MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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November 16, 2010

Jay Squires
Attorney at Law
Ratwik, Roszak & Maloney, P.A.
730 Second Avenue South
Suite 300
Minneapolis, MN 55402

Re: OA-1449/OA-1449-1 Ranier/Rainy Lake Unorganized Territory
A-7705 International Falls/Rainy Lake Unorganized Territory

Dear Mr. Squires:

On April 30, 2010, the City of Ranier and Koochiching County filed an Amended and Restated Joint Resolution and Annexation Agreement for Orderly Annexation (Amended Joint Resolution) with the MBA unit. The Amended Joint Resolution removed language from the Original Joint Resolution previously filed on August 7, 2009, that requested a hearing pursuant to Minn. Stat. §§ 414.0325, subd. 2, and 414.09. The Amended Joint Resolution inserted the following language in the preamble:

> Pursuant to Minn. Stat. § 414.0325(h), no consideration by the Chief Administrative Law Judge of the Office of Administrative Hearings-Municipal Boundary Adjustment (the "Office") is necessary. The Chief Administrative Law Judge may review and comment, but shall within thirty (30) days, order the annexation in accordance with the terms of the Joint Resolution.

The Amended Joint Resolution also inserted the following language in paragraph 1:

> Both the City and the County agree that no alteration of the stated Annexation Area boundaries is appropriate, and pursuant to Minn. Stat. § 414.0325(g), the Chief Administrative Law Judge may review and comment, but may not alter the boundaries and shall order the annexation in accordance with the terms of this Joint Resolution.

Other than this change of language, the Amended Joint Resolution was in all other respects identical to the Original Joint Resolution submitted in August 2009.

As was discussed in my letter to you of May 7, 2010, the Amended Joint Resolution presented conflicting statutory duties between Minn. Stat. § 414.0325 subd. 1(h) which states:

> 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 judge is necessary, the chief judge may review and comment, but shall within 30 days, order the annexation in accordance with the terms of the resolution.

and, Minn. Stat. § 414.031 which states:

> Upon receipt of a petition or resolution initiating an annexation, the chief administrative law judge shall designate a time and place for a hearing in accordance with section 414.09.

Minnesota's appellate courts have determined that such conflicting statutory duties give rise to discretion in the Director to resolve such conflicts by allowing a consolidated hearing to proceed. *See City of Wyoming v. Minnesota Office of Administrative Hearings, 735 N.W.2d 746 (Minn.App. 2007), rev. denied (Sep. 26, 2007).* For the reasons set forth in my letter, an order addressing the Amended Joint Resolution was deferred until after the consolidated hearing in the matters referenced above was completed.

The consolidated hearing is now complete. Having reviewed Judge Luis' Order dated October 7, 2010 and Amended Order dated October 21, 2010, the Amended Joint Resolution and request for immediate annexation of the area described in the Amended Joint Resolution is dismissed as moot.

Sincerely,

Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge
Director, Municipal Boundary Adjustment Unit

BHJ:sjh

c: Matthew Hanka, Fryberger, Buchanan, Smith & Frederick, P.A.
Joseph Boyle, Boyle Law Office
The Honorable Edgar Oerichbauer, Mayor City of Ranier
The Honorable Shawn Mason, Mayor of the City of International Falls
Teresa Jaska, Koochiching County Coordinator
The Honorable Raymond R. Krause, Chief Administrative Law Judge
The Honorable Richard C. Luis, Administrative Law Judge
Kenneth E. Raschke, Jr., Assistant Attorney General

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May 7, 2010

Jay T. Squires
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RE: OA-1449/OA-1449-1 Ranier/Rainy Lake Unorganized Territory (1,142 acres)
A-7705 International Falls, City/Rainy Lake Unorganized Territory (590 acres)

Dear Mr. Squires:

This responds to your letter of April 29, 2010, by which you submitted an Amended and Restated Joint Orderly Annexation Agreement (Amended Joint Resolution) in OA-1449/OA-1449-1 to the Municipal Boundary Adjustment Unit (MBAU) of the Office of Administrative Hearings (OAH). Your letter also requested the Chief Administrative Law Judge to issue an Order annexing the approximately 1,142 acres of land to the City of Ranier pursuant to that Amended Joint Resolution.

As Assistant Chief Administrative Law Judge, the Chief Administrative Law Judge appointed me to be Director of the MBAU, and he delegated to me his authority, powers, responsibilities and duties under Minnesota Statutes, Chapter 414.[1] This matter has therefore been referred to me for appropriate action on your request.

On August 7, 2009, the City of Ranier and Koochiching County filed a Joint Resolution and Annexation Agreement (Original Joint Resolution) with the MBAU in which the City of Ranier seeks to annex 1,142 acres of the Rainy Lake Unorganized Territory in Koochiching County. The Original Joint Resolution contained the following provision:

[1] Minnesota Delegation of Authority filed with the Secretary of State on March 16, 2005.

> ... [P]ursuant to Minn. Stat. § 414.0325, subd. 2, [the City and County] wish to have a public hearing and consideration by the Chief Administrative Law Judge of the Office of Administrative Hearings Municipal Boundary Adjustments (the "Office") within 30 to 60 days of the filing of this Joint Resolution pursuant to Minn. Stat. § 414.09.

On September 15, 2010, the Chief Administrative Law Judge assigned the Original Joint Resolution to Administrative Law Judge Richard C. Luis to conduct the requested contested case proceeding (the OA-1449 Contested Case).

Subsequently, on October 30, 2009, the City of International Falls filed a petition with the MBAU that also requested the annexation of certain property from Rainy Lake Unorganized Territory pursuant to Minn. Stat. § 414.031, subd. 1(a)(1) (the Annexation Petition). When the Chief Administrative Law Judge receives a petition under that section, Minn. Stat. § 414.031, subd. 3, requires him to "designate a time and a place for a hearing in accordance with section 414.09." Most of the area that the City of International Falls proposes to annex is also included in the area that the City of Ranier proposes to annex in the Joint Resolution Proceeding. Therefore, on November 12, 2010, the Chief Administrative Law Judge also assigned that second petition to Administrative Law Judge Richard C. Luis to conduct the required contested case proceeding (the A-7705 Contested Case).

