

A-7040 Hinckley/Barry Township

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PETITION FOR)	
THE ANNEXATION OF CERTAIN LAND)	JOINT RESOLUTION
TO THE CITY OF HINCKLEY PURSUANT)	
TO MINNESOTA STATUTES, SECTION 414.031)		

**JOINT RESOLUTION FOR ORDERLY ANNEXATION
BY AND BETWEEN BARRY TOWNSHIP AND
THE CITY OF HINCKLEY IN SETTLEMENT OF MINNESOTA
DEPARTMENT OF ADMINISTRATION FILE NO.
A-7040 HINCKLEY/BARRY TOWNSHIP**

WHEREAS, the City of Hinckley filed an annexation petition, dated March 3, 2004, with the Minnesota Department of Administration Municipal Boundary Adjustments Office (File No. A-7040 Hinckley/Barry Township) seeking annexation of certain areas located within Barry Township pursuant to Minnesota Statutes, Section 414.031; and

WHEREAS, Barry Township and the City of Hinckley have been working toward settlement of their boundary dispute and have reached a settlement agreement believed to be in the mutual best interests of both parties; and

WHEREAS, the City of Hinckley (hereinafter the "City") and Barry Township (hereinafter the "Township") desire to enter into an agreement allowing for the orderly annexation of certain property, pursuant to Minnesota Statutes, Section 414.0325; and

WHEREAS, the City and Township are in agreement to the procedures and process for orderly annexation of certain land described herein; and

WHEREAS, the City and Township have agreed to work cooperatively to accomplish the orderly annexation of the area legally described herein; and

WHEREAS, the City and Township agree the area designated herein is urban or suburban or about to become so and annexation will benefit the public health, safety and welfare of the community; and

WHEREAS, for the area designated herein, the City and the Township desire to accomplish the orderly annexation of said area in a mutually acceptable and beneficial manner; and

WHEREAS, the parties hereto desire to set forth the terms and conditions of such orderly annexation by means of this Joint Resolution in settlement of the above-referenced contested case matter.

NOW, THEREFORE, BE IT RESOLVED by the Town Board of Supervisors of Barry Township and the City Council of the City of Hinckley, as follows:

1. **Designation of Orderly Annexation Area – City of Hinckley and Barry Township.** The Township and the City hereby designate the area legally described in Exhibit A, attached hereto and incorporated herein by reference, for immediate orderly annexation pursuant to Minnesota Statutes, Section 414.0325. For ease of reference the area legally described in Exhibit A is property owned by the City and is hereinafter referred to as the “City-owned Property”.
2. **Acreage.** The Township and City agree that the area legally described in Exhibit A and designated as in need of immediate orderly annexation is approximately 62 acres.
3. **Population.** The Township and City agree that the population of the area legally described in Exhibit A and designated as in need of immediate orderly annexation is zero.
4. **Map of Area.** A boundary map showing the area legally described in Exhibit A is attached hereto as Exhibit B and incorporated herein by reference.
5. **No Hearing Required.** Pursuant to Minnesota Statutes, Section 414.0325, the Township and City agree that no alteration of the boundaries stated herein is appropriate, that all conditions for annexation of the area legally described in Exhibit A are contained in this Joint Resolution, and that no consideration by the Department of Administration is necessary. Upon the execution and filing of this Joint Resolution, the Department of Administration may review and comment thereon, but shall, within 30 days of receipt of this Joint Resolution, order the annexation of the area legally described in Exhibit A in accordance with the terms and conditions contained in this Joint Resolution.
6. **Weidendorf Property.** The property legally described in Exhibit C shall be known for ease of reference as the “Weidendorf Property” and shall be referred to as such throughout the remainder of this Joint Resolution. Except as provided in this paragraph, the City agrees that it will not initiate annexation or accept or support a property-owner petition for annexation of the Weidendorf Property until such time as the existing City boundary line extends so as to abut the property and the property can be annexed pursuant to Minnesota Statutes, Chapter 414, or the property can be annexed pursuant to Minnesota Statutes, Section 414.0325.

