hearings received the Orderly Annexation Agreement on May 3, 2004.

⁷ Orderly Annexation Agreement at 1-2.

⁸ The Office of Administrative Hearings received the First Amendment to Orderly Annexation Agreement on July 23, 2014.

⁹ Orderly Annexation Agreement at 2 ¶ 4 (emphasis added).

first such installment being made at the time the annexation petition is filed with the City and Township and shall be calculated in accordance with the following formula:

A. For all unimproved lands annexed into the City under the Agreement after the date of July 1, 2014, \$310 per acre of annexed land. "Unimproved land" for purposes of this Agreement shall mean any parcel of property except parcels of property ten acres or less in size which contain a principal commercial or industrial structure, or property of forty acres or less which contains a residence.

* * *

Other than the reimbursement outlined above, no other reimbursement or taxes shall be owed to the Township from the City and property owners.¹⁰

* * *

19. **No Further Annexation. During the term of this Agreement, the City shall not annex any property from the Township except as set out in this Agreement.** It is the intent of the parties that this Agreement set the exclusive geographical boundaries of land which may be annexed and **set the exclusive procedures under which annexation from the Township to the City may occur during the term of this Agreement.**¹¹

9. In an earlier filed matter,¹² the Office of Administrative Hearings advised the Township and the City that the Taxation Reimbursement provision of their Orderly Annexation Agreement appears to violate Minn. Stat. § 414.036, which: (1) allows reimbursement only "for all or part of the taxable property" and does not appear to allow a standardized per acre fee no matter the taxable value of the subject property; and (2) defines reimbursement as "between the municipality and the town," not between a township and a petitioner.

10. The Township has not adopted an ordinance related to its imposition of a Taxation Reimbursement fee or assessment.¹³

¹⁰ First Amendment at 1-2.

¹¹ Orderly Annexation Agreement at 10 ¶ 19 (emphasis added).

¹² See *In re the Orderly Annexation Agreement Between the City of Belle Plaine and the Town of Belle Plaine Pursuant to Minn. Statutes 414*, No. OA-1042-5, ORDER (Minn. Office Admin. Hearings Mar. 9, 2006).

¹³ <http://www.belleplainetownship.com/information.htm#ordinances>. The Chief Administrative Law Judge takes judicial notice of this public record pursuant to Minn. R. Evid 201.

Annexation Proceeding

11. The City received a request for annexation of the Property from the owner.¹⁴

12. On March 13, 2017, the Office of Administrative Hearings received Town of Belle Plaine Resolution Number 3.7.17/City of Belle Plaine Resolution Number 17-029 (Annexation Resolution) adopted by the City on March 6, 2017, and by the Township on March 7, 2017.¹⁵

13. The Annexation Resolution recites as fact that “the owner has paid, or will pay, the taxation reimbursement amount due under the Orderly Annexation Agreement prior to submission of this Joint Resolution to the OAH.”¹⁶

14. The Annexation Resolution further provides as follows:

The Orderly Annexation Agreement confers jurisdiction over annexation of the Property to the OAH. The OAH may review and comment but no additional consideration is necessary and annexation of the Property shall be ordered within thirty (30) days without alteration of the boundaries as required by law and provided in the Orderly Annexation Agreement.¹⁷

15. Pursuant to the amended Orderly Annexation Agreement, the Township required and the Property owner paid to the Township \$1,861.55 on February 7, 2017 and an additional \$1,247.75 on March 1, 2017, for a total of \$3,109.30 which the Township calculated as the full “Taxation Reimbursement” (TR Fee) due in support of the orderly annexation of the Property.¹⁸ Upon its realization that the TR Fee was erroneously calculated on 10.03 acres multiplied by \$310/acre and should have been calculated at that rate on only 10.02 acres, the City reimbursed the Property owner \$3.10.¹⁹ Accounting for that reimbursement, the City has collected \$3,106.20 from the Property owner as the complete TR Fee it deems due pursuant to the amended Orderly Annexation Agreement.