With respect to both the OA-1449 and the A-7705 Contested Cases, provisions of Minnesota Statutes, Chapter 414, require the presiding administrative law judge to grant or deny the requested annexations on the basis of statutory criteria set forth in Minn. Stat. §414.031 Subd. 4. Because the final decisions in both contested cases are guided by the same statutory criteria, Judge Luis could decide in either of the contested cases that some of the property at issue should be annexed to either of the two communities. Accordingly, on December 7, 2010, both contested cases were consolidated for hearing before Judge Luis and for final decision.[2]

On April 30, 2010, the City of Ranier and Koochiching County filed an Amended and Restated Joint Resolution for Orderly Annexation (Amended Joint Resolution) with the MBAU. The Amended Joint Resolution strikes from the Original Joint Resolution language that requested a hearing pursuant to Minn. Stat. §§ 414.0325, subd. 2, and 414.09. The Amended Joint Resolution also inserted the following language in the preamble:

> Pursuant to Minn. Stat. § 414.0325(h), no consideration by the Chief Administrative Law Judge of the Office of Administrative Hearings – Municipal Boundary Adjustments (the "Office") is necessary, The Chief Administrative Law Judge may review and comment, but shall within thirty (30) days, order the annexation in accordance with the terms of the Joint Resolution.

Additionally, the Amended Joint Resolution inserted the following language in paragraph 1:

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[2] Minn. Stat. §414.01 Subd. 5.

> Both the City and the County agree that no alteration of the stated Annexation Area boundaries is appropriate, and pursuant to Minn. Stat. § 414.0325(g), the Chief Administrative Law Judge may review and comment, but may not alter the boundaries and shall order the annexation in accordance with the terms of this Joint Resolution.

In all other respects, the Amended Joint Resolution is identical to the Original Joint Resolution.

Thus, when the City of Ranier submitted the Amended Joint Resolution, two competing annexation petitions were already pending in OAH and had been consolidated for hearing. That consolidated proceeding remains pending. Your Amended Joint Resolution raises two questions. First, does its stated withdrawal of the request for a hearing, combined with the reference to Minn. Stat. § 414.0325, subd 1(h), deprive OAH of further jurisdiction over the pending Joint Resolution Proceeding? Second, is the Director legally obligated to enter an order causing annexation by the City of Ranier of the property described in the Amended Joint Resolution and dismissing the pending consolidated Annexation proceeding as moot?

With regard to the first question, Minn. Stat. § 414.0325, subd. 1(c) gives the "chief administrative law judge jurisdiction over annexations in the designated area." After acquiring jurisdiction, Minn. Stat. § 414.0325, subd. 2, goes on to require "the chief administrative law judge [to] set a time and place for a hearing in accordance with section 414.09." This is what has occurred. There is, however, no provision in Chapter 414 requiring relinquishment of jurisdiction once it has been acquired. Thus, the operative effect of Minn. Stat. § 414.0325 is analogous to Minn. R. Civ. P. 41.01, under which a plaintiff may not voluntarily dismiss a case after the issues have been joined without a stipulation of all the parties or leave of the court. In short, the filing of the Amended Joint Resolution does not divest OAH of jurisdiction of the OA-1449 Contested Case or compel its dismissal. Additionally, even if submission of the Amended Joint Resolution were considered to deprive Judge Luis of jurisdiction of the the OA-1449 Contested Case, he would still continue to retain jurisdiction of the City of Ranier and Koochiching County as necessary parties in the A-7705 Contested Case.

With regard to whether I, as the Chief Administrative Law Judge's delegate, am statutorily required to immediately order annexation of the property described in the Amended Joint Resolution, the City of Ranier bases its position on the following language in Minn. Stat. § 414.0325, subd.1(h):

> 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.

However, if ordering annexation pursuant to Minn. Stat. § 414.0325, subd.1(h) is

considered a statutory duty, the City of International Falls' filing of a petition to annex some of the property covered by the Original Joint Resolution pursuant to Minn. Stat. § 414.031 gives rise to another statutory duty;

> Upon receipt of a petition or resolution initiating an annexation, the chief administrative law judge shall designate a time and a place for a hearing in accordance with section 414.09.[3]

In short, the Director is presented here with conflicting statutory duties. In such a case, Minnesota's appellate courts have held that the Director has the discretion to resolve that kind of conflict by allowing a consolidated hearing to proceed to a final decision by the presiding administrative law judge on what represents the best interest of the area. In fact, the situation presented here is indistinguishable from the situation presented in *City of Wyoming v. Minnesota Office of Administrative Hearings*.[4] There, pursuant to Minn. Stat. § 414.0325, the City of Wyoming and Wyoming Township filed a joint resolution and orderly annexation agreement with the OAH on December 7, 2005, to annex the entire Township into the City of Wyoming, invoking the "review and comment" provisions contained in Minn. Stat. § 414.0325, subd. 1(g), (h). Subsequently, on January 4, 2006, the City of Chisago City filed an annexation petition with the OAH pursuant to Minn. Stat. § 414.031 to annex 3,300 acres of that same Township. The next day, the City of Stacy also filed an annexation petition pursuant to the same statute to annex 777.6 acres of the Township. Thereafter, the City of Wyoming and Wyoming Township applied to the Ramsey County District Court for a writ of mandamus compelling OAH to issue an order annexing the entire Township to the City of Wyoming, citing the same review and comment language in Minn. Stat. § 414.0325 Subd.1(h) that the City of Ranier and Koochiching County rely on in their Amended Joint Resolution. In affirming the District Court's denial of a writ of mandamus, the Court of Appeals concluded:

> We agree that the competing proposals for annexation create a statutory conflict between Minn.Stat. § 414.0325, subd. 1, and Minn.Stat. § 414.031. Both statutes require that hearings be held on two different types of annexation proceedings. But we do not read Minn.Stat. § 414.0325 to require the director to order that a petition under that statute to proceed first. Rather, we read Minn.Stat. ch. 414 to authorize the director to exercise discretion in determining how competing proposals for annexation may proceed in a manner that satisfies the purposes of chapter 414. Specifically, the director has the authority to conduct hearings and to consolidate proceedings. Minn.Stat. §§ 414.01, subds. 1, 5 and 414.09, subd. 1.[5]

