

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 Blakeley Township
(MBAU Docket OA-1151-3)

**AMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER
REGARDING CONSOLIDATED
RECORD AND ORDER
APPROVING ANNEXATION**

This matter came before Chief Administrative Law Judge Tammy L. Pust upon receipt of the Joint Resolution for Orderly Annexation Between the Town of Blakeley and the City of Belle Plaine, Minnesota filed on March 13, 2017.

Robert J.V. Vose, Kennedy & Graven, Chartered, appears on behalf of the City of Belle Plaine (City). Robert T. Ruppe, Couri & Ruppe, PLLP, appears on behalf of Blakeley Township (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 certain real property (Property) by detaching the 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:

The North 813.20 feet of the Southeast Quarter (SE¼) of Section 2 except the westerly 340.00 feet thereof, in Township 113 North, Range 25 West, Scott County, Minnesota according to the U.S. Government Survey thereof. Subject to all easements and agreements of record.¹

3. The Property consists of 43.29 acres,² all of which are unimproved.³

¹ Annexation Resolution, Exhibit (Ex.) A.

² Annexation Resolution at 1.

³ Map of "Annexed Parcel" prepared by Bolton & Menk, submitted with Annexation Resolution.

4. As of October 2016, the Property was part of a larger parcel consisting of approximately 160.40 acres (PID 029020060), then listed on public tax records as being owned by Tammy L. Devine.⁴

5. As of December 16, 2016, the Property has been separately identified in the Scott County public tax records as PID 029020061,⁵ and is listed as owned by Kimberly K. Devine-Johnson.⁶

6. For taxes payable in 2017, the Property generates \$472.70 in property taxes to the Township.⁷

Orderly Annexation Agreement

7. On December 20, 2004,⁸ the Township adopted a “Joint Resolution for Orderly Annexation Between the Town of Blakeley and the City of Belle Plaine, Minnesota” (Orderly Annexation Agreement). On March 21, 2005, the City adopted the Orderly Annexation Agreement. 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.

8. The Orderly Annexation Agreement contains 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. Tax Reimbursement. To compensate the Township for the permanent loss of taxable property from Township tax rolls, the

⁴ <http://img3.publicaccessnow.com/MN-Scott-Taxbills/2016/2016-TS-029020060.pdf>.

The Chief Administrative Law Judge takes judicial notice of this public record pursuant to Rule 201, Minn. R. Evid. See also Correspondence from R. Ruppe, at Ex. A (Jan. 6, 2017).

⁵ <https://www2.co.scott.mn.us/landrecords/showDocumentInfo.aspx?AorT=A&docno=1016807>.

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

⁶ <http://mn-scott-treasurer.publicaccessnow.com/TaxSearch/AccountDetail.aspx?p=029020061&a=112130>.

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

⁷ <http://img3.publicaccessnow.com/MN-Scott-Taxbills/2017/2017-TS-029020061.pdf>.

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

⁸ The Office of Administrative Hearings received the Orderly Annexation Agreement on May 26, 2005. The date on the Orderly Annexation Agreement above the signatures of the Township Chair and Clerk is **December 20, 2005** (emphasis added). It would appear that this is a typographical error and the year indicating when the Township adopted the Orderly Annexation Agreement should be 2004.

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

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 accordance with [a formula involving the following steps: (a) determining the "Base Price" (an average post-annexation, per-acre sales price for property exceeding 10 acres) ; (b) adjusting the Base Price on a biennial schedule to achieve an Adjusted Base Price (the average per-acre price of property which has been annexed to the City for the five years immediately preceding the Adjustment Date); (c) dividing the Adjusted Base Price by the Base Price; and (d) multiplying that result by \$250 to arrive at the Taxation Reimbursement Fee for the annexation.]

* * *

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

15. Severability and Repealer. A determination that a provision of this Joint Resolution is unlawful or unenforceable shall not affect the validity or enforceability of the other provisions herein. However, should any element of paragraph 6 relating to "Tax Reimbursement" be deemed unlawful or unenforceable, the Township at its discretion may terminate this Agreement. Any prior agreement or joint resolution existing between the parties and affecting the property described in the attached Exhibit shall be considered repealed upon the effective date of this Joint Resolution.¹¹

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.**¹²

9. In an earlier filed matter, the Office of Administrative Hearings advised the Township and the City that the Tax Reimbursement provision of their Orderly Annexation Agreement appears to violate Minn. Stat. § 414.036, which: (1) allows reimbursement

¹⁰ Orderly Annexation Agreement at 3-6.