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

CONCLUSIONS OF LAW

1. Orderly annexations are governed by the provisions of Minnesota Statutes Chapter 414 (Municipal Boundary Adjustment Act) and, most specifically, by Minn. Stat. § 414.0325.

¹⁴ Annexation Resolution at 1.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 1 ¶ 1.

¹⁸ Correspondence from S. Strack, City Community Dev. Dir., submitted for the purpose of supplementing the record as ordered (Apr. 14, 2017).

¹⁹ Correspondence from S. Strack, City Community Dev. Dir., submitted for the purpose of correcting the record (Apr. 17, 2017).

2. The Chief Administrative Law Judge is authorized to review and approve an orderly annexation pursuant to Minnesota Statutes §§ 414.01-.12 (2016) and Minnesota Rules 6000.0100-.3400 (2015).

3. The Municipal Boundary Adjustment Act (Act) authorizes the Chief Administrative Law Judge to scrutinize proposed municipal boundary changes “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.”²⁰

4. The City, as the party submitting the Annexation Resolution, bears the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for orderly annexation have been met.²¹

5. A municipality’s attempt to annex property by orderly annexation is final on the effective date specified in the Order of Annexation approved by the Chief Administrative Law Judge.²²

6. Minnesota Statutes, section 414.036, sets forth the following with regard to statutorily authorized payments to townships as compensation for the lost value of property annexed into an adjoining municipality:

Unless otherwise agreed to by the annexing municipality and the affected town, when an order or other approval under this chapter annexes part of a town to a municipality, the order or other approval must provide a reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order. The reimbursement shall be completed in substantially equal payments over not less than two nor more than eight years from the time of annexation. The municipality must reimburse the township for all special assessments assigned by the township to the annexed property, and any portion of debt incurred by the town prior to the annexation and attributable to the property to be annexed but for which no special assessments are outstanding, in substantially equal payments over a period of not less than two or no more than eight years.

7. “[M]unicipalities have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.”²³

8. Townships and cities are legislatively authorized to generate revenue by tax assessment or by fee.²⁴

²⁰ Minn. Stat. § 414.01, subd. 1b(3).

²¹ Minn. R. 1400.7300, subp. 5 (2015).

²² Minn. Stat. § 414.0325, subd. 4.

²³ *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 820 (Minn. 1966); *N. States Power Co. v. City of Granite Falls*, 463 N.W.2d 541, 543 (Minn. Ct. App. 1990); see also *Country Joe, Inc. v. City of Eagan*, 548 N.W.2d 281, 286 (Minn. Ct. App. 1996), *aff’d*, 560 N.W.2d 681, 683-84 (Minn. 1997).

²⁴ See Minn. Stat. §§ 366.01-.27, 412.251, 462.353, subd. 4(a) (2016).

9. To enact an administrative fee in support of a statutorily authorized municipal action, a municipality is statutorily required to enact an ordinance after allowing the public to comment at a duly noticed and open hearing.²⁵

10. As the amended Orderly Annexation Agreement provides that the City and the Township have agreed that no reimbursement is due from the City to the Township,²⁶ the requirements of Minn. Stat. § 414.036 with respect to the provision for reimbursement from the City to the Township have been sufficiently addressed for purposes of this Order.²⁷

11. Pursuant to Minn. Stat. § 414.12, subd. 3, the Chief Administrative Law Judge must apportion the Office of Administrative Hearings' costs of contested case proceedings in boundary adjustment matters to the parties in an equitable manner if the parties have not otherwise agreed to a division of the costs.

Based upon these Findings of Fact and Conclusions of Law, and for the reasons set forth in the Memorandum below, the Chief Administrative Law Judge issues the following:

ORDER

1. The Property legally described in Finding No. 2 above is hereby annexed into the City effective on the date that the Township submits to the Office of Administrative Hearings evidence that the Township has adopted, pursuant to Minn. Stat. §§ 365.10, subd. 17, 365.125, 415.021 (2016) or other statutory or lawful governmental authority, an ordinance, administrative fee schedule, property tax assessment or other tax assessment memorializing the Township's legal authority to collect a Tax Reimbursement payment with respect to the annexation of the Property, on which date the Chief Administrative Law Judge will issue a supplemental Order confirming the filing.

