

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Orderly Annexation
of Certain Real Property to the City of
Carver from Dahlgren Township
(MBAU Docket OA-1428-9)

**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 pursuant to 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. On or about February 11, 2009, the City of Carver (City) and Dahlgren Township (Township) executed a “Joint Resolution for Orderly Annexation Between the Town of Dahlgren and the City of Carver, Carver County, Minnesota” (Orderly Annexation Agreement).¹ By its terms, the Orderly Annexation Agreement designates certain real property for orderly annexation pursuant to Minn. Stat. § 414.0325 (2008).

2. Section 6 of the Orderly Annexation Agreement provide as follows:

A. Tax Reimbursement. Unless otherwise agreed, to allow the Township to be reimbursed for the permanent loss of taxable property (determined by Carver County’s GIS system net of existing roads) from Township tax rolls for property in the Orderly Annexation Area, the City agrees that it will not initiate annexation or forward a resolution for annexation of any portion of the property described on **Exhibit 1** to the Office of Administrative Hearings or its successor agency, until such time as the Township has received reimbursement for the loss of such taxable property in the amount of \$500 for each acre described in the City resolution to be annexed to the City. Tax exempt property at time of annexation is not subject to tax reimbursement.

¹ Orderly Annexation Agreement (Feb. 11, 2009), No. OA-1428, filed with the Office of Administrative Hearings Feb. 17, 2009.

Other than the reimbursement outlined above in paragraphs B and C, no other reimbursement or taxes shall be owed to the Township from the City.²

3. Section 15 of the Orderly Annexation Agreement provides as follows:

Severability and Repealer. A determination that a provision of this Agreement 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 Orderly Annexation Agreement existing between the parties and affecting the property described in the attached Exhibits shall be considered repealed upon the effective date of this Agreement.³

Current Annexation Proceeding

4. On or about April 12, 2017, the owners of certain property located in the Township (Olsen Property) petitioned the City for immediate orderly annexation of the Olsen Property.⁴

5. On May 15, 2017, the City adopted Resolution Number 124-17 (Annexation Resolution) for the purpose of seeking an order of annexation related to the Olsen Property.⁵

6. The Olsen Property, which consists of two parcels totaling approximately 76 acres presently located within the boundaries of the Township, is located adjacent to the current boundaries of the City and legally described as follows:

The East Half of the Southeast Quarter of Section 13, Township 115, Range 24, Carver County, Minnesota, except the North 828.77 feet thereof.

That part of the following described tract:

That part of the Northwest Quarter of the Northeast Quarter of Section 24, Township 115, Range 24 and that part of the West Half of the Southeast Quarter and that part of the Southwest Quarter of the Northeast Quarter of Section 13, Township 115, Range 24, Carver County, Minnesota, described as follows: Beginning at the northeast corner of said Northwest Quarter of the Northeast Quarter of Section 24; thence on an assumed bearing of South 0 degrees 19 minutes 32 seconds West, along the east line of said Northwest Quarter of the Northeast Quarter, a distance of 293.49 feet to the centerline of Dahlgren Road, as now laid out and traveled; thence South 73 degrees 20 minutes 22 seconds West, along said centerline, a distance of 412.50 feet; thence North 0 degrees 19

² Orderly Annexation Agreement at 3 § 6, emphasis in original.

³ *Id.* at 7 § 15.

⁴ Annexation Resolution at 1 ¶ 4 (May 15, 2017).

⁵ *Id.* at 3 ¶ 4.

minutes 32 seconds East, parallel with said east line of the Northwest Quarter of the Northeast Quarter, a distance of 326.38 feet; thence North 87 degrees 07 minutes 48 seconds West a distance of 19.83 feet; thence North 0 degrees 18 minutes 40 seconds East, a distance of 401.67 feet; thence North 6 degrees 46 minutes 10 seconds East a distance of 990.26 feet; thence North 0 degrees 24 minutes 34 seconds East a distance of 1113.46 feet; thence North 87 degrees 54 minutes 19 seconds East a distance of 271.51 feet; thence North 2 degrees 40 minutes 28 seconds East a distance of 361.87 feet to an intersection with a line drawn and parallel with the south line of the Southeast Quarter of the Northeast Quarter of said Section 13, Township 115, Range 24 from a point on the east line of said Southeast Quarter of the Northeast Quarter distant 148.50 feet from the southeast corner thereof; thence North 87 degrees 05 minutes 36 seconds East, along said parallel line, a distance of 15.81 feet to the east line of said Southwest Quarter of the Northeast Quarter of Section 13; thence South 0 degrees 40 minutes 18 seconds West, along said east line, a distance of 148.46 feet to the southeast corner of said Southwest Quarter of the Northeast Quarter; thence South 0 degrees 18 minutes 40 seconds West, along the east line of said West Half of the Southeast Quarter of Section 13, a distance of 2637.86 feet to the southeast corner of said West Half of the Southeast Quarter of Section 13 and the point of beginning.