The Court of Appeals' decision in *City of Wyoming* echoed the decision of the Minnesota Supreme Court in *Village of Farmington v. Minnesota Municipal Commission*,[6] which addressed the jurisdiction of the then Minnesota Municipal Commission when faced with competing and

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[3] Minn. Stat. § 414.031, subd. 3.
[4] 735 N.W.2d 746 (Minn.App. 2007), *rev. denied* (Sep. 26, 2007) (*City of Wyoming*).
[5] 735 N.W.2d at 751.
[6] 284 Minn. 125, 170 NW2d. 197 (1969).

conflicting petitions. The *Farmington* Court noted:

> These provisions [Chap. 414] contemplate that the commission will be confronted with conflicting petitions. It is clear therefore that the legislature necessarily intended to authorize simultaneous consideration of such petitions. Such authority not only is consistent with the legislative purpose and design of c. 414 when considered as a whole, but also appears necessary if the commission is to fulfill its intended role and function of aiding, advancing, and authoritatively controlling the orderly expansion of existing municipalities....[7]

To order annexation pursuant to the Amended Joint Resolution at this time would foreclose the City of International Falls' opportunity for a hearing on the merits of its Annexation Petition. On the other hand, conducting a consolidated hearing on both International Falls' Annexation Petition and Ranier's Original Joint Resolution will not necessarily result in denial of the City of Ranier's annexation petition. The presiding administrative law judge may conclude that annexation of some or all of the disputed property by the City of Ranier may be in the best interest of the area.[8]

Continuing with the consolidated contested case is not only consistent with the design and purpose of Chapter 414 but also with the broader principles expressed in *Ashbacker Radio Corp. v. F.C.C.*[9] There, the U. S. Supreme Court addressed the consequences of granting a license to one of two competing applicants without a hearing:

> We do not think it is enough to say that the power of the Commission to issue a license on a finding of public interest, convenience or necessity supports its grant of one of two mutually exclusive applications without a hearing of the other. For if the grant of one effectively precludes the other, the statutory right to a hearing which Congress has accorded applicants before denials of their applications becomes an empty thing.

Thus, considering Chapter 414 as a whole and the underlying policies, the course of action most closely aligned with the legislature's intent is to defer issuing an order addressing the Amended Joint Resolution until after a consolidated hearing has been completed. That approach is also consistent with past judicial decisions.[10]

For the reasons discussed above, I therefore must deny the request of the City of Ranier

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[7] 179 N.W.2d at 202.
[8] *See* Minn. Stat. 414.031 Subd. 4. and 735 N.W.2d at 752-753.
[9] 326 U.S. 327, 66 S. Ct. 148 (1945).
[10] *See City of Wyoming, supra; see also Township of Winona v. Minnesota Municipal Board and the City of Winona* File No. C-3-95-4981 (Ramsey County Dist. Ct., July 12, 1995) and *City of Lake Elmo v. Minnesota Municipal Board and City of Oak Park Heights et.al.*, File No. C-9-97-8893 (Ramsey County Dist. Ct., November 22, 1997), copies of which are attached.

and Koochiching County to order annexation to the City of Ranier of the property described in the Amended Joint Resolution, to dismiss the City of International Falls' Annexation Petition, and to direct Judge Luis to dismiss the pending consolidated contested case.

Sincerely yours,

Bruce H. Johnson

BRUCE H. JOHNSON
Assistant Chief Administrative Law Judge
Director, Municipal Boundary Adjustment Unit

BHJ:sjh

Enclosures (3)

cc(w/encl): Matthew Hanka, Fryberger, Buchanan, Smith & Frederick, P.A.
Joseph Boyle, Boyle Law Office
The Honorable Edgar Oerichbauer, Mayor City of Ranier
The Honorable Shawn Mason, Mayor of the City of International Falls
Teresa Jaska, Koochiching County Coordinator
The Honorable Raymond R. Krause, Chief Administrative Law Judge
The Honorable Richard C. Luis, Administrative Law Judge
Kenneth E. Raschke, Jr., Assistant Attorney General

735 N.W.2d 746
(Cite as: 735 N.W.2d 746)

H

Court of Appeals of Minnesota.
CITY OF WYOMING, et al., petitioners, Appellants,
v.
MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS, Respondent,
City of Chisago City, intervenor, Respondent,
City of Stacy, intervenor, Respondent.
No. A06-1594.

July 24, 2007.
Review Denied Sept. 26, 2007.

Background: City and township petitioned for writ of mandamus to compel Office of Administrative Hearings (OAH) to order annexation of township into city. The District Court, Ramsey County, denied the petition, and city and township appealed.

Holdings: The Court of Appeals, Dietzen, J., held that:
(1) statute providing from appeals from municipal boundary orders did not preclude separate mandamus proceeding, and
(2) OAH was not required to order annexation of township into city in light of competing petitions for annexation.

Affirmed.

West Headnotes

[1] Mandamus 250 ⚿12

250 Mandamus
250I Nature and Grounds in General
250k12 k. Nature of Acts to Be Commanded. Most Cited Cases
Purpose of the writ of mandamus is to compel a government official to perform a duty that the law enjoins him to do. M.S.A. § 586.01.

[2] Mandamus 250 ⚿1

250 Mandamus
250I Nature and Grounds in General
250k1 k. Nature and Scope of Remedy in General. Most Cited Cases
Mandamus is a special proceeding. M.S.A. § 586.01.

[3] Mandamus 250 ⚿4(5)

250 Mandamus
250I Nature and Grounds in General
250k4 Remedy by Appeal or Writ of Error
250k4(5) k. Acts of Officers, Boards, or Private Corporations. Most Cited Cases
Statute providing for appeals from municipal boundary orders did not preclude a separate mandamus proceeding to compel the Office of Administrative Hearings (OAH) to order annexation; statute did not expressly prohibit a mandamus proceeding, and the purpose of the mandamus proceeding was not to appeal a decision of a government official, but rather to compel the government official to perform an act required by law. M.S.A. §§ 414.07, 586.01.

[4] Mandamus 250 ⚿187.9(1)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review
250k187.9(1) k. Scope and Extent in General. Most Cited Cases
When a decision on a writ of mandamus is based solely on a legal determination, the appellate court reviews that decision de novo.