¹¹ Orderly Annexation Agreement at 10, ¶ 15.

¹² Orderly Annexation Agreement at 10, ¶ 19 (emphasis added).

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.¹³

10. The Property is included within the area designated for orderly annexation pursuant to the Orderly Annexation Agreement.¹⁴

Annexation Proceeding

11. The City received a request for annexation of the Property from the owner for the purpose of future utility-scale solar energy system development.¹⁵

12. City of Belle Plaine Resolution Number 16-094/Blakeley Township Resolution Number 2016-03 (Annexation Resolution) was adopted by the City on July 25, 2016, and the Township on August 2, 2016.¹⁶

13. The Annexation Resolution contains the following relevant terms:

Prior to annexation of the parcel by the City, the property owner of the subject parcel shall reimburse the Township for the loss of taxes from the property so annexed in the amount of two hundred fifty dollars (\$250) per acre or fraction thereof annexed.¹⁷

No other reimbursement or taxes shall be owed to the Township from either the City or the property owner, with regard to the property described on attached Exhibits A and B.¹⁸

14. Paragraph 3 of the Annexation Resolution is inconsistent with Paragraph 6 of the Orderly Annexation Agreement in that the \$250 per acre charge does not calculate the “adjusted base price” of the Property via the mandated formula.¹⁹

15. DG Minnesota CSG 4, LLC, a Delaware limited liability company registered to do business in the state of Minnesota,²⁰ paid to the Township the amount of \$10,822.50 (43.29 acres x \$250/acre) as a Tax Reimbursement Fee relevant to the requested

¹³ See OAH Docket No. 84-0331-33290, *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. OA-1151-1, ORDER (Minn. Office Admin. Hearings Nov. 15, 2016).

¹⁴ Orderly Annexation Agreement.

¹⁵ Annexation Resolution at 1.

¹⁶ Annexation Resolution at 2, 3.

¹⁷ Annexation Resolution at 2, ¶ 3.

¹⁸ Annexation Resolution at 2, ¶ 4.

¹⁹ See Orderly Annexation Agreement at ¶6.

²⁰ <https://mblsportal.sos.state.mn.us/Business/SearchDetails?filingGuid=0003ded3-895c-e511-b14d-001ec94ffe7f>. The Chief Administrative Law Judge takes judicial notice of this public record pursuant to Rule 201, Minn. R. Evid.

annexation of the Property.²¹

16. The Township has not adopted any administrative fee schedule or tax assessment in relation to its collection of the Tax Reimbursement Fee, but instead deems the collected Tax Reimbursement Fee to be authorized as a matter of contract pursuant to the terms of the Orderly Annexation Agreement.²²

Procedural Findings

17. On October 14, 2016, the Office of Administrative Hearings received the Annexation Resolution in support of the parties' request for an order of annexation pursuant to Minn. Stat. § 414.0325. The matter was docketed as OAH Docket No. 84-0331-33920.

18. On November 15, 2016, the Office of Administrative Hearings issued and served, by email and by United States mail,²³ its Findings of Fact, Conclusions of Law, and Order Requiring Supplementation of Record wherein the parties were required to supplement the record to include all factual and/or legal authority supporting the lawfulness of their practice of charging the property owner a tax reimbursement fee of \$250 per acre for tax reimbursement for the loss to the Township of the Property. The parties' required supplementation was ordered filed on or before 4:30 p.m. on November 21, 2016.²⁴

19. In correspondence dated November 21, 2016 and received on November 23, 2016, the City requested an extension of time to submit the required supplemental information. As the request was untimely filed, it generated no responsive order.²⁵

20. On January 3, 2017, the Office of Administrative Hearings issued Findings of Fact, Conclusions of Law and Order of Dismissal based upon the parties' failure to supplement the record as ordered.²⁶

21. On January 10, 2017, the City filed a Petition for Amendment requesting reconsideration of the Order of Dismissal pursuant to Minn. Rule 1400.8300 and 6000.3100 (2015).²⁷

²¹ Correspondence from R. Ruppe at Ex. A (Jan. 6, 2017).

²² Correspondence from R. Ruppe at 6 (Jan. 6, 2017).

²³ Certificate of Service (Nov. 15, 2016).

²⁴ *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).