Notwithstanding the foregoing, in the event that the Minnesota Pollution Control Agency or another state agency orders the City to provide sewer or water service to the Weidendorf Property, the City may thereafter seek annexation of the Weidendorf Property in accordance with the procedures contained in Minnesota Statutes, Chapter 414.

The property-owner of the Weidendorf Property may seek annexation pursuant to any of the procedures contained in Chapter 414, and the City may join in such a proceeding, in the event that a Township approved licensed septic system installer or inspector determines that the septic system(s) located or to be located on the Weidendorf Property does not meet the requirements contained in Minnesota Rules, Chapter 7080 and the property or existing systems cannot be brought into compliance with the Rules without unreasonable expense on the part of the property owner. Unreasonable expense shall mean that conditions on the site are unsuitable for septic systems in the judgment of a licensed installer to serve the property or that to achieve compliance with the Rules will cost the property owner 50% or more of what it would cost to install mound systems to serve the property. The property-owner, in order to move forward with annexation, must file a petition with the City seeking annexation and extension of City sewer or water service to the property and the City must agree to provide such services within two years of the effective date of annexation. The property-owner shall pay the cost of inspection of the septic system(s) for purposes of this Paragraph. The Township shall make the determination regarding compliance of the septic system(s) located or to be located on the Weidendorf Property with Minnesota Rules, Chapter 7080 within sixty (60) days of a written request from the property-owner or the septic system shall be deemed non-compliant. In the event that there is a dispute regarding whether compliance with the requirements of Chapter 7080 have been met or whether the system can be brought into compliance with the Rules without unreasonable expense on the part of the property owner, the parties shall submit the matter to binding arbitration within sixty (60) days of the Township's determination. The arbitrator selected by the parties shall be knowledgeable regarding septic system installation or inspection. The parties shall select an arbitrator within 30 days of providing notice to the Township that the matter shall be submitted to arbitration. In the event that the parties do not select an arbitrator within the time specified, either party may petition the Pine County Board of Commissioners and serve on the other party a petition to select a neutral arbitrator knowledgeable regarding septic system installation or inspection. Within 30 days of the date of the petition each of the parties shall serve on the County Board and the other side a list of three potential candidates for the County Board to consider. The County Board shall then select a neutral arbitrator from the lists provided by the parties within 30 days. Failure to participate in the selection process shall result in the participating party selecting the arbitrator of their choice from the list. The decision of the arbitrator shall be binding. The costs of the arbitrator shall be borne equally by the parties to the proceeding.

7. **Prohibition on Annexation of Abutting Property.** With regard to the City-owned Property, except for the lands in the Township located west of the western boundary line of the City-owned property as shown on Exhibit D, which the City may annex pursuant to Minnesota Statutes, Chapter 414 in the event such procedures become applicable, the City agrees not to initiate an annexation of or accept a property owner petition for annexation of any property abutting the City-owned Property until such time as the City's present boundary extends so as to make the City-owned Property abut the City.
8. **Deferred Assessment Policy.** With respect to sanitary sewer and municipal water improvements to be constructed for the benefit of the City-owned Property, the City's policy for deferred, delayed, or future assessments for such improvements shall be as follows:

A. *Sanitary Sewer and Water Utilities.* The City shall not specially assess any properties located within Barry Township related to the cost of construction of sanitary sewer and municipal water utilities constructed to serve the orderly annexation area designated in Exhibit A. However, the City may impose connection and trunk charges as permitted by law on properties within the Township that are to become due and payable at such time as the properties are: 1) annexed to the City, and 2) connect to municipal water or sanitary sewer service.

B. *Reservation of Rights.* Notwithstanding the terms of this Joint Resolution, the City reserves the right to enter into development agreements with the developers of any specific parcels of property within Barry Township that vary from the terms of this paragraph with respect to such parcel.