[5] Mandamus 250 ⚿1

250 Mandamus
250I Nature and Grounds in General
250k1 k. Nature and Scope of Remedy in General. Most Cited Cases
Mandamus is an extraordinary legal remedy.

[6] Municipal Corporations 268 ⚿33(1)

268 Municipal Corporations
268I Creation, Alteration, Existence, and Dissolution

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268I(B) Territorial Extent and Subdivisions, Annexation, Consolidation, and Division
268k26 Alteration and Creation of New Municipalities
268k33 Proceedings
268k33(1) k. In General. Most Cited Cases
Office of Administrative Hearings was not required to order annexation of township into city in light of competing petitions for annexation; rather, director had authority to decide which annexation proposal should proceed first. M.S.A. §§ 414.031, 414.0325.

**747 Syllabus by the Court*

Under Minn.Stat. ch. 414, the director of the Office of Strategic and Long-Range Planning has the discretion to determine which of two competing petitions for annexation, namely, a joint petition under Minn.Stat. § 414.0325 (2006) and a petition for annexation under Minn.Stat. § 414.031 (2006), should proceed first.

Timothy A. Sime, Rinke-Noonan, St. Cloud, MN, for appellants.

Lori Swanson, Attorney General, Kenneth E. Raschke, Jr., Assistant Attorney General, St. Paul, MN, for respondent Minnesota Office of Administrative Hearings.

Christopher M. Hood, Brandon M. Fitzsimmons, Flaherty & Hood, P.A., St. Paul, MN, for respondent **City** of Chisago **City**.

George C. Hoff, Daphne A. Lundstrom, Hoff, Barry & Kozar, P.A., Eden Prairie, MN, for respondent **City** of Stacy.

Considered and decided by DIETZEN, Presiding Judge; TOUSSAINT, Chief Judge; and HALBROOKS, Judge.

OPINION

DIETZEN, Judge.

Appellants **City** of **Wyoming** and **Wyoming** Township challenge the district court's order denying their petition for a writ of mandamus compelling respondent Minnesota Office of Administrative Hearings (OAH) to order annexation of **Wyoming** Township into the **City** of **Wyoming**, arguing that the OAH is required by Minn.Stat. § 414.0325 (2006) to grant their petition. Because the district court properly applied the law and did not abuse its discretion, we affirm.

FACTS

Wyoming Township (Township) is located in Chisago County and is surrounded by the **cities** of Stacy, **Wyoming**, and Chisago **City**. Respondent Minnesota Office of Administrative Hearings-Municipal ***748** Boundaries Adjustment Unit (OAH) is an agency of the State of Minnesota authorized by Minn.Stat. § 14.48 (2006) to perform the duties and responsibilities assigned to the director of the Office of Strategic and Long-Range Planning under Minn.Stat. ch. 414. *See* Minn.Stat. § 414.01, subd. 1 and 414.011, subd. 11 (2006). The director's duties include the duty to conduct proceedings, make determinations, and issue orders for the creation of a municipality, the combination of two or more governmental units, or the alteration of a municipal boundary.

On December 6, 2005, the **Wyoming City** Council and the **Wyoming** Town Board each approved a joint resolution and orderly annexation agreement (**Wyoming** agreement) to annex the entire Township into the **City** of **Wyoming**. The **Wyoming** agreement was filed with the OAH on December 7, 2005.

The **Wyoming** agreement provided, among other things, that the entire Township was in need of orderly annexation and conferred jurisdiction upon the "director" of the Office of Strategic and Long-Range Planning to "review and comment" on the proposed annexation, but "not alter the boundaries" of the orderly annexation area. Because of holiday schedules and the 30-day limit contained in Minn.Stat. § 414.0325, subd. 1(g) (2006), for the OAH to act, appellants and the OAH agreed that the matter would be considered at its regular monthly meeting in January 2006.

On January 4, 2006, the City of Chisago City filed a resolution with the OAH, petitioning to annex 3,300 acres of the Township. The next day, the City of Stacy also filed a resolution with the OAH, petitioning to annex 777.6 acres of the Township.

The OAH did not act on appellant's joint resolution to annex the Township into the City of Wyoming at its January meeting. But in February 2006, the OAH issued orders setting a date for opening the hearing record for a contested case hearing on the Stacy and Chisago City petitions in accordance with the requirements of Minn.Stat. §§ 414.031, .09 (2006). The hearings were opened by the OAH and continued indefinitely. Subsequently, in March 2006, the OAH issued an order consolidating the Stacy and Chisago City petitions for purposes of a contested case hearing and stayed a decision on appellants' annexation petition pending resolution of the Stacy and Chisago City petitions.

Appellants then petitioned the Ramsey County District Court for a writ of mandamus compelling the OAH to order the annexation of the Township into the City of Wyoming, claiming that the OAH was required to do so by Minn.Stat. § 414.0325. Following a hearing on stipulated facts, the district court denied the petition for a writ of mandamus. This appeal follows.

ISSUE

Did the district court err by refusing to issue a writ of mandamus compelling the OAH to order the annexation of **Wyoming** Township into the **City** of **Wyoming**?

ANALYSIS

Appellants argue that the district court erred by denying their petition for a writ of mandamus compelling the OAH to grant their petition for annexation under Minn.Stat. § 414.0325 (2006). Initially, the OAH argues that a writ of mandamus is not the proper procedural mechanism for judicial review of its actions under chapter 414. We turn to that issue first.

A. Availability of Mandamus Relief Under Chapter 414

Minn.Stat. § 414.07, subd. 2 (2006), provides that:

> ***749** (a) Any person aggrieved by any order issued under this chapter may appeal to the district court upon the following grounds:
>
> (1) that the order was issued without jurisdiction to act;
>
> (2) that the order exceeded the orderer's jurisdiction;
>
> (3) that the order is arbitrary, fraudulent, capricious or oppressive or in unreasonable disregard of the best interests of the territory affected; or
>
> (4) that the order is based upon an erroneous theory of law.