²⁵ Correspondence from R. Vose (Nov. 21, 2017).

²⁶ *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 OF DISMISSAL (Minn. Office Admin. Hearings Jan. 3, 2017).

²⁷ Petition for Amendment (Jan. 9, 2017).

22. Also on January 10, 2017, the Township filed various documentation, dated January 6, 2017, for the purpose of supplementing the record.²⁸

23. On or about March 13, 2017, the Petition for Amendment was withdrawn.²⁹

24. On March 13, 2017, the parties filed the present matter, again requesting annexation of the Property pursuant to the Annexation Resolution.³⁰ This matter is docketed as OAH Docket No. 84-0331-34335.

25. Neither of the parties submitted into the record in either filed matter any of the information related to the Property's change of ownership, taxable value and tax identification status as detailed in Findings No. 5-6 above.

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 (2016) (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 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."³¹

4. The City and Township, as the parties submitting the Annexation Resolution, bear the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for orderly annexation have been met.³²

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.³³

6. Minn. Stat. 414.0325, subd. 1, provides that "[o]ne or more townships and

²⁸ Correspondence from R. Ruppe (Jan. 6, 2017).

²⁹ Correspondence from R. Vose (Apr. 5, 2017).

³⁰ Annexation Resolution, filed with correspondence received on March 13, 2017 from Cynthia S. Strack (Mar. 9, 2017).

³¹ Minn. Stat. § 414.01, subd. 1b(3).

³² Minn. R. 1400.7300, subp. 5 (2015).

³³ Minn. Stat. § 414.0325, subd. 4.

one or more municipalities, by joint resolution, may designate an unincorporated area as in need of orderly annexation”³⁴ and that the filing of “[t]he joint resolution will confer jurisdiction on the chief administrative law judge over annexations in the designated area and over the various provisions in said agreement.”³⁵ The statute goes on to provide:

If a joint resolution designates an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration by the chief administrative law judge is necessary, the chief administrative law judge may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the resolution.³⁶

7. In this case, the “joint resolution” referenced in Minn. Stat. § 414.0325, subd. 1, is the Orderly Annexation Agreement executed by the City and the Township in December 2004 and March 2005.

8. The Chief Administrative Law Judge has no authority to order the annexation on any terms other than those included in the Orderly Annexation Agreement given the dictates of Minn. Stat. § 414.0325, subd. 1, and the language of Sections 4 and 19 of the Orderly Annexation Agreement.

9. As the Annexation Resolution provides that the City and the Township have agreed that no reimbursement is due from the City to the Township, 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.³⁷

10. 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 the submissions of the parties and the record, and for the reasons set forth in the Memorandum below, the Chief Administrative Law Judge issues the following:

ORDER

1. As OAH Docket 84-0331-33920 presented substantially the same issues of fact and law affecting the same parties as does OAH Docket 84-0331-34335, and as record consolidation would save time and costs and not prejudice any party, the two matters are consolidated for purposes of compiling a joint record pursuant to Minn. Stat. § 414.01, subd. 5 (2016) and Minn. R. 1400.6350, subp. 1 (2015). As such, any filings of the parties received with respect to OAH Docket 84-0331-33920 will be considered filed in the record of OAH Docket 84-0331-34335.

³⁴ Minn. Stat. § 414.0325, subd. 1(a).

³⁵ Minn. Stat. § 414.0325, subd. 1(c).


³⁶ Minn. Stat. § 414.0325, subd. 1(h).

³⁷ Annexation Resolution at 2, ¶ 4.

2. The Property legally described in Finding No. 2 above is hereby annexed into the City effective on the date that City and Township submit to the Office of Administrative Hearings duly adopted resolution(s) in support of the requested annexation which contain either amendments to the Orderly Annexation Agreement and/or amendments to the Annexation Resolution, which amendments have the legal effect of making the terms of the Orderly Annexation Agreement and the Annexation Resolution legally consistent, 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 amounts will be sent under separate cover.

Dated: April 11, 2017

A handwritten signature in black ink, appearing to read 'TLP', is written over a horizontal line.

