

BEFORE THE MUNICIPAL BOARD
OF THE STATE OF MINNESOTA

Robert J. Ferderer	Chairman
Robert W. Johnson	Vice Chairman
Kenneth F. Sette	Member
Sydney G. Nelson	Ex-Officio Member
A. Hubert Nordgren	Ex-Officio Member

IN THE MATTER OF THE JOINT RESOLUTION)
OF THE CITY OF FERGUS FALLS AND THE)
TOWN OF FERGUS FALLS FOR THE ORDERLY)
ANNEXATION OF CERTAIN LAND TO THE CITY)
OF FERGUS FALLS PURSUANT TO MINNESOTA)
STATUTES 414)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

The above-entitled matter came on for hearing before the Minnesota Municipal Board pursuant to Minnesota Statutes 414, as amended, on April 29, 1981, at Fergus Falls, Minnesota and was continued from time to time. The hearing was conducted by Thomas J. Simmons, then Chairman, Robert W. Johnson, Vice Chairman, and Terrence A. Merritt, Executive Director pursuant to Minnesota Statutes 414.01, Subdivision 12. Also in attendance were Minnesota Municipal Board Members Robert J. Ferderer, Kenneth F. Sette and County Commissioners A. Hubert Nordgren and Sydney G. Nelson, Ex-Officio Members of the Board. The City of Fergus Falls appeared by and through William Briggs and the Township of Fergus Falls appeared by and through Robert Sefkow. Testimony was heard and records and exhibits were received.

After due and careful consideration of all evidence, together with all records, files and proceedings, the Minnesota Municipal Board hereby makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. A joint resolution for orderly annexation was adopted by the City of Fergus Falls and the Town of Fergus Falls and duly accepted by the Minnesota Municipal Board.
2. A resolution was filed by one of the signatories to the joint resolution, the City of Fergus Falls, on February 2, 1981, requesting the annexation of certain property within the orderly annexation area. The resolution contained all of the information required by statute including a description of the property subject to annexation which is as follows:

The Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ of SW $\frac{1}{4}$) and the East Half (E $\frac{1}{2}$) of Section Twenty-five (25), Township One Hundred Thirty-three (133) North, Range Forty-three (43) West, not presently within the City of Fergus Falls.

3. Due, timely and adequate legal notice of the hearing was published, served and filed.

4. The area subject to annexation is unincorporated, approximately 360 acres in size and abuts the City of Fergus Falls by approximately 29% of its border. The City of Fergus Falls is approximately 6,500 acres in size.

5. The general topography of the area proposed for annexation is gently rolling land with heavy soils of clay and black dirt. The area adjacent to Hoot Lake is generally hilly.

6. The population of the City of Fergus Falls in the year 1970 was 12,433, the present estimated population is 12,519, it is projected that by the year 1990, the City will have a population of 13,700.

7. In the area proposed for annexation, the population in 1970 was approximately 77 residents. The present estimated population of the area proposed for annexation is 90.

8. The Town of Fergus Falls in 1970 had a population of 877 and its present estimated population is 1,160.

9. The City of Fergus Falls has approximately 4,749 acres in residential use, approximately 350 acres in institutional use, approximately 275 acres in commercial use, approximately 181 acres in industrial use, approximately 445 acres in agricultural use and approximately 500 acres of vacant land.

The City of Fergus Falls has property which is being developed which is defined as platted and having services potentially available to it, as follows: approximately 60 acres of residential land, approximately 20 acres of commercial land and approximately 20 acres for industrial use.

The City of Fergus Falls has remaining land, which is presently either agricultural or vacant, and the land is presently zoned or could be zoned as follows: 100 acres for residential use, 100 acres for commercial use, and approximately 200 acres for industrial use.

10. In the area proposed for annexation, there are the following uses: approximately 80 acres of residential use, approximately 10 acres of commercial use, approximately 35 acres of agricultural use, approximately 105 acres of vacant land and approximately 130 acres of water, which is Hoot Lake.

The area proposed for annexation has approximately 80 acres that is being developed for residential use by either the platting process or the first step toward a platting process which had been taken, or parcels which had been divided off in such a way that they could be immediately built upon.