2. In the alternative and if the Township determines that it will not lawfully enact an ordinance, administrative fee schedule, property tax assessment or other tax assessment as described immediately above, the Property legally described in Finding No. 2 above is hereby annexed into the City effective on the date that the Township submits to the Office of Administrative Hearings evidence that the TR Fee has been returned to the Property owner, on which date the Chief Administrative Law Judge will issue a supplemental Order confirming the filing.

3. The costs of this matter, billed as required by law at the approved hourly rates of the Office of Administrative Hearings, are ordered paid by the parties in the following percentages: 50% by the City; and 50% by the Township. Invoices for the billed

²⁵ Minn. Stat. § 462.353, subds. 4, 4a (2016).

²⁶ First Amendment at 1-2.

²⁷ Annexation Resolution at 2 ¶ 4.

amounts will be sent under separate cover.

Dated: April 17, 2017



TAMMY L. PUST
Chief Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.0325, .07, .09, .12. Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Scott 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. However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

Orderly annexation is a statutory process. As defined by the Act and specified in Minn. Stat. § 414.0325, municipal boundary adjustment through the orderly annexation of property is available to cities and townships upon compliance with the criteria specified in the Act and other applicable law.

In this case, the City and the Township have, to date, failed to comply with the requirements of Minnesota law in their collection of a TR Fee without the adoption of an ordinance allowing for such. While the Township may believe that its action is a lawful exercise of its authorized contracting power, this belief is unsupported by law as set forth below.

I. The Township Lacks Sufficient Legal Authority to Impose and Collect the Taxation Reimbursement Fee.

“[M]unicipalities have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.”²⁸ Recognizing this legal principle, the Minnesota Association

²⁸ *Mangold*, 143 N.W.2d at 820; *N. States Power Co.*, 463 N.W.2d at 543; see also *Country Joe*, 548 N.W.2d at 286 (declining to uphold a city’s “road unit connection charge” by finding that such “would set a precedent allowing statutory cities virtually unlimited authority to impose funding measures not otherwise permitted by

of Townships publicly advises that “[a]s creations of the legislature, towns only have those powers granted them by the legislature.”²⁹

A. The Township has not Adopted a Taxation Reimbursement Fee Ordinance.

The Minnesota legislature has authorized municipalities to generate revenue by tax assessment or by fee.³⁰ With respect to levying taxes, municipalities only have the authority “granted to them by Constitution or the statutes.”³¹ While “[t]he legislature has broad discretion in selecting subjects for taxation and in granting tax exemptions,”³² the fact remains that a tax must be legislatively authorized.³³ The Minnesota legislature has never authorized the Township to assess a tax for purposes of tax reimbursement related

statute in connection with any service they provide.”).

²⁹ TROY GILCHRIST, TOWN ORDINANCES (The Minnesota Association of Townships, Information Library 2002), available at <http://www.mntownships.org/vertical/sites/%7BD45B3299-B0BE-4D08-8A42-B7053B4AE74F%7D/uploads/%7B0B550A5B-CD01-4D52-BC8A-F4845A7250B5%7D.PDF>.

³⁰ See Minn. Stat. §§ 366.01-.27, 412.251, 462.353, subd. 4(a). A general overview of municipal revenue generation options is set forth in *SDCO St. Martin, Inc. v. City of Marlborough*, 5 F.Supp.3d 139, 142-43 (D. Mass. 2014), as follows:

“Cities and towns have no independent power of taxation.” *Opinion of the Justices*, 378 Mass. 802, 393 N.E.2d 306, 310 (1979). “A municipality does not have the power to levy, assess, or collect a tax unless the power to do so in a particular instance is granted by the Legislature.” *Silva v. City of Attleboro*, 454 Mass. 165, 908 N.E.2d 722, 725 (2009).