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 (2016). 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 (2015). However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

As an administrative court, the Office of Administrative Hearings has only the authority that the legislature has granted it; the agency cannot exercise any power beyond that authority.³⁸ Relevant to this case, the legislature has granted to the Office of Administrative Hearings the authority to issue municipal boundary adjustment orders, including those related to orderly annexation.³⁹

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

In this case, the City and the Township have, to date, failed to comply with the statute's requirements. The Annexation Resolution conflicts with the terms of the Orderly Annexation Agreement in several respects, rendering the former legally insufficient to support the requested annexation order. These deficiencies are easily cured upon amendment and repassage of the operative agreements in resolution form. Once done, the annexation will become effective pursuant to the terms of this Order.

I. The Annexation Must Comply with the Terms of the Orderly Annexation Agreement.

The Municipal Boundary Adjustment Act authorizes the Office of Administrative Hearings to order the annexation of property when the statutory requirements are met. Minn. Stat. § 414.0325, subd. 1, provides that “[o]ne or more townships and one or more municipalities, by joint resolution, may designate an unincorporated area as in need of orderly annexation”⁴⁰ and that the filing of “[t]he joint resolution will confer jurisdiction on the chief administrative law judge over annexations in the designated area and over the various provisions in said agreement.”⁴¹ The statute goes on to provide:

If a joint resolution designates an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration by the chief administrative law judge is necessary, the chief administrative law judge may review and comment, but shall, within 30 days, **order the annexation in accordance with the terms of the resolution.**⁴²

In this case, the “joint resolution” referenced in Minn. Stat. § 414.0325, subd. 1, is the Orderly Annexation Agreement executed by the City and the Township.⁴³

³⁸ *Wallace v. Commissioner of Taxation*, 184 N.W.2d 588, 594 (Minn. 1971); see also *Can Manufacturers Institute, Inc. v. State*, 289 N.W.2d 416 (Minn. 1981).

³⁹ Minn. Stat. § 414.0325, subd. 1(c).

⁴⁰ Minn. Stat. § 414.0325, subd. 1(a).

⁴¹ Minn. Stat. § 414.0325, subd. 1(c).

⁴² Minn. Stat. § 414.0325, subd. 1(h) (emphasis added).

⁴³ Correspondence from R. Ruppe (Jan. 6, 2017).

As between the parties to the Orderly Annexation Agreement,⁴⁴ the Office of Administrative Hearings has no authority to order the annexation on any terms other than those included in the Orderly Annexation Agreement given the specific dictates of Minn. Stat. § 414.0325, subd. 1(c), which directs the agency to “order the annexation in accordance with the terms of the resolution.”⁴⁵ The parties acknowledged this binding authority when they executed the Orderly Annexation Agreement and thereby specifically agreed that the Orderly Annexation Agreement “set the exclusive procedures under which annexation from the Township to the City may occur during the term of this Agreement”⁴⁶ and that all annexations of designated property must be ordered “in accordance with the terms of the [Orderly Annexation Agreement.]”⁴⁷

As described in the 2016 Annexation Resolution, the proposed orderly annexation is inconsistent with the terms of the Orderly Annexation Agreement. The Orderly Annexation Agreement requires that any orderly annexation involving designated property include payment of a “per-acre amount (‘Tax Reimbursement’)” (TR Fee) by “the property owners petitioning for annexation” for the purpose of “compensate[ing] the Township for the permanent loss of taxable property from Township tax rolls...”⁴⁸ The required TR Fee is mandated to “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 accordance with [a formula involving the following steps: (a) determining the ‘Base Price’ (an average post-annexation, per-acre sales price for property exceeding 10 acres); (b) adjusting the Base Price on a biennial schedule to achieve an Adjusted Base Price (the average per-acre price of property which has been annexed to the City for the five years immediately preceding the Adjustment Date); (c) dividing the Adjusted Base Price by the Base Price; and (d) multiplying that result by \$250 to arrive at the Taxation Reimbursement Fee for the annexation.]”⁴⁹ The Orderly Annexation Agreement further provides that “[o]ther than the reimbursement outlined above, no other reimbursement or taxes shall be owed to the Township from the City and property owners.”⁵⁰

In direct contradiction of these terms, the Annexation Resolution requires the Property owner to “reimburse the Township for the loss of taxes from the property so annexed in the amount of two hundred fifty dollars (\$250) per acre or fraction thereof annexed,” and further provides that “[n]o other reimbursement or taxes shall be owed to the Township from either the City or the property owner” with regard to the annexation.⁵¹ The record includes no evidence that the Township received a TR Fee payment calculated with reference to the Base Price/Adjusted Base Price formula required in the Orderly Annexation Agreement. In fact, the record includes no evidence related to any

⁴⁴ This Order does not address the rights or responsibilities of entities not parties to the Orderly Annexation Agreement.