The OAH argues that Minn.Stat. § 414.07 is the exclusive mechanism of judicial review for any party aggrieved by an order of the OAH.[FN1] Appellants argue that a writ of mandamus is not governed by Minn.Stat. § 414.07, but rather is a separate proceeding governed by Minn.Stat. §§ 586.01-.12 (2006).

> FN1. Appellants have separately appealed the orders of the OAH, the appeal of which is currently pending in Chisago County District Court.

We review questions of statutory interpretation de novo. *Hyatt v. Anoka Police Dep't*, 691 N.W.2d 824, 826 (Minn.2005). The object of all statutory interpretation "is to ascertain and effectuate the intention of the legislature." Minn.Stat. § 645.16 (2006). Thus, we construe words according to their common and approved usage. Minn.Stat. § 645.08 (2006). Further, "[e]very law should be construed, if possible, to give effect to all its provisions." Minn.Stat. § 645.16. If the meaning of the law is free of ambiguity, then we apply the law according to the plain and ordinary meaning of its terms. *Id.* (stating that when the words of a statute are clear and free of ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit).

[1][2] Minn.Stat. § 586.01 provides that: "[t]he writ of mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." The purpose of the writ is to compel a government official to perform a duty that the law enjoins him to do. *State ex rel. Schmidt v. Youngquist*, 178 Minn. 442, 445, 227 N.W. 891, 892 (1929). Mandamus is a spe-

cial proceeding. *Ullrich v. Newburg Twp. Bd.*, 648 N.W.2d 743, 744 (Minn.App.2002).

[3] For two reasons, we conclude that Minn.Stat. § 414.07 does not preclude a separate mandamus proceeding under Minn.Stat. §§ 586.01-586.12. First, Minn.Stat. § 414.07 does not expressly prohibit a mandamus proceeding under Minn.Stat. §§ 586.01-586.12. Second, the purpose of a mandamus proceeding is not to appeal a decision of a government official, but rather is a special proceeding to compel a government official to perform an act required by law. In short, appellants' petition is not an "appeal" and, therefore, is not governed by Minn.Stat. § 414.07.

The OAH suggests that our decision in *Rockford Twp. v. City of Rockford*, 608 N.W.2d 903 (Minn.App.2000), supports its argument. We disagree. In *Rockford Twp.*, we stated that Minn.Stat. § 414.07 was the "exclusive" mechanism for obtaining judicial review of boundary adjustment "orders." *Id.* at 907. But the availability of mandamus was not raised in that case.

B. Writ of Mandamus

[4][5] We turn then to whether the district court erred by denying appellants' petition for a writ of mandamus. When a decision on a writ of mandamus is based solely on a legal determination, we review that decision de novo. *750*Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn.2006). "Mandamus is an extraordinary legal remedy." *State v. Pero*, 590 N.W.2d 319, 323 (Minn.1999). To be entitled to mandamus relief, appellants must show that: (1) the OAH failed to perform an official duty clearly imposed by law; (2) appellants suffered a public wrong and were specifically injured by the OAH's failure to order annexation; and (3) appellants have no other adequate legal remedy. *See Breza*, 725 N.W.2d at 109-110.

[6] Appellants argue that Minn.Stat. § 414.0325, subd. 1, provides that upon receipt of a joint resolution designating an area as in need of orderly annexation, the director may "review and comment," but the annexation is mandated and must be ordered within 30 days. Thus, appellants argue that the OAH failed to exercise a duty imposed by law.

Minn.Stat. § 414.0325 sets forth the procedure that governs appellants' joint resolution to designate the unincorporated area of Wyoming Township as in need of orderly annexation. It provides that annexation of any part of the designated area may be initiated by the director or by submitting to the director a joint resolution. *Id.* at subd. 1(d). Appellants rely on subdivision 1, subparts (f) and (g), which provide as follows:

> (f) If a joint resolution designates an area as in need of orderly annexation and states that no alteration of its stated boundaries is appropriate, the director may review and comment, but may not alter the boundaries.
>
> (g) If a joint resolution designates an area as in need of orderly annexation, provides for the conditions of its annexation, and states that no consideration by the director is necessary, the director may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the resolution.

Respondents argue that subparts (f) and (g) must be read in the context of the entire statute. Specifically, respondents argue that subparts (f) and (g) apply to a proceeding in which the only parties are the signatories to the joint resolution and do not apply when there is a competing petition for annexation. Respondents point to subdivision 6, which provides: "An orderly annexation agreement is a binding contract upon all parties to the agreement and is enforceable in the district court in the county in which the unincorporated property in question is located." Minn.Stat. § 414.0325, subd. 6. We agree that an orderly annexation agreement is not binding on respondents Stacy and Chisago City, but we do not view that conclusion as dispositive of the legislative intent behind subdivision 1, subparts (f) and (g).

Respondents next argue that the filing of petitions for annexation by Stacy and Chisago City of portions of the area sought to be annexed by the City of Wyoming created a "statutory conflict" between Minn.Stat. § 414.0325, subd. 1(f), (g), and Minn.Stat. § 414.031 (2006), which governs the procedure for petitions for annexation. Minn.Stat. § 414.031, subd. 3, provides: "Upon receipt of a petition or resolution initiating an annexation, the director shall designate a time and place for a hearing in accordance with sec-

tion 414.09." And Minn.Stat. § 414.09 (2006) requires that the hearing must occur within 30 to 60 days after the filing of the petition. Thus, respondents argue that both statutes, namely, Minn.Stat. §§ 414.0325 and 414.031, require a hearing, and the director has the statutory authority to decide which annexation proposal proceeds first. The OAH agreed, stayed appellants' joint resolution, and ordered that the petitions of Stacy and Chisago City be consolidated*751 and proceed to hearing first. The OAH reasoned that:

> [T]o order the Wyoming annexation ... would foreclose the opportunity for a hearing on the merits of the respective annexation petitions of the cities of Chisago and Stacy.... On the other hand, conducting hearings on the Chisago and Stacy petitions will not, in itself, foreclose annexation of some or all of the disputed property to Wyoming.

The district court denied appellants' petition for a writ of mandamus, reasoning that:

> [P]ublic policy and the law supports the proposition that the OAH has the authority, under Minn.Stat. § 414 to act upon conflicting annexation petitions by conducting public hearings on the various petitions. The orderly process will assure that the complex issues involved in annexation, which have regional effect, will be openly discussed and resolved.