In addition to general taxes, a municipality may also charge fees for the use of specific municipally provided services or as an exercise of police power. See *Denver St. L.L.C. v. Town of Saugus*, 462 Mass. 651, 970 N.E.2d 273, 274 (2012). “There are two kinds of fees, ‘user fees based on the rights of the entity as proprietor of the instrumentalities used’ and ‘regulatory fees,’ ‘founded on police power to regulate particular businesses or activities.’” *Id.* (quoting *Emerson College v. City of Boston*, 391 Mass. 415, 462 N.E.2d 1098, 1105 (1984)). Sewer charges would be an example of a lawful user fee. See *Town of Winthrop v. Winthrop Housing Authority*, 27 Mass. App. Ct. 645, 541 N.E.2d 582, 583–84 (1989).

Whether a charge is a lawful fee or an unlawful tax “must be determined by its operation rather than its specifically descriptive phrase.” *Denver Street*, 970 N.E.2d at 275. In *Emerson College*, the Supreme Judicial Court identified the three traits that distinguish fees from taxes.

Fees “[1.] are charged in exchange for a particular government service which benefits the party paying the fee in a manner ‘not shared by other members of society’ [;] ... [2.] are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge” [;] ... “and” [3.] ... are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. *Denver St.*, 970 N.E.2d at 275 (alteration in original) (quoting *Emerson College*, 462 N.E.2d at 1105).

³¹ *State v. City of Ely*, 151 N.W. 545, 546 (Minn. 1915) (citing *Sewall v. City of St. Paul*, 20 Minn. 511 (Gil. 459); *State v. District Court*, 44 Minn. 244, 46 N. W. 349; 27 Am. & Eng. Enc. (2d Ed.) 869)).

³² *Rio Vista Non-Profit Hous. Corp. v. Ramsey County*, 335 N.W.2d 242, 245 (Minn. 1983) (citing *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S. Ct. 1001, 35 L.Ed.2d 351 (1973)).

³³ *Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681, 686-87 (Minn. 1997).

to annexation proceedings.

The Act, at Minn. Stat. § 414.036, does authorize the Township to collect a TR Fee within appropriate parameters, and so serves as sufficient statutory authority for the Township to enact an ordinance specifying when, from whom and in what amounts it can collect a TR Fee. But the fact remains, as a fundamental matter of municipal law, that a municipality's having statutory authority to impose an administrative fee does not, in and of itself, constitute a sufficient legal basis for the action. The law requires a municipality to enact an ordinance, after allowing the public to comment at a duly noticed and open hearing, to specify the parameters under which the administrative fee will be imposed.³⁴ The Township has not adopted an ordinance relative to the TR Fee. Therefore, the record does not support a finding that the Township has legal authority to impose the TR Fee against the Property owner in this matter.

This legal deficiency is easily cured. The Township can, and should if it intends to continue to impose TR Fees in annexation proceedings, enact an administrative fee ordinance memorializing its intent for the public it serves. The Township is well acquainted with the legal process for ordinance adoption, as evidenced by the fact that it has adopted ordinances in the past.³⁵ Once it does so with regard to the TR Fee, it can avoid in the future any further delays and record supplementation or similar orders in orderly annexation matters.

B. The Township has not Contracted with the Property owner.

The Township may seek to avoid the public hearing process necessary to adopt an ordinance and continue to assert that its TR Fee is authorized as a matter of contract under Minn. Stat. § 365.025 (2016).³⁶ This statute provides as follows: "Notwithstanding other law, a town board may enter into any contract it considers necessary or desirable to use any town power." It is similar to Minn. Stat. § 365.02(b)(3) (2016), which authorizes a Minnesota township to "enter into any contract that is necessary for the town to use any of its powers...."

