

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Orderly Annexation
of Certain Real Property to the City of
Watertown from Watertown Township
(MBAU Docket OA-1386-3)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER REGARDING ANNEXATION**

This matter came before the Office of Administrative Hearings pursuant to a request for annexation of certain identified property filed under the authority of Minn. Stat. § 414.0325 (2016).

Based upon a review of the files and proceedings herein, and upon a review of 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

Orderly Annexation Agreement

1. In March 2008, the City of Watertown (City) and Watertown Township (Township) executed a “Joint Resolution Establishing an Orderly Annexation Agreement Between the City of Watertown and Watertown Township” (Orderly Annexation Agreement).¹ By its terms, the Orderly Annexation Agreement designates certain real property for orderly annexation pursuant to Minn. Stat. § 414.0325 (2006).

2. Section 13a of the Orderly Annexation Agreement provides as follows:

A Taxation Reimbursement equal to \$500 per acre of property shall be paid to the Town for all property for which an annexation petition is submitted to the City. The City shall not deem as complete any petition for annexation unless accompanied by a certification from the Town that the appropriate Taxation Reimbursement has been paid to it by or on behalf of the owners of the property subject to the petition or that such payment has been waived by the Town.²

3. The Orderly Annexation Agreement contains no provision addressing the statutory requirements of Minn. Stat. § 414.036 (2016) with respect to the provision for reimbursement from the City to the Township.

¹ Orderly Annexation Agreement (Mar. 4 and 11, 2008), No. OA-1386, filed with the Office of Administrative Hearings Mar. 13, 2009.

² Orderly Annexation Agreement at 6 § 13.

Current Annexation Proceeding

4. On or about March 10, 2017, the owners of two parcels totaling approximately 63.7 acres³ presently located within the boundaries of the Township (Tufte Property) petitioned the City for immediate orderly annexation of that property.⁴

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

That part of the West Half of the Northwest Quarter of Section 3, Township, 117, Range 25, and that part of the Northeast Quarter of Section 4, Township 117, Range 25, described as follows:

Beginning at the northeast corner of the Northwest Quarter of the Northwest Quarter of said Section 3; thence southerly along the east line of said Northwest Quarter of the Northwest Quarter to its intersection with the traveled center line of Watertown Township Road No. T-101 (now known as Mill Avenue); thence southwesterly and westerly along said center line to a point 247.55 feet westerly, as measured along the south line of the Northeast Quarter of said Section 4, of the intersection of said center line and the east line of the Southwest Quarter of the Northeast Quarter of said Section 4, said south line having an assumed bearing of East; thence, on a bearing of North, 179.40 feet; thence South 89 degrees 02 minutes 12 seconds West, 273.00 feet to the west line of the east 520.55 feet of the Southwest Quarter of the Northeast Quarter of said Section 4; thence northerly, along said west line to its intersection with the center line of the main channel of the Crow River; thence generally, northeasterly, along said center line to its intersection with the north line of the Northwest Quarter of said Section 3; thence easterly, along said north line, to the point of beginning.⁵

6. The Tufte Property is included with the area designated for orderly annexation pursuant to the Orderly Annexation Agreement.

7. The owners of the Tufte Property, Jennifer and Kenneth Tufte,⁶ requested annexation for the purpose of connecting to City public sewer and water.⁷

8. Identified for tax purposes as Property ID Numbers 10.0040700 and 10.0030400, the Tufte Property generates a total of \$787.33 in property taxes to the Township for the applicable tax year.⁸

³ Annexation Petition Application (Mar. 10, 2017).

⁴ City Resolution Number 2017-62 at 1 (Apr. 25, 2017).

⁵ Annexation Resolution at Exhibit (Ex.) C.

⁶ Annexation Petition Application (Mar. 10, 2017).

⁷ Annexation Resolution at 1.

⁸ Carver County 2017 Property Tax Statement (available at https://gis.co.carver.mn.us/digital_docs/prts/tax_statements/pdfs2017/pay2017-10.0030400.pdf); Carver County 2017 Property Tax Statement (available at

9. On April 20, 2017, the City received certification that the Property Tax Reimbursement had been paid to the Township by or on behalf of the petitioners pursuant to the Orderly Annexation Agreement.⁹

10. Calculated at \$500 per acre, the Taxation Reimbursement fee paid to the Township totaled approximately \$31,850 (63.7 acres X \$500/acre).¹⁰

11. On April 25, 2017, the City adopted Resolution Number 2017-62 (Annexation Resolution) for the purpose of seeking an order of annexation related to the Tufte Property.

12. On June 5, 2017, the Township adopted Ordinance Number 6-2017 (Ordinance Establishing Fees), which includes a \$500 per acre annexation fee.¹¹ The Ordinance was filed with the Office of Administrative Hearings on June 15, 2017.

13. As between the City and the Township with respect to an equitable division of the costs of this proceeding, the record indicates that both the City and the Township executed the Orderly Annexation Agreement and necessary supporting resolutions. The City stands to gain the tax capacity of the Tufte Property, a value which the Township stands to lose as a consequence of the annexation. At the same time, the Township has received a Tax Reimbursement payment measured at \$500 per acre, multiplied by 63.7 acres. The Township has not appeared or filed anything of record in this matter.

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 Minn. Stat. ch. 414 (2016) and Minn. R. 6000 (2015).