That lies southerly of the south line of the North 828.77 feet of the Southeast Quarter of said Section 13.

That part of the Northeast Quarter of the Northeast Quarter of Section 24, Township 115, Range 24, Carver County, Minnesota, described as follows: Beginning at the Northeast corner of said Northeast Quarter of the Northeast Quarter of Section 24; thence on an assumed bearing of South 0 degrees 13 minutes 13 seconds West, along the east line thereof a distance of 143.17 feet; thence North 87 degrees 07 minutes 48 seconds West a distance of 1340.09 feet to the west line of said Northeast Quarter of the Northeast Quarter of Section 24; thence North 0 degrees 19 minutes 32 seconds East, along said west line, a distance of 22.07 feet to the northwest corner of said Northeast Quarter of the Northeast Quarter; thence North 87 degrees 41 minutes 25 seconds East, along the north line of said Northeast Quarter of the Northeast Quarter, a distance of 1339.92 feet to the point of beginning.⁶

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

8. The owners of the Olsen Property, currently listed on Carver County Parcel Detail records as Vernon & Lorraine Olsen Trusts and Lyle F. Olsen Estate,⁷ propose to

⁶ Annexation Resolution at Exhibit (Ex.) A.

⁷ Carver County Taxpayer Services, Parcel Detail Report (available at <https://mn-carver.manatron.com/Tabs/TaxSearch/ParcelDetail.aspx?p=04.0131100&a=35672>); Carver County Taxpayer Services, Parcel Detail Report (available at <https://mn-carver.manatron.com/Tabs/TaxSearch/ParcelDetail.aspx?p=04.0241300&a=1213>).

sell the property to a developer for residential purposes which requires the extension of City utilities.⁸

9. Identified for tax purposes as Property ID Numbers 04.0131100 and 04.0241300, the Olsen Property generates a total of \$396.43 in property taxes to the Township for the applicable tax year.⁹

10. Westwood Professional Services, Inc. (Westwood),¹⁰ a Minnesota corporation, paid the Township the amount of \$500 per acre for annexation of 72.03 acres, for a total tax reimbursement payment of \$36,015.¹¹

11. The Annexation Resolution provides that no further reimbursement or taxes shall be owed by the City to the Township.¹²

12. As between the City and the Township with respect to an equitable division of the costs of this proceeding, the record indicates only that the City stands to gain the tax capacity of the Olsen Property, a value which the Township stands to lose as a consequence of the annexation. No evidence was introduced relative to any benefit that will flow to the Township, nor to any action or inaction on the part of the Township that is relevant to the issue of cost division. 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.¹³

4. The Municipal Boundary Adjustment Act authorizes the Chief Administrative

⁸ Annexation Resolution at 2 ¶ 3.

⁹ *Id.* at 2 ¶ 9; Carver County 2017 Property Tax Statement (available at https://gis.co.carver.mn.us/digital_docs/prts/tax_statements/pdfs2017/pay2017-04.0131100.pdf); Carver County 2017 Property Tax Statement (available at https://gis.co.carver.mn.us/digital_docs/prts/tax_statements/pdfs2017/pay2017-04.0241300.pdf).

¹⁰ Annexation Resolution at 1 ¶ 4.

¹¹ Annexation Resolution at 2 ¶ 5.

¹² Annexation Resolution at 3 ¶ 7.

¹³ Minn. R. 1400.7300, subp. 5 (2015).

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

5. 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.

6. 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.¹⁵

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

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

ORDER

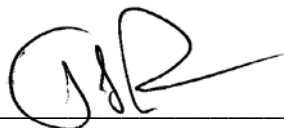
1. Pursuant to the terms of Orderly Annexation Agreement, the Annexation Resolution and this Order, the Olsen Property is **ANNEXED** to the City.

¹⁴ Minn. Stat. § 414.01, subd. 1b(3).

¹⁵ Annexation Resolution at 2 ¶ 12.

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 - 100%; and to the Township - 0%. An itemized invoice for costs will be sent under separate cover.

Dated: June 14, 2017



TAMMY L. PUST
Chief Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.0325, .07, .09, .12 (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

The Property currently generates only \$396.43 per year in property taxes to the Township. Nevertheless, Westwood, as the developer, has been required to “reimburse” the Township for lost taxes at the rate of \$500 per acre. Because the required “tax reimbursement payment” was paid by Westwood and not required to be paid by the landowner, this case does not raise the same legal issues of *ultra vires* governmental action raised in other recent matters.¹⁶ As the parties are well aware of the Office of Administrative Hearings’ legal interpretation of the Municipal Boundary Adjustment Act with regard to this issue, the Chief Administrative Law Judge will not repeat that analysis herein.

T. L. P.

¹⁶ 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).