9. **Joint Airport Zoning Board.** In the event that the Weidendorf Property is annexed to the City, the airport located on that property is owned or controlled by the City, and the City seeks to extend its planning and zoning authority pursuant to Minnesota Statutes, Section 360.063, the City and Township agree that a five member Joint Airport Zoning Board shall be created, which board shall have the powers applicable to the airport hazard area in the Township vested by Minnesota Statutes, Section 360.063. The Joint Board shall have as members two representatives appointed by the Council of the City, the Town Board of the Town of Barry shall appoint two members, and the Pine County Board of Commissioners shall appoint one member. All members shall serve at the pleasure of their respective appointing authority. The Chair of the board shall be elected from the membership of the Joint Airport Zoning Board. The City shall provide all administration for the Joint Airport Zoning Board including, but not limited to, the posting and publishing of meetings for the Joint Airport Zoning Board, as well as the taking of minutes for their meetings, shall be the responsibility of the City. Administrative expenses for the Joint Board shall be borne by the City. The City will be entitled to retain permit fees to cover the cost of administration. This provision shall not be operative should section 360.063 be repealed by the State legislature.

The Parties agree that the Joint Airport Zoning Board shall not enact or adopt zoning ordinances or restrictions that are more restrictive than those required by state and federal law relating to airport zoning.

10. **Board of Adjustment.** In the event that a Joint Airport Zoning Board is established as provided in paragraph 9, the City and Township agree that a five member Board of Adjustment shall be created and shall exercise the powers and duties as provided by Minnesota Statutes, Section 360.071. The Board of Adjustments shall have as members two representatives appointed by the Council of the City, the Town Board of the Town of Barry shall appoint two members, and the Pine County Board of Commissioners shall appoint one member. All members shall be appointed for a three year term and be removable by the appointing authority for cause, upon written charges and after a public hearing.

11. **Withdraw Contested Case Petition.** The City agrees to withdraw its pending annexation petition, File No. A-7040, as soon as practicable after execution and filing of this Joint Resolution with the State Department of Administration.
12. **Filing.** The Township and City agree that upon adoption and execution of this Joint Resolution, the City shall file the same with the Department of Administration Municipal Boundary Adjustments Office after the Township has acted upon the environmental assessment worksheet (EAW) for a blacktop tarmac for the airport project located on the Weidendorf Property or 120 days after the date of execution of this Joint Resolution by the Township, whichever comes first. The City and Township agree to waive the time period for the contested case hearing on this matter, A-7040, so that the parties have time to meet their respective obligations under this agreement. Following adoption and execution of this Joint Resolution, the Township and City shall, within 30 days of signing the Joint Resolution, file a letter requesting that the time period for a contested case on File No. A-7040 be extended 120 days to August 23, 2005 to allow the parties to complete their settlement of this matter.
13. **Governing Law.** The Township and City agree that this Joint Resolution is made pursuant to, and shall be construed in accordance with the laws of the State of Minnesota.
14. **Headings and Captions.** The Township and City agree that the headings and captions contained in this Joint Resolution are for convenience only and are not intended to alter any of the provisions of this Joint Resolution.
15. **Entire Agreement.** With respect to the areas legally described in Exhibits A and C and shown on Exhibits B and D, which are attached hereto and incorporated herein by reference, the terms, covenants, conditions, and provisions of this Joint Resolution shall constitute the entire agreement between the parties hereto superseding all prior agreements and negotiations between the parties.
16. **Legal Description and Mapping.** The Township and City agree that in the event there are errors, omissions or any other problems with the legal description provided in Exhibits A and C or mapping provided in Exhibits B and D, in the judgment of the Department of Administration, the City and Township agree to make such corrections and file any additional documentation, including a new Exhibits A, B, C or D making the corrections requested or required by the Department of Administration as necessary to make effective the annexation of said area in accordance with the terms of this Joint Resolution.
17. **Disputes and Remedies.** The City and Township agree as follows:
 - a. **Negotiation.** When a disagreement over interpretation of any provision of this Joint Resolution shall arise, the City and the Township will direct staff members, as they deem appropriate, to meet at least one (1) time at a mutually convenient time and place to attempt to resolve the dispute through negotiation.
 - b. **Mediation/Arbitration.** When the parties to this Joint Resolution are unable to resolve disputes, claims or counterclaims, or are unable to negotiate an

interpretation of any provision of this Joint Resolution, the parties may mutually agree in writing to seek relief by submitting their respective grievances to mediation and/or binding arbitration.