We agree that the competing proposals for annexation create a statutory conflict between Minn.Stat. § 414.0325, subd. 1, and Minn.Stat. § 414.031. Both statutes require that hearings be held on two different types of annexation proceedings. But we do not read Minn.Stat. § 414.0325 to require the director to order that a petition under that statute to proceed first. Rather, we read Minn.Stat. ch. 414 to authorize the director to exercise discretion in determining how competing proposals for annexation may proceed in a manner that satisfies the purposes of chapter 414. Specifically, the director has the authority to conduct hearings and to consolidate proceedings. Minn.Stat. §§ 414.01, subds. 1, 5 and 414.09, subd. 1. The authority to conduct hearings necessarily includes the authority to stay hearings. *See* Minn.Stat. § 414.01, subd. 16 (outlining the director's authority to compel meetings to address the issues in a petition); Minn.Stat. § 414.09 (outlining procedures for proceedings initiated by the submission of an initiation document such as an annexation petition); *see also Hagen v. Civil Serv. Bd.*, 282 Minn. 296, 300, 164 N.W.2d 629, 632 (1969) (stating that an administrative body acting quasi-judicially is not bound by the strict procedural rules that circumscribe the action of a court). Minn.Stat. § 414.0325, subd. 1(d), explicitly authorizes the director to initiate the annexation of any part of the designated area.

Thus, we read Minn.Stat. § 414.0325 to authorize the director to proceed either on the joint resolution, or on a proceeding initiated by the director. We conclude that the director had no legal duty to order the annexation of **Wyoming** Township into the **City** of **Wyoming** under Minn.Stat. § 414.0325. Consequently, the district court did not err in denying the writ of mandamus.

Existing case law supports our conclusion. In *Village of Farmington v. Minn. Mun. Corp.*, our supreme court addressed the jurisdiction of the now-defunct Minnesota Municipal Commission, the Municipal Boundary Adjustment Unit's predecessor, in a dispute involving competing petitions. 284 Minn. 125, 170 N.W.2d 197 (1969). The *Farmington* court stated:

> [Chapter] 414 authorizes the chairman of the commission to consolidate "separate hearings in the interest of economy and expedience" and vests in the commission broad powers to increase or decrease the area proposed for annexation. These provisions contemplate that the commission will be confronted with conflicting petitions. It is clear therefore that the legislature necessarily intended to authorize simultaneous consideration of such petitions. Such authority not only is consistent with the legislative purpose and design of c. 414 when considered*752 as a whole, but also appears necessary if the commission is to fulfill its intended role and function of aiding, advancing, and authoritatively controlling the orderly expansion of existing municipalities and the incorporation of new municipalities.

Id. at 132, 170 N.W.2d at 202 (citations omitted).

Our conclusion is also supported by the reasoning of *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 66 S.Ct. 148, 90 L.Ed. 108 (1945). In *Ashbacker*, the United States Supreme Court addressed the agency's

grant of a radio-station license to one competing applicant and the scheduling of a *pro forma* hearing on the second application with intent to deny the application because the law forbade denial of an application without a hearing. The *Ashbacker* Court stated that "where two bona fide applications are mutually exclusive the grant of one without a hearing to both deprives the loser of the opportunity which [the legislature] chose to give him." *Id.* at 333, 66 S.Ct. at 151. Likewise, in this case there are three bona fide petitions. Approving the annexation of the Township into the City of Wyoming would deny Stacy and Chisago City the opportunity for a hearing on their respective petitions afforded to them by the legislature.

Appellants also argue that statutory rules of construction provide that when two laws passed in different sessions of the legislature are irreconcilable, the law later in date of final enactment shall prevail. *See* Minn.Stat. § 645.26, subd. 4 (2006). Specifically, appellants point out that Minn.Stat. § 414.031, requiring the OAH to set a hearing once it receives a resolution from an annexing municipality, was adopted in 1969, and the applicable provisions of Minn.Stat. § 414.0325 were adopted by the legislature in 1983 and amended in 2002. *See* 1969 Minn. Laws ch. 1146, § 10; 1983 Minn. Laws ch. 18, § 1; 2002 Minn. Laws ch. 236, § 1. Therefore, appellants argue, the later-adopted provisions of Minn.Stat. § 414.0325 must prevail over the older provisions found in Minn.Stat. § 414.031. We disagree.

But Minn.Stat. § 645.26 does not apply unless the provisions of two or more laws "are irreconcilable." Here, the director has the authority to initiate the annexation of any portion of the area designated for orderly annexation by appellants, and has the authority to consolidate proceedings in order to adjudicate disputes and oversee the orderly adjustment of municipal boundaries. Minn.Stat. §§ 414.0325; 414.01, subds. 1, 5; and 414.09, subd. 1. Thus, we conclude that the provisions of Minn.Stat. § 414.0325 and Minn.Stat. § 414.031, applied to the competing petitions at issue, are not irreconcilable.

Finally, appellants argue that the OAH's interpretation of the statutes frustrates one of the purposes of chapter of 414, which is to encourage long-range planning powers or other cooperative efforts among governmental bodies. *See LaCrescent Twp. v. City of LaCrescent*, 515 N.W.2d 608, 610 (Minn.App.1994) ("section 414.0325 allows cities and townships to plan for the future"). We disagree. Here, the director has ordered that the Stacy and Chisago City petitions proceed to a hearing and that appellants are parties to the proceeding, and, therefore, appellants will have the right to participate in the hearings and present evidence. Clearly, appellants' cooperative efforts that culminated in an annexation agreement and joint resolution filed with the OAH may be considered under the statute in determining the "best interest" of the area. *See* Minn.Stat. § 414.031, subd. 4(b)(3) (stating that in arriving at a decision on a petition or resolution for annexation, the director ***753** shall consider the best interest of the area).

Respondents make further arguments on statutory construction that are not necessary for us to reach, and, therefore, we decline to do so.