⁴⁵ *Id.*

⁴⁶ Orderly Annexation Agreement at 10, ¶ 19.

⁴⁷ Orderly Annexation Agreement at 2 ¶ 4.

⁴⁸ Orderly Annexation Agreement at 3-6.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Annexation Resolution at 2, ¶¶ 3,4.

payment made by the Property owners to the Township in support of the requested annexation. Instead, the record recites counsel's assertion that the \$10,822.50 tendered by DG Minnesota CSG 4, LLC "satisfy[ies] in full the provisions of Section 6 of the [Orderly Annexation Agreement]." ⁵²

The Office of Administrative Hearings disagrees. The preponderance of evidence in the record indicates that DG Minnesota CSG 4, LLC is not the owner of the Property; Kimberly K. Devine-Johnson and/or Tammy L. Devine are the owner(s) of the Property. Therefore, the Orderly Annexation Agreement's requirement that the property owner be required to pay a TR Fee to the Township has not been satisfied.

Even if the parties could further supplement the record to evidence that the Property owner(s) and DG Minnesota CSG 4, LLC are the same parties-in-interest for purposes of meeting the statute's requirements, a position unasserted and unevidenced to date, the record is also insufficient to establish that the sum of \$10,822.50 was calculated pursuant to the required Base Rate/Adjusted Base Rate formula required by the Orderly Annexation Agreement. Unless and until that fact is established in the record, the Office of Administrative Hearings is unable to determine that the terms of the Orderly Annexation Agreement have been met and, therefore, is unable to order annexation "in accordance with the terms of the [Orderly Annexation Agreement]." ⁵³

Though counsel is well experienced in annexation matters and therefore well able to identify and complete the steps necessary to cure the deficiencies identified herein, the Office of Administrative Hearings provides the following suggestions as an aid to the parties and for the purpose of expediting resolution of the matter. Two paths are equally available: (1) the parties could amend the Annexation Resolution to fully comply with the existing terms of the Orderly Annexation, subject to the issues raised in footnote 54 below; or (2) the parties could amend the Orderly Annexation Agreement by:

- striking the Base Price/Adjusted Base Price formula;
- striking the requirement that the TR Fee be paid by the property owner; and
- refiling the Amended Orderly Annexation Agreement with the Office of Administrative Hearings, thus providing the agency with jurisdiction over annexations involving designated property pursuant to the amended terms.

⁵² Correspondence from R. Ruppe at 7 (Jan. 6, 2017).

⁵³ Orderly Annexation Agreement at 2 ¶ 4.

As soon as practicable after either of these paths is pursued and concluded and barring further noncompliance with statutory provisions,⁵⁴ the Office of Administrative Hearings will fully exercise its legislatively-granted authority to memorialize the effective date of the annexation.

II. 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 primarily⁵⁵ 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.⁵⁶ 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

⁵⁴ Through counsel, 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 with regard to the lawful imposition and 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 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 to amend either their Orderly Annexation Agreement and/or Annexation Resolution in order to make effective the requested annexation of the Property in this case, they are advised to review the agency’s recent determinations with regard to these issues in order to avoid any additional unnecessary delays in this matter. 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); *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.

⁵⁵ 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.

⁵⁶ Minn. Stat. Ch. 14 (2016).

Administrative Hearings are invoiced for the hours of judicial time expended pursuant to the approved hourly rate.⁵⁷

Some history is instructive.⁵⁸ 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 judges⁵⁹ 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"⁶⁰ but instead "the costs must be allocated on an equitable basis" by the Chief Administrative Law Judge unless otherwise agreed to by the parties.⁶¹ In this orderly annexation action, the Chief Administrative Law Judge has allocated equally to the Township and the City the costs of the judicial time expended in this matter. The 50/50 split of the invoiced time is based on the fact that both parties filed pleadings, both were represented by counsel, both executed the Orderly Annexation Agreement and the Annexation Resolution, and both jointly sought the requested annexation. The record did not indicate any basis to differentiate the necessitated use of judicial time between the City and the Township, but rather supported the conclusion that both parties equally contributed to the development of the record and stood to gain equally in the resulting order, one benefitting from the Property and one benefitting financially through the required 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.

⁵⁷ See Minn. Stat. §§ 14.53, 14.54.