- c. Adjudication. When the parties to this Joint Resolution are unable to resolve disputes, claims or counterclaims, are unable to negotiate an interpretation of any provision of this Joint Resolution or are unable to agree to submit their respective grievances to mediation or binding arbitration, or such action has not otherwise resolved the matter in dispute, either party may seek relief through initiation of an action in a court of competent jurisdiction. In addition to the remedies provided for in this Joint Resolution and any other available remedies at law or equity, in the case of a violation, default, or breach of any provision of this Joint Resolution, the non-violating, non-defaulting, or non-breaching party may bring an action for specific performance to compel the performance of this Joint Resolution in accordance with its terms.
18. Modification/Amendment. Except as otherwise provided herein, this Joint Resolution shall not be modified, amended, or altered except upon the written joint resolution of the City and the Township duly executed and adopted by the City Council and the Township Board of Supervisors and filed with the Department of Administration, or its successor agency.
19. Severability. In the event that any provision of this Joint Resolution is determined and adjudged to be unconstitutional, invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Joint Resolution shall remain in full force and effect, and the parties hereto shall negotiate in good faith and agree to such amendments or modifications of or to this Joint Resolution or other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties hereto.


Passed, adopted, and approved by the Town Board of Supervisors of Barry Township, Pine County, Minnesota, this 18th day of May 2004.

BARRY TOWNSHIP

By:

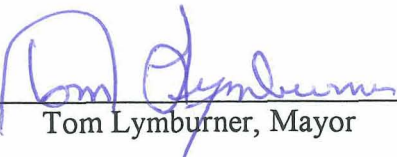

Maynard Workman, Chairman

ATTEST:


Theresa Ausmus, Town Clerk

Passed, adopted, and approved by the City Council of the City of Hinckley, Pine County, Minnesota, this 1st day of June 2004.

CITY OF HINCKLEY

By: 
Tom Lymburner, Mayor

ATTEST:

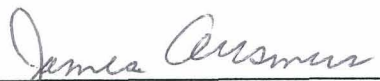

James Ausmus, City Administrator

EXHIBIT A
Legal Description

The subject area to be annexed as referenced in the attached Joint Resolution is legally described as follows:

City-owned Property

That part of the Northeast Quarter of Northeast Quarter (NE $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section Nineteen (19), Township Forty-one (41), Range Twenty (20), described as follows: All that portion lying between the East line of the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ of NE $\frac{1}{4}$) of said Section Nineteen (19), Township Forty-one (41), Range Twenty (20), and a line parallel to said East line and twenty (20) feet West thereof; and,

All that part of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ of NE $\frac{1}{4}$) lying North of the Grindstone River, Section Nineteen (19), Township Forty-one (41), Range Twenty (20); and,

South Half of the Northeast Quarter of Northeast Quarter (S $\frac{1}{2}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section Nineteen (19), Township Forty-one (41), Range Twenty (20), less that portion of the S $\frac{1}{2}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$ described as follows: All that portion lying between the East line of the S $\frac{1}{2}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 19, Township 41, Range 20, and a line parallel to said East line and 20 feet West thereof.

EXHIBIT B
Boundary Map

The municipal boundary map referenced in the attached Joint Resolution, showing the current City of Hinckley and its relation to the area proposed to be annexed, legally described in Exhibit A, is attached hereto.