Neither of these statutes provide the Township with any legal authority to impose a \$310 per acre TR Fee in this matter. It is clear that the Property owner is not a party to any contract with the Township evidenced in the record in this matter: the owner is not a signator to the amended Orderly Annexation Agreement or the Annexation Resolution. The Township and the City are legally entitled to agree to negotiated terms between themselves as parties to the amended Orderly Annexation Agreement and the Annexation Resolution. However, the record provides no evidence of any legal power they possess to bind the Property owner, a non-contracting party, to compliance with the terms of those contracts.

³⁴ Minn. Stat. § 462.353, subds. 4, 4a.

³⁵ <http://www.belleplainetownship.com/information.htm#ordinances>. The Chief Administrative Law Judge takes judicial notice of this public record pursuant to Minn. R. Evid 201.

³⁶ *Id.*

II. Required Supplementation of the Record

The Property currently generates \$49.09 per year in property taxes to the Township. Upon annexation of the Property to the City, the Township will lose \$49.09 per year of revenue. Nevertheless, the preponderance of evidence in the record, consisting solely of the amended Orderly Annexation Agreement's requirement of a \$310/acre TR Fee for the annexation of unimproved property and the Annexation Resolution's recitation that the Property owner has or will be required to pay the TR Fee as set by the Orderly Annexation Agreement, indicates that the Township has charged the Property owner \$3,106.20 (10.02 acres X \$310/acre) in order to proceed with the annexation request. At the rate of \$49.09 per year, it would take over 63 years for the Township to "lose" \$3,106.20 due to its loss of the Property to the City.

Given the sparsity of the record, it may be that these recited facts are incorrect. Supplementation of the record may establish that the Township collected less than the \$310/acre TR Fee provided for in the amended Orderly Annexation Agreement, or that it collected the TR Fee from some entity other than the Property owner. To the contrary, the required supplementation may establish that the Township in fact collected a TR Fee of \$3,106.20 from the Property owner, which may well raise other legal concerns grounded in the Township's authority to do so in light of the dictates of Minn. Stat. § 414.036.³⁷ For this reason, the current Order requires the parties to supplement the

³⁷ The parties are well aware of the recent decisions of the Office of Administrative Hearings regarding the interplay between Minn. Stat. §§ 414.0325 and 414.036 and the lawful calculation of tax reimbursement fees relative to orderly annexation proceedings. In summary, recent decisions provide statutory analysis and support for the following agency determinations:

- (1) In orderly annexation proceedings, the Office of Administrative Hearings has authority to require compliance with Minn. Stat. § 414.036 notwithstanding the provisions of Minn. Stat. § 414.0325, subd. 1(h);
- (2) Minnesota Statutes, section 414.036, requires that statutorily authorized payments to townships as compensation for the lost value of property annexed into an adjoining municipality be appropriately related to the loss of tax value suffered by the Township through annexation, payable in accordance with statutory terms;
- (3) Minn. Stat. § 414.036, in and of itself and without enactment of an implementing ordinance, does not provide legal authority for a Township to impose upon a landowner a per acre tax reimbursement charge in order to obtain the Township's support for a requested annexation of the owned land;
- (4) Although Minn. Stat. § 414.0325 authorizes municipalities to contractually agree to negotiated terms and conditions regulating the orderly annexation of property, the statute does not authorize the parties to contractually agree to tax reimbursement terms that violate the criteria set forth in Minn. Stat. § 414.036; and
- (5) Nothing in Minn. Stat. § 414.0325 allows parties to an orderly annexation agreement to preempt the applicability or operation of Minn. Stat. § 414.036 in orderly annexation proceedings.

To the extent that the parties to this proceeding seek further explanation and analysis of these issues, they are advised to review the agency's recent determinations in order to avoid any additional unnecessary delays in this or future matters. See *In the Matter of the Orderly Annexation Agreement Between the City of Belle Plaine and the Town of Blakeley Pursuant to Minnesota Statutes 414*, No. 84-0331-33920, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Minn. Office Admin. Hearings Nov. 15, 2016) and FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER REGARDING CONSOLIDATED RECORD AND ORDER APPROVING ANNEXATION (Minn. Office Admin. Hearings Apr.10, 2017); *In the Matter of the Orderly Annexation of Certain Real*

record on this salient point.