⁵⁸ See Office of Administrative Hearings' website at <http://www.mba.state.mn.us/History.html>.

⁵⁹ 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.

⁶⁰ Minn. Stat. § 414.12, subd. 3(b).

⁶¹ Minn. Stat. § 414.12, subd. 3(a), (c).

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 Blakeley Township
(MBAU Docket OA-1151-3)

**SECOND AMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER
REGARDING CONSOLIDATED
RECORD AND ORDER
APPROVING ANNEXATION**

This matter came before Chief Administrative Law Judge Tammy L. Pust upon receipt of the Joint Resolution for Orderly Annexation Between the Town of Blakeley and the City of Belle Plaine, Minnesota filed on March 16, 2017.

Robert J.V. Vose, Kennedy & Graven, Chartered, appears on behalf of the City of Belle Plaine (City). Robert T. Ruppe, Couri & Ruppe, PLLP, appears on behalf of Blakeley Township (Township).

Based upon a review of the filings, the Chief Administrative Law Judge makes the following:

AMENDED FINDINGS OF FACT

Subject Property

1. On April 11, 2017, the undersigned issued Amended Findings of Fact, Conclusions of Law, Order Regarding Consolidated Record and Order Approving Annexation (April 11th Order) wherein the annexation was approved upon completion of specified conditions.¹

2. On May 2, 2017, the parties effectively adopted a Joint Resolution Amending Orderly Annexation Agreement (Joint Resolution) by virtue of the City's April 17, 2017 adoption of City of Belle Plaine Resolution No. 17-045 and the Township's May 2, 2017 adoption of Town of Blakeley Resolution No. 2017-01.²

3. The Joint Resolution provides that "the terms of the [Joint] Resolution shall supersede and control over the 2005 Orderly Annexation Agreement with respect to the Devine Property."³

¹ Amended Findings of Fact, Conclusions of Law, Order Regarding Consolidated Record and Order Approving Annexation (Apr. 11, 2017).

² Joint Resolution Amending Orderly Annexation Agreement (May 2, 2017).

³ *Id.* at 2.

4. The City filed the Joint Resolution with the Office of Administrative Hearings on May 9, 2017.⁴

Based upon these Amended Findings of Fact, together with the Findings of Fact included in the April 11th Order which are incorporated herein by reference except to the extent that they are amended above, the Chief Administrative Law Judge makes the following:

AMENDED CONCLUSIONS OF LAW

1. The property subject to this consolidated annexation proceeding (Devine Property) is located adjacent to the current boundaries of the City and is legally described as follows:

The North 813.20 feet of the Southeast Quarter (SE¼) of Section 2 except the westerly 340.00 feet thereof, in Township 113 North, Range 25 West, Scott County, Minnesota according to the U.S. Government Survey thereof. Subject to all easements and agreements of record.⁵

2. The Joint Resolution conforms to and meets the conditions set forth in the April 11th Order.

3. The terms of City of Belle Plaine Resolution Number 16-094/Blakeley Township Resolution Number 2016-03 adopted by the City on July 25, 2016, and the Township on August 2, 2016 (Annexation Resolution) supersede and control over the 2005 Orderly Annexation Agreement with respect to the Devine Property.⁶

Based upon the Amended Findings of Fact and Amended Conclusions of Law, together with the Conclusions of Law included in the April 11th 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. The Property legally described as follows is hereby annexed into the City:

The North 813.20 feet of the Southeast Quarter (SE¼) of Section 2 except the westerly 340.00 feet thereof, in Township 113 North, Range 25 West, Scott County, Minnesota according to the U.S. Government Survey thereof. Subject to all easements and agreements of record.⁷

⁴ Correspondence from Cynthia S. Strack, Community Dev. Dir., City of Belle Plaine (May 9, 2017).

⁵ Annexation Resolution, Exhibit (Ex.) A.

⁶ Annexation Resolution at 2, 3.

⁷ Annexation Resolution, Exhibit (Ex.) A.

2. The effective date of the annexation of the above-described property is May 9, 2017.⁸

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

A handwritten signature in black ink, appearing to read 'TLP', is written over a horizontal line.

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 (2016). 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 (2015). However, no request for amendment shall extend the time of appeal from this Order.

⁸ Correspondence from Cynthia S. Strack, Community Dev. Dir., City of Belle Plaine (May 9, 2017).