In the area proposed for annexation there remains approximately 60 acres for residential development.

The majority of the western and southwestern frontage along Hoot Lake has been developed into lots. The majority of those lots are developed with a single-family residence.

11. The Town of Fergus Falls has residential, commercial, industrial, agricultural and vacant land uses. It also has land uses by non-taxable entities.

12. The majority of the residential development in the City of Fergus Falls since 1970 has been in the north and northeastern part of the City.

The majority of the residential development near the City of Fergus Falls since 1970 has been northeast of the City.

13. The City of Fergus Falls has a zoning ordinance, subdivision regulation, comprehensive plan, an official map, capital improvements program, a fire code, building inspector, a planning commission, shoreland regulations, an economic development plan, a Fergus Falls Industrial Park Feasibility Study, a Comprehensive Market Analysis for the Central Business District of Fergus Falls, Minnesota, and a Fergus Falls Fringe Area and Growth Study. The City of Fergus Falls and its surrounding townships were the subject of a Growth Management Study by the Physical Planning Division of the State Planning Agency.

14. The Town of Fergus Falls has a zoning ordinance and Ottertail County subdivision regulations are applied to the Township.

15. The County of Ottertail has subdivision regulations, a planning commission and shoreland regulations.

16. The City Comprehensive Plan, the Ottertail River System Report by the Minnesota Pollution Control Agency, Division of Water Quality and Preliminary Report on Sanitary Sewerage System for Wright Lake - Hoot Lake Area, Fergus Falls, Minnesota have concluded that the long-range protection of Hoot Lake will be served by the installation of a central sanitary sewer around the lake. These plans envision the inclusion of the area proposed for annexation within the City of Fergus Falls to accomplish the extension of municipal sewer.

17. The City of Fergus Falls provides its residents with water, sewer, fire protection, police protection, street improvements, street maintenance, recreational opportunities, administrative services, refuse collection, an airport and a library.

18. The Town of Fergus Falls provides the area proposed for annexation with fire protection through a contract with the City of Fergus Falls, a contract with the City of Fergus Falls allows residents to use the landfill. The area proposed for annexation has private streets and does not receive street maintenance from the Township.

19. The City of Fergus Falls provides the area proposed for annexation with fire protection through a contract with the Township and landfill services through a contract with the Township.

20. Presently the library, airport and recreational services of the City of Fergus Falls service residents who are not within the corporate limits.

21. Hoot Lake is the water source for the City of Fergus Falls water reservoir, which is named Wright Lake. The City of Fergus Falls provides its residents with central water. The water treatment plant draws its raw water source from Wright Lake.

22. The City of Fergus Falls has been treating the water it uses to provide city water, with activated charcoal to remove occasional odors from the water.

23. The presence of increased nitrates within a water system is indicated through the presence of odor.

24. Since 1971 when the Ottertail County Shoreland Management Ordinance was enacted, which requires a permit for the installation of an on-site septic system, approximately 62 septic systems have been installed around Hoot Lake. The installations have included the replacement of 28 failed septic systems. Of the 28 failed septic systems, 3 failures were systems that were constructed since 1971.

25. The Environmental Protection Agency lists an average life expectancy of a septic system to be approximately 10 years.

26. Around Hoot Lake in Ottertail County, the installers of on-site septic systems are encouraged by the County to locate the systems between the residence and the adjacent lake front, if the residence is on the lake.

27. One of the first signs of a failed or failing on-site septic system is waste water coming to the surface of the ground.

28. The majority of the lots in the area proposed for annexation adjacent to Hoot Lake slope to the lake.

29. The requirements of the Shoreland Management Ordinance may prevent the location of a second on-site septic system on a lot adjacent to Hoot Lake in the area proposed for annexation, if the original system fails.