III. Apportionment of Costs is Statutorily-Required.

Minn. Stat. § 414.12, subd. 3, requires the Office of Administrative Hearings to allocate equitably between the parties the costs of administrative law judge time spent on boundary adjustment matters. This legislative directive is mandated by the fact that the Office of Administrative Hearings operates primarily³⁸ as an “enterprise fund” within the executive branch of Minnesota state government. As such, Minn. Stat. §§ 14.53 and 14.55 (2016) direct the Office of Administrative Hearings to assess its costs to the state agencies and other political subdivisions to which it provides the services of administrative law judges. Each fiscal year, Minnesota Management & Budget approves a billable rate for the billable time expended by administrative law judges in all matters that come before the agency, known as “contested case proceedings” pursuant to the Minnesota Administrative Procedures Act.³⁹ Whether or not cases are settled, result in default or are tried through a full hearing, all “contested case proceedings” filed with the Office of Administrative Hearings are invoiced for the hours of judicial time expended pursuant to the approved hourly rate.⁴⁰

Some history is instructive.⁴¹ Legislatively created in 1959, the Municipal Boundary Board operated until 1999 when it was legislatively dissolved. During the Board’s 40-year tenure, the appointed board members issued final decisions and the costs of the agency were legislatively funded. In 1999, the functions of the board were transferred to the Office of Strategic and Long Range Planning, commonly referred to as Minnesota Planning, and in 2003 the functions were again transferred, this time to the Minnesota Department of Administration. Since 1999, administrative law judges at the Office of Administrative Hearings have presided over all contested case proceedings related to municipal boundary adjustment matters. In accord with Minn. Stat. § 14.53 and 14.55, the costs of the services provided by administrative law judges⁴² have been equitably apportioned to the parties to boundary adjustment matters under the authority of Minn. Stat. § 414.12 for over a decade.

In recognition of the legislature’s funding scheme pertinent to the state agency, Chapter 414 specifically provides that the Office of Administrative Hearings “is not liable for [its] costs”⁴³ but instead “the costs must be allocated on an equitable basis” by the Chief Administrative Law Judge unless otherwise agreed to by the parties.⁴⁴ In this orderly

Property to the City of Carver from Dahlgren Township, No. 84-0331-33356, AMENDED ORDER APPROVING ANNEXATION (Minn. Office Admin. Hearings June 15, 2016). Copies of relevant decisions and analysis will be provided upon request.

³⁸ The Office of Administrative Hearings receives different funding for the work of its Workers’ Compensation Division and for contested cases related to data privacy matters.

³⁹ Minn. Stat. §§ 14.001-.70.

⁴⁰ See Minn. Stat. §§ 14.53, .54.

⁴¹ See Office of Administrative Hearings’ website at <http://www.mba.state.mn.us/History.html>.

⁴² Parties are not and have not been billed for the costs of the administrative staff in the Municipal Boundary Adjustment Unit, which remain funded through a general fund appropriation from the legislature.

⁴³ Minn. Stat. § 414.12, subd. 3(b).

⁴⁴ *Id.*, subd. 3(a), (c).

annexation action, the record is silent as to any agreement of the parties relative to cost-splitting.