DECISION

Under Minn.Stat. ch. 414, the director of the Office of Strategic and Long-Range Planning has the discretion to determine which of two competing petitions for annexation, namely, a joint petition under Minn.Stat. § 414.0325 and a petition under Minn.Stat. § 414.031, should proceed first. Because the OAH had no legal duty to order the annexation of Wyoming Township into the City of Wyoming, the district court did not err by refusing to issue a writ of mandamus compelling annexation.

Affirmed.

Minn.App.,2007.
City of Wyoming v. Minnesota Office of Administrative Hearings
735 N.W.2d 746

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STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

File No. C3-95-4981

Township of Winona,

Petitioner,

vs.

Minnesota Municipal Board
and the City of Winona,

Respondents.

ORDER AND MEMORANDUM

On June 12, 1995, the undersigned judge of the district court heard the plaintiff's petition for writ of mandamus compelling the Minnesota Municipal Board to order the annexation of land as described in the petition submitted to the Board for approval.

The attorneys were Michael C. Couri for the petitioner Township of Winona, Kenneth E. Raschke, Jr. for respondent Minnesota Municipal Board, and Douglas Peine for intervenor/respondent City of Winona.

Upon the oral and written arguments of the attorneys, the entire pertinent record, and the attached memorandum,

IT IS HEREBY ORDERED that:

1. The Township of Winona's petition is in all respects denied.

2. The City of Winona's motion for bad faith attorney fees is denied.

GORDON W. SHUMAKER
Judge of District Court

DATED: This 12th day of July, 1995.

MEMORANDUM

In December of 1994 the Township of Winona ("Township") and the City of Goodview ("Goodview") entered into negotiations to annex certain portions of the Township to Goodview. On March 10, 1995, before the Township and Goodview filed their petition with the Minnesota Municipal Board ("Board") for review, the City of Winona ("City") filed two petitions to annex Winona Township. On March 17, the Township and Goodview filed their joint resolutions with the Board. The Township demands that the Board approve the orderly annexation to Goodview as required by the applicable statute (§414.0325). The City argues that they are entitled to a hearing before the Board as required by the applicable statute (§414.031). The Board voted to withhold its order granting the annexation between the Township and Goodview and to proceed with a hearing on the City of Winona's petitions on July 31, 1995. On June 12, 1995, the Township asked this court to issue a Writ of Mandamus directing the Board to approve the annexation to Goodview, which, if granted, would deny the City a hearing before the Board on its petition for the same land.

Chapter 414 of the Minnesota Statutes governs the annexation of land. Minn. Stat. Sec. 414.0325, subd. 1. specifically governs the annexation by joint resolution between the Township and Goodview. Minn. Stat. Sec. 414.031, subd. 3. specifically governs the annexation proceeding initiated by the City of Winona. The conflict between §414.0325 and §414.031 lies at the center of the issue before the court.

The Township claims that the Board's approval of the joint resolution between the Township and Goodview is mandatory pursuant to §414.0325. §414.0325 states that where a

joint resolution designates an area in need of orderly annexation the Board may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the resolution. The Township and Goodview did submit a joint resolution to the Board which was in proper form for approval by the Board. Ordinarily, in these circumstances, the Board would simply review the petition and order the annexation. The Board has refused to order the annexation by joint resolution between the Township and Goodview because the City has also filed a petition with the Board to annex the same land.

The City filed two petitions to annex the Township land a week before the Township submitted its resolution to annex to Goodview. The City's petition is governed by §414.031. subd. 3. §414.031 states that upon receipt of a petition initiating an annexation, the director shall designate a time and place for a hearing. This statute also uses mandatory language. The City asserts that they are entitled, by statute, to a hearing on this matter and therefore the writ must be denied.

In order to determine whether the writ should be granted the Court must construe these two competing statutes. Where two provisions in a statute appear to be inconsistent the court must interpret the statutes in light of one another. Beaver Creek Mutual Insurance Company v. Commissioner of Jobs and Training, 463 N.W. 2d 535, 538 (Minn. App. 1990). The Board cannot order the annexation to Goodview as the Township demands without denying the City its right to a hearing on the matter. On the other hand, the Board could hold a hearing on the City's petition and still consider the Township and Goodview's joint resolution. Viewing the statutes in light of one another, the better choice would be to allow the Board to proceed with a hearing on the City's petition and deny the writ.

The Township argues that in cases where statutes conflict, the specific shall prevail over the general. LaCrescent Township v. City of LaCrescent, 515 N.W.2d 608 (Minn. App. 1994). While this is a general principle of statutory construction, it is not apparent that the statute relied upon by the Township is any more specific than the statute relied upon by the City. §414.0325 allows two municipalities to agree to annex land by following certain statutory procedures. When this procedure is followed, and where there is no necessary action by the Board, the Board's role is simply to review and approve the annexation. §414.031 is no less specific. Under this statute, if the proper procedure is followed, the Board's role is to grant and hold a hearing on the petition. The statutes in this case seem equal in specificity, one section, therefore, does not necessary prevail over the other.

The Township also argues that the language in §414.0325 is mandatory and the language clear and unambiguous, therefore the Board has no other choice except to order the annexation between the Township and Goodview. The word "shall," while suggestive of a mandatory action, may be construed as directory. Sullivan v. Credit River Township, 217 N.W.2d 502, 507 (Minn. 1974). Both §414.0325 and §414.031 direct the Board with the word "shall." In this case the statutes conflict and because of that conflict the statutes have become ambiguous. It is therefore reasonable to interpret the word "shall" in both of these statutes as directory, thereby allowing the Board to hold a hearing on the petitions rather than forcing an annexation which may not be in the best interest of the municipalities involved.

The City acknowledges that the language in the §414.0325 is mandatory, but points out that the language in §414.031 is also mandatory. If the court issues the writ the City would be denied the statutory right to a hearing on its petitions. In view of these two apparently conflicting

mandatory statutory provisions, the City argues that the statutes must be reconciled to accommodate both parties' interests. The City cites the Ashbacker doctrine to support this argument. The Ashbacker doctrine stands for the principle that where there are two bona fide applications which are mutually exclusive, the grant of one application, without a hearing to both, deprives the loser of the opportunity to a hearing which the legislature intended to provide.