30. The area proposed for annexation has an average soil percolation rate of 15.7 minutes/inch.

31. In Ottertail County, those systems with a percolation rate in excess of 5 minutes/inch are subject to failure.

32. There are 91 homes in the annexation area between the area proposed for annexation in Fergus Falls Township and the area under consideration before the Municipal Board in Aurdal Township. Of those homes, 58 homes were constructed after 1971. Thirty-three of the homes and septic systems were constructed prior to 1971. Thirty-one of the 91 homes are in the Fergus Falls Township area proposed for annexation.

33. The City of Fergus Falls wishes to control the area surrounding Hoot Lake, so as to prevent future deterioration of the water quality of Hoot Lake.

34. City sanitary sewer line, 12" in size, located on the north side of County Road 1, east of Southview Drive is of sufficient size to allow for the sewerage of the area proposed for annexation. The City installed a 12" line in anticipation of extending sewer to the area proposed for annexation.

35. The City of Fergus Falls Waste Water Treatment Facility presently is operating at approximately 50% of its design flow.

36. The anticipated sewage from the area proposed for annexation is less than 1% of the present sewage flow received by the City's Waste Water Treatment Plant.

37. The Minnesota Pollution Control Agency has not denied any sewer extension permits to the City of Fergus Falls.

38. The Minnesota Pollution Control Agency historically has denied sewer extension permits only where there has been continued failure to meet discharge standards as well as the exceeding of the plant's design flow.

39. The City does not expect any problems obtaining sewer extension permits from the Minnesota Pollution Control Agency.

40. The City of Fergus Falls has completed the step two stage of an Environmental Protection Agency and Minnesota Pollution Control Agency grants procedure for the funding of a new Waste Water Treatment Facility for Fergus Falls.

The City anticipates funding of the step three stage of the process, to be on either the 1982 or 1983 project list.

41. A developer in the area proposed for annexation wishes the City to extend sewer and water to the area to facilitate the development of residential dwellings on his approximate 55 acres. Some of the present residents in the area proposed for annexation indicated the desire for the extension of city sewer and water, also.

42. The City is willing to extend sanitary sewer to the area proposed for annexation.

43. The City of Fergus Falls has a 10" waterline located at approximately Lakeview Drive and County Road 1.

44. The waterline was sized so as to contain capacity to service the area proposed for annexation with City water.

45. On the west end of Wright Lake is located the City's Water Treatment Plant.

46. The City has sufficient capacity in its City water system to service the area proposed for annexation with water.

47. The City is willing to extend city water to the area proposed for annexation.

48. The City does not expect any problems in getting the necessary permits for the extension of its waterlines to service the area proposed for annexation.

49. Access to the southern portion of the area proposed for annexation is off of County Road 1 on a private drive. Access to the homes on the northern portion of the lake is off of County Road 111 on a private drive. Presently there are no Township roads in the area proposed for annexation.

Some of the residents along the southern private drive have requested City assistance in upgrading the road.

50. The City of Fergus Falls is serviced by local, county, state and federal roads.

51. The City is willing to provide all municipal services to the area proposed for annexation if requested.

52. The City of Fergus Falls tax base includes the following present valuations:

- 1) Residential property assessed in 1980, payable 1981 was established at \$22,826,411.
- 2) Commercial property assessed in 1980, payable 1981 was established at \$13,278,622.
- 3) Industrial property assessed in 1980, payable 1981 was established at \$12,948,387.
- 4) Agricultural property assessed in 1980, payable 1981 was established at \$163,832.
- 5) Vacant land assessed in 1980, payable 1981 was established at \$314,399.

The City of Fergus Falls has a tax base of approximately \$50,000,000.

53. The City of Fergus Falls, in 1980 had 757 acres with an approximate worth of \$91,478,200 which was non-taxable property.

Contained in this valuation of non-taxable property are the Fergus Falls State Hospital, the Fergus Falls State Junior College, schools and churches among other properties which serve an area greater than the City of Fergus Falls.

54. The Town of Fergus Falls tax base includes the following present valuations:

- 1) Residential property assessed in 1980, payable 1981 was established at \$1,936,359.
- 2) Commercial property assessed in 1980, payable 1981 was established at \$215,625.
- 3) Industrial property assessed in 1980, payable 1981 was established at \$439,514.