3. 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.¹²

https://gis.co.carver.mn.us/digital_docs/prts/tax_statements/pdfs2017/pay2017-10.0040700.pdf).

⁹ Annexation Resolution at 2 ¶ 2.

¹⁰ There is a discrepancy in the record relative to the total acreage of the Tufte Property. While the petitioners note that there are 63.7 acres in the Tufte Property, the City represents that there are only 58 acres. If the City is correct, under the Township's ordinance (adopted after the date of payment) it is authorized by law to collect only \$29,000 as an annexation fee and not \$31,850.

¹¹ Watertown Township Ordinance Number 6-2017 (June 5, 2017).

¹² Minn. R. 1400.7300, subp. 5 (2015).

4. 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.¹³

5. 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."¹⁴

6. Minn. Stat. § 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. Pursuant to Minn. Stat. § 414.036, the Township is authorized to collect a tax reimbursement charge of \$787.33 from the City, that being the amount that represents the taxes lost by the Township upon annexation of the Tufte Property and therefore the amount that represents "all or part of the taxable property annexed as part of the order" as required by statute.

8. 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:

¹³ Minn. Stat. § 414.0325, subd. 4.s


¹⁴ Minn. Stat. § 414.01, subd. 1b(3).

ORDER

1. Pursuant to the terms of Orderly Annexation Agreement, the Annexation Resolution and this Order, the Tufte Property is **ANNEXED** into the City.

2. The costs of this matter, billed as required by law at the approved hourly rates of the Office of Administrative Hearings, shall be borne by the parties as follows: to the City - 50%; and to the Township - 50%. An itemized invoice for costs will be sent under separate cover.

Dated: July 24, 2017

A handwritten signature in black ink, appearing to read 'T. Pust', 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 Carver 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

I. Tax Reimbursement Order

A. Statutorily Required Order

Minn. Stat. § 414.036 defines the parameters of statutorily authorized compensation attributable to the loss 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.¹⁵

By its terms, the statute directs that a municipality which loses property through annexation is entitled to “reimbursement ... for all or part of the taxable property annexed.”¹⁶ The term “reimbursement” means “to pay back or compensate (another party) for money spent or losses incurred.”¹⁷ Thus, to be “reimbursed” a municipality losing property to annexation must have incurred some loss. Because the municipality does not own the property being annexed, it is not losing the monetary value of the subject property; it never owned that value and therefore could not lose it. Instead, and at most, a municipality losing property to annexation loses the real estate taxes it would have collected from the property in the future.

Based on this analysis, the Township is entitled to recover from the City a tax reimbursement charge for “all or part of the taxable property annexed.”¹⁸ The Property generates taxes of \$787.33 per year. Thus, the statute allows the Township to recover this value from the City.

Minn. Stat. § 414.036 provides that every annexation order “**must** provide a reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order.”¹⁹ The statute does not exclude from its mandate orders issued pursuant to section 414.0325, or orders that reference any other annexation fees already received by the involved township. Therefore, the Chief Administrative Law Judge

¹⁵ Minn. Stat. § 414.036 (emphasis added).

¹⁶ *Id.*

¹⁷ *American Heritage Dictionary of the English Language, Fifth Edition* (2011).

¹⁸ Minn. Stat. § 414.036.

¹⁹ Emphasis added.

has ordered the reimbursement from the City to the Township in the amount of \$787.33.

B. Timing of Ordinance

Although the Tufte Property currently generates only \$787.33 per year in property taxes to the Township, the petitioning property owners were required to “reimburse” the Township for lost taxes at the rate of \$500 per acre, for a total payment of \$31,850. At the time it required and accepted the payment on April 20, 2017, the Township had not adopted an annexation fee ordinance. It did not adopt its ordinance until June 5, 2017. Accordingly, the Township’s required payment of the \$31,500 fee constituted *ultra vires* governmental action at the time the payment was required.²⁰

Though it would be technically correct to require the Township to repay the required fee on this basis, that result would elevate form over substance. As the Township did eventually adopt the required ordinance during the pendency of this proceeding, any forced repayment could be immediately followed by a second required payment under the now-adopted ordinance. For this reason, and to avoid further delay and resulting costs to the parties, the Office of Administrative Hearings will not invalidate the already collected payment.

II. **Apportionment of Costs**

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 primarily²¹ 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.²² 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.²³

Some history is instructive.²⁴ 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

²⁰ See *In re the Orderly Annexation of Certain Real Prop. to the City of Waconia from Waconia Twp.*, Nos. 84-0330-32991, 84-0331-32786, SECOND AMENDED ORDER APPROVING ANNEXATION UPON SATISFACTION OF CONDITION (Minn. Office Admin. Hearings Apr. 1, 2016).

²¹ 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.

²² Minn. Stat. §§ 14.001-.70.

²³ See Minn. Stat. §§ 14.53, .54.

²⁴ See Office of Administrative Hearings’ website at <http://www.mba.state.mn.us/History.html>.

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 judges²⁵ 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"²⁶ but instead "the costs must be allocated on an equitable basis" by the Chief Administrative Law Judge unless otherwise agreed to by the parties.²⁷ 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 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.²⁸

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. 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 Tax Reimbursement payment. 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.

²⁵ 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.

²⁶ Minn. Stat. § 414.12, subd. 3(b).

²⁷ *Id.*, subd. 3(a), (c).

²⁸ *Id.*, subd. 4(2).