EXHIBIT B
City of Hincley Boundary Map

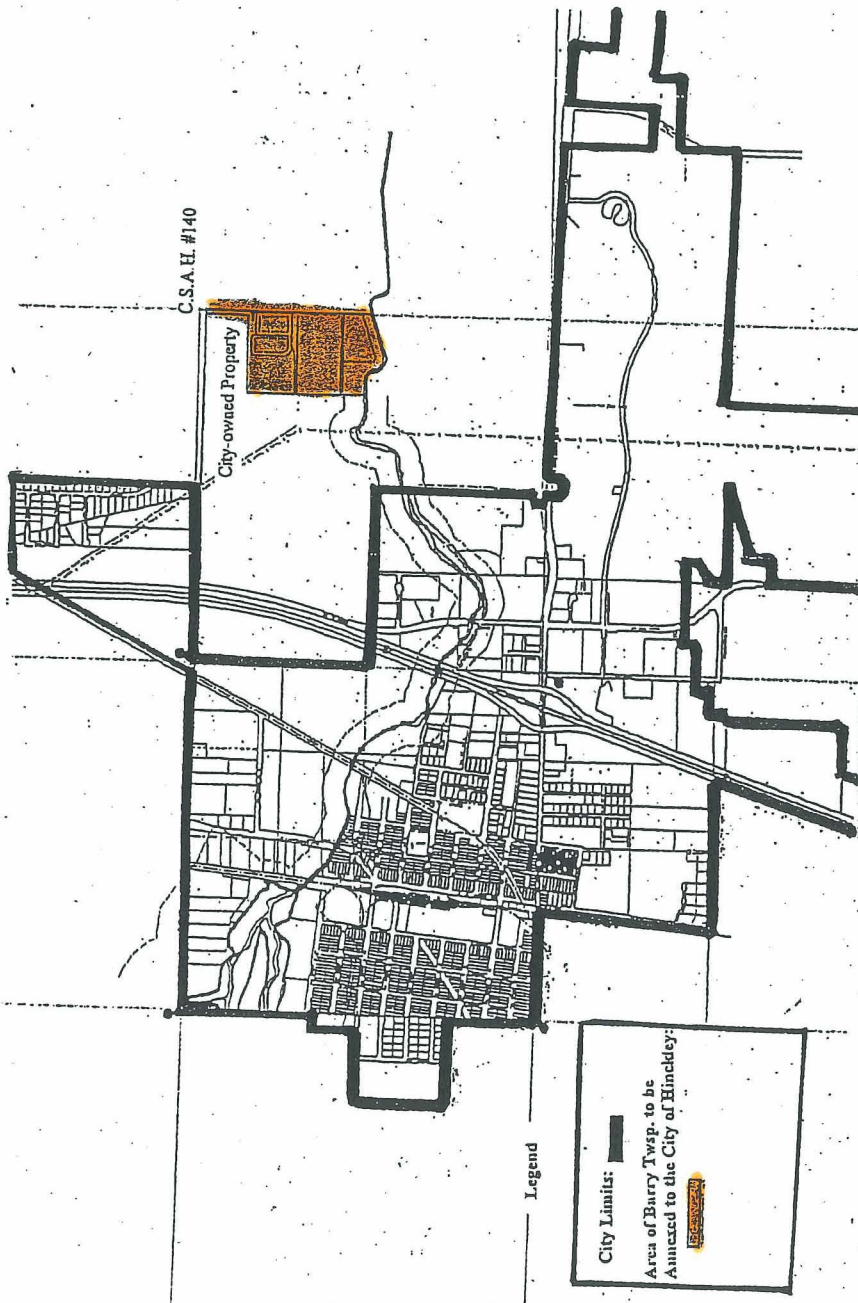


EXHIBIT C**Legal Description of Weidendorf Property**

The east 60 acres of the East Half of the Northwest Quarter of Section 20, Township 41, Range 20, Pine County, Minnesota, except the west 525 feet thereof, and except the north 309 feet thereof.

AND

The Northeast Quarter of Section 20, Township 41, Range 20, Pine County, Minnesota, except the following 3 described parcels:

1. That part of the Southeast Quarter of the Northeast Quarter of Section 20, Township 41, Range 20, Pine County, Minnesota lying north of the south 660 feet of said Southeast Quarter of the Northeast Quarter.
2. The west 418 feet of the north 309 feet of the Northwest Quarter of the Northeast Quarter of Section 20, Township 41, Range 20, Pine County, Minnesota.
3. The east 330 feet of the Northeast Quarter of the Northeast Quarter of Section 20, Township 41, Range 20, Pine County, Minnesota




Subject to C.S.A.H. No. 140 along the north and east lines thereof.

EXHIBIT D

Map showing lands located west of the western boundary line of the City owned property

EXHIBIT D

Map showing lands located west of the western boundary line of the City-owned property

- City Limits: 
- City-owned Property to be annexed: 
- Area west of City-owned Property: 

SEE PAGE 23