- 4) Agricultural property assessed in 1980, payable 1981 was established at \$1,580,156.
- 5) Vacant land assessed in 1980, payable 1981 was established at \$139,948.

The Town of Fergus Falls has a tax base of approximately \$4,400,000.

55. In the area proposed for annexation the tax base included the following:

- 1) Residential property assessed in 1980, payable 1981 was established at \$307,708.
- 2) Commercial property assessed in 1980, payable 1981 was established at \$3,664.
- 3) Industrial property assessed in 1980, payable 1981 was established at \$1,247.
- 4) Agricultural property assessed in 1980, payable 1981 was established at \$12,989.
- 5) Vacant land assessed in 1980, payable 1981 was established at \$32,473.

56. In 1981 the mill levy for the City of Fergus Falls was 29.606.

In 1981 the mill levy for Fergus Falls Township was 6.787.

In 1981 the County of Ottertail's mill levy was 19.378.

The School District's mill levy in 1981 was 38.357.

57. The Township's fire cost would decrease by approximately \$300 if the area proposed for annexation is annexed.

58. In 1980 the City of Fergus Falls had a bonded indebtedness of \$7,621,900.

59. In 1980 the Town of Fergus Falls had no bonded indebtedness.

60. The City of Fergus Falls has prepared a Fiscal Analysis of the proposed annexation and does not anticipate a tax windfall if the area proposed for annexation is annexed.

61. When city streets, sewer and water are extended, the City of Fergus Falls will absorb costs for non-assessable property, as well as street intersections and oversizing.

The City also absorbs those amounts that are deferred for future assessments.

62. The Town of Fergus Falls can continue to function as a governmental unit without undue hardship if the area proposed for annexation were annexed.

63. The City of Fergus Falls is the only municipality adjacent to the area proposed for annexation.

64. There is no evidence that the annexation of the area proposed for annexation to the City of Fergus Falls will have any adverse impact on School District #544, which is the only school district in the area.

65. The annexation is consistent with the joint resolution for orderly annexation between the Town of Fergus Falls and the City of Fergus Falls.

CONCLUSIONS OF LAW

1. The Minnesota Municipal Board duly acquired and now has jurisdiction of the within proceeding.

2. The area subject to annexation is now or is about to become urban or suburban in nature and the annexing municipality is capable of providing the services required by the area within a reasonable time.

3. The existing Township form of government is not adequate to protect the public health, safety and welfare in the area proposed for annexation.

4. The annexation would be in the best interests of the area proposed for annexation.

5. The annexation is consistent with the terms of the joint resolution for orderly annexation.

6. Four years will be required to effectively provide full municipal services to the annexed area or to comply with the terms and conditions of the orderly annexation agreement as relates to the mill levy step up.

7. There is no requirement under M.S. 414.0325 of a referendum when an annexation has been initiated under an orderly annexation agreement.

8. An order should be issued by the Minnesota Municipal Board annexing the area described herein.

O R D E R

1. IT IS HEREBY ORDERED: That the property described in Findings of Fact 2, herein, be and the same is annexed to the City of Fergus Falls, Minnesota, the same as if it had been originally made a part thereof.

2. IT IS FURTHER ORDERED: That the mill levy of the City of Fergus Falls on the property herein ordered annexed shall be increased in substantially equal proportions over a period of four years to equality with the mill levy of the property already within the City.

3. IT IS FURTHER ORDERED: That the population of the City of Fergus Falls has been increased by 90 persons.

4. IT IS FURTHER ORDERED: That the population of the Town of Fergus Falls has been decreased by 90 persons.

5. IT IS FURTHER ORDERED: That the effective date of this order is April 27, 1983.

Dated this 23rd day of March, 1983.

MINNESOTA MUNICIPAL BOARD
165 Metro Square Building
St. Paul, Minnesota 55101


Terrence A. Merritt
Executive Director

M E M O R A N D U M

The Minnesota Municipal Board in issuing its order without requiring a referendum did so after extensive review of the orderly annexation agreement which served as the jurisdictional base for this proceeding as well as applicable state law.