The Chief Administrative Law Judge has allocated equally to the parties the costs of the agency's judicial time expended in this matter. While only the City formally appeared in the matter, the Township is also a party to the proceeding as a matter of law.⁴⁵

The ordered 50/50 split of the invoiced time is based on the fact that both parties executed the Orderly Annexation Agreement and the Annexation Resolution, and both thereby jointly sought the requested annexation. Though only the City submitted the proceeding for agency action, that submission was based upon the documentation which both public bodies had authorized and executed. Additionally, both entities are well advised as to the Office of Administrative Hearings' legal analysis on relevant issues in recent decisions. The record does not provide any factual basis to differentiate the necessitated use of judicial time between the City and the Township, but rather supports the conclusion that both parties equally contributed to the development of the record eventually submitted by the City, and both stood to gain equally in the resulting order, one benefitting from the Property and one benefitting financially through the collected TR Fee. The judicial time expended in the matter has been allocated to the tenth of a billable hour and valued at the agency's current approved rate of \$170 per hour.

T. L. P.

⁴⁵ *Id.*, subd. 4(2).

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Orderly Annexation
of Certain Real Property to the City of
Belle Plaine from Belle Plaine Township
(MBAU Docket OA-1042-7)

**SECOND AMENDED
FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER REQUIRING
RECORD SUPPLEMENTATION, AND
ORDER APPROVING ANNEXATION**

Pursuant to Minn. Stat. § 414.0325 (2016), the City of Belle Plaine (City) and Belle Plaine Township (Township) requested an Order from the Chief Administrative Law Judge approving the annexation of certain real property (Property) presently located within the boundaries of the Township.

Based upon a review of the filings and matters of public record, of which the Chief Administrative Law Judge takes judicial notice as noted below, the Chief Administrative Law Judge makes the following:

AMENDED FINDINGS OF FACT

1. On April 17, 2017, the undersigned issued Amended Findings of Fact, Conclusions of Law, Order Requiring Record Supplementation, and Order Approving Annexation with Conditions (April 17th Order) wherein the annexation was approved upon completion of specified conditions.¹

2. On May 2, 2017, the Township adopted Belle Plaine Township Ordinance Number 4 (Ordinance), which contains annexation fees for unimproved and improved property.²

3. The Township filed the Ordinance with the Office of Administrative Hearings on May 3, 2017.³

Based upon these Amended Findings of Fact, together with the Findings of Fact included in the April 17th Order which are incorporated herein by reference except to the extent that they are amended above, the Chief Administrative Law Judge makes the following:

¹ Amended Findings of Fact, Conclusions of Law, Order Requiring Record Supplementation, and Order Approving Annexation with Conditions at 6 (Apr. 17, 2017).

² Belle Plaine Township Ordinance Number 4 (May 2, 2017).

³ Correspondence from Cynthia S Strack, Community Dev. Dir., City of Belle Plaine (May 3, 2017).

AMENDED CONCLUSION OF LAW

1. Belle Plaine Township Ordinance Number 4 conforms to and meets the conditions set forth in the April 17th Order.

Based upon the Amended Findings of Fact and this Amended Conclusion of Law, together with the Conclusions of Law included in the April 17th Order which are incorporated herein by reference except to the extent that they are amended above, the Chief Administrative Law Judge issues the following:

AMENDED ORDER

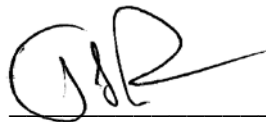
1. Pursuant to the April 17th Order, the following described property is annexed to the City:

All that part of the West Half of the East Half of the Southwest Quarter of Section 12, Township 113, Range 25, Scott County, Minnesota, lying Northerly of the Northerly right-of-way line of Trunk Highway Number 169, except that part taken as Parcel 6N1 on City of Belle Plaine Road Right of Way Plat No. 1.⁴

2. The effective date of the annexation of the above-described property is May 3, 2017.⁵

3. The costs of this matter, billed as required by law at the approved hourly rates of the Office of Administrative Hearings, are ordered paid by the parties in the following percentages: 50% by the City; and 50% by the Township. Invoices for the billed amounts will be sent under separate cover.

Dated: May 22, 2017



TAMMY L. PUST
Chief Administrative Law Judge

⁴ *Id.*

⁵ *Id.*

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.0325, .07, .09, .12. Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Scott 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. However, no request for amendment shall extend the time of appeal from this Order.