The Township of Fergus Falls contends that paragraph nine of the orderly annexation agreement between Fergus Falls City and Fergus Falls Township requires a referendum in the instant case before the board. The City of Fergus Falls contends that the aforementioned paragraph refers to and should be interpreted and enforced as the preservation of a future right of election should one be granted to orderly annexation agreements.

Under M.S. 414.0325 and its predecessor, M.S. 414.032, the legislature did not include referendum requirements under an orderly annexation agreement. Further, Chapter 414 of the statutes has only one section concerning annexation which raises the issue of a referendum.

Under M.S. 414.0325 and its predecessor, M.S. 414.032, an orderly annexation proceeding before the Municipal Board could be initiated only by the submission of a resolution of one of the signatories to the orderly annexation agreement, namely the city or the township, or by the Municipal Board on its own motion. On the other hand, M.S. 414.031 Annexation of Unincorporated Property to a Municipality by a Board Order, Subdivision 1 Initiating the Proceeding reads as follows concerning the initiation of the proceeding for annexation of land: "(a) A resolution of the annexing municipality; (b) A resolution of the township containing the area proposed for annexation; (c) A petition of 20 percent of the property owners or 100 property owners, whichever is less, in the area to be annexed; (d) A resolution of the municipal council together with a resolution of the township board stating their desire to have the entire township annexed to the municipality." M.S. 414.031, Subdivision 5 which deals with the annexation election reads as follows: "Where the proceeding for annexation has been initiated by petition of a majority of the property owners within the area to be annexed or when the board has assumed jurisdiction under section 414.031, Subdivision 1, clause (d) and orders that the entire township named in the resolution be annexed to the city named in the resolution, no referendum is required." In all other instances the order of the board shall fix a day...when an election shall be held at a place designated by the board within the area determined by the board..." The legislature has not required a referendum under M.S. 414.031 in only two situations - when jurisdiction has been invoked for the annexation of the entire township to the city through a joint resolution of the city and the township and when the proceeding has

been initiated by the petition from the majority of the property owners. Orderly annexation statute M.S. 414.0325 contemplates neither of those procedures for the initiation of a proceeding within the orderly annexation process. Thus, that language in paragraph nine of the orderly annexation agreement would create the requirement of a referendum in each orderly annexation proceeding, since each must be initiated by the township or the city, which under M.S. 414.031 would necessitate an election.

The board does not construe this language by the parties to set up such a requirement. Such a requirement would inject in orderly annexation proceedings a standard for elections higher than that required under M.S. 414.031. The city's incentive for signing such an agreement would have been minimal and it is doubtful that the township would have wished to extract such a concession from the city.

The language in its entirety in paragraph nine supports the reservation within the orderly annexation agreement that any future rights of an election in the orderly annexation statute should be preserved. Such a reading of the language prevents the confusion of whether the annexation was properly initiated or not, as well as giving notice to the township's concern that future rights should not be bargained away should the statute be amended. In passing, the board notes that the two previous annexation proceedings under this orderly annexation agreement did not entail elections in either case. It may be argued that the township did not oppose these annexations and thus there was no need for a referendum. M.S. 414.031 has no exceptions to the election requirement except the two in Subdivision 5 which were previously noted. In a proceeding under M.S. 414.031 there is no provision for the city and township to agree that no referendum is required on property to be annexed over which there is no dispute. Thus, the parties could not waive the requirements of an election. Since any annexation under this agreement necessitated the submission to the board of a resolution by either the city or the township, M.S. 414.031 if operative would necessitate an election. No election was held, the right of an election cannot be waived by the affected governmental units and therefore no election must have been contemplated.

The board notes that over a majority of its members have attended the proceedings or reviewed the transcript of those proceedings they were not at.

The board notes that the parties have spent extensive funds in addressing the annexation proceeding concerning the affected area. Such funds could be better spent on needed governmental services. As both parties know, orderly annexation attempts to avoid acrimonious fights over the annexation of land to a municipality. The board urges the parties to begin meeting together to reestablish lines of communication so that should there be future annexation requests, the parties will not be involved in such a struggle.

TAM 3-23-83