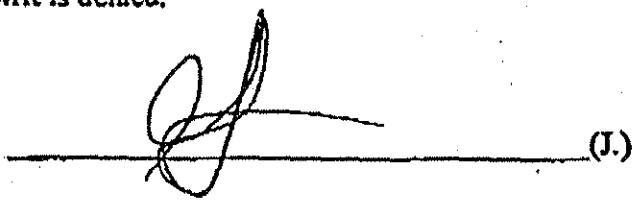
Ashbacker Radio Corp. v. Federal Communications Com., 326 U.S. 327, 66 S. Ct. 140 (1945), addressed two competing petitions for the same radio frequency. The FCC granted one of the petitions, but in doing so effectively denied the statutory right to a hearing to the other party. The U.S. Supreme Court ruled that the FCC erred, and stated that if the grant of one application effectively precluded the other application without holding a hearing first, the statutory right to a hearing becomes an empty thing. Thus, the court in Ashbacker held that when the Commission was faced with two mutually exclusive applications, the commission was obligated to set the applications for a hearing.

In this case, as in Ashbacker, there are two bona fide applications for the same thing. If the court orders the writ and grants the Township the order it seeks, the City is deprived of its statutory right. The statutes cannot be construed together to give full effect to both provisions. The resolution in Ashbacker favors a hearing. The court in this case should deny the writ and allow the Board to proceed with a hearing on the competing petitions.

While not controlling, the Board's opinion is helpful in determining this issue. The Board, by a unanimous vote, voted to hold a hearing on the City's petitions and not order the joint resolution petition before the hearing is held. The Board argues that to proceed with a hearing on the City's petition is in keeping with the legislative purpose of Chapter 414.

Chapter 414 was designed to eliminate difficulties and resolve conflicting claims of municipalities seeking to enlarge their boundaries. The Board has the jurisdiction to act upon conflicting annexation and consolidation proceedings in any sequence it deems appropriate. Village of Farmington v. Minnesota Municipal Commission., 170 N.W.2d 197, 198 (Minn. 1969). In view of the competing interests and the apparent conflict of rights, a hearing on this matter appears to be the most appropriate means to address this annexation conflict.

For all of the foregoing reasons, the writ is denied.



(J.)

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

File No. C9-97-8893

City of Lake Elmo, a Minnesota municipal corporation, and the Town of Baytown, a Minnesota Township,

Petitioners,

vs.

The Minnesota Municipal Board,

Respondent,

and

City of Oak Park Heights, a statutory City and political subdivision of the State of Minnesota,

Intervener,

and

David R. Screaton Partnership; Oakgreen Farms, Inc.; Low & Associates, Inc., A.L.K. Partnership; Frederick Kemper; Calvin J. Brookman; Bernard and Loelle Nass,

Interveners.

ORDER DENYING PETITION
WRIT OF MANDAMUS

The above-entitled matter came duly on before the undersigned Judge of District Court for hearing on the 13th day of October, 1997. The matter was before the Court upon the alternative writ of mandamus of the undersigned dated September 12, 1997.

Appearances: John M. Miller, Esq., and Jerome Filla, Esq., appeared for Petitioner City of Lake Elmo. David T.

Magnuson, Esq., appeared for Petitioner Town of Baytown. Kenneth E. Raschke, Jr., Assistant Attorney General, appeared for Respondent Minnesota Municipal Board. Mark J. Vierling, Esq., appeared for Intervener City of Oak Park Heights. John S. McDonald, Esq., appeared for Interveners David R. Screaton Partnership; Oakgreen Farms, Inc.; Low & Associates, Inc.; A.L.K. Partnership; Frederick Kemper; Calvin J. Brookman; Bernard and Loelle Nass.

Upon all the files records and proceedings herein, **IT IS HEREBY ORDERED** that the petition of City of Lake Elmo and Town of Baytown for a writ of mandamus be in all things denied.

The attached Memorandum is made part of this Order.

Dated at St. Paul, Minnesota
this 22 day of November, 1997.

BY THE COURT:

S/ BERTRAND PORITSKY
Bertrand Poritsky
Judge of District Court

M E M O R A N D U M

The material facts in this matter do not appear to be in dispute. The proceeding involves competing attempts by Petitioner City of Lake Elmo and Respondent City of Oak Park Heights to annex a portion of the town of Baytown ("the Property"). On July 29, 1997, the Respondent Minnesota Municipal Board ("the Board") received a petition for annexation of the Property to the City of Oak Park Heights. The petition was signed by various landowners in

the Property and was accompanied by a resolution of support from the Oak Park Heights City Council.

Thereafter, on August 6, the Board received a joint resolution by the City of Lake Elmo and the Town of Baytown providing for an annexation of the Property by Lake Elmo.

The Petitioners, Lake Elmo and Baytown, cite Minn. Stat. §414.0325, Subd. 1 (1996) which provides in part:

> 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 board is necessary, the board may review and comment but **shall**, within 30 days, order the annexation in accordance with the terms of the resolution. (Emphasis supplied.)

On the basis of the language in the cited statute, Petitioners claim that the Board must order the annexation by Lake Elmo of the Property. Since the Board is mandated to order the annexation, Petitioners argue, they are entitled to a writ of mandamus from this Court commanding the Board to order the annexation.

Respondents and Interveners cite Minn. Stat. §414.031 (1996). The petition submitted by the landowners and supported by the Oak Park Heights resolution is in compliance with that statute. The statute provides for a hearing to be held before the Board and for the Board to consider some 14 factors in deciding whether or not to approve the annexation.

In opposition to Petitioners' arguments that a writ of mandamus should issue, Respondents and Interveners cite the case of Dexner v. Houghton, 190 N.W. 179 (Minn. 1922). In that case the

trial court denied a writ of mandamus, and the plaintiff appealed. The Supreme Court affirmed. The Court pointed out that a writ of mandamus should issue upon "a proper showing," Id. at 180, but the Court went on to say:

> But this does not mean that a court may never refuse a writ where a prima facie right to it is shown. . . . The consensus of opinion is that the writ still remains a discretionary writ, and should be refused, if sound judicial discretion bespeaks that course. In saying that in a proper case the writ issues as a matter of course, no more is meant than this: It may not be refused arbitrarily or capriciously, but only in the exercise of discretion, guided by law and reason. (Citations omitted.) Ibid.

It is my opinion that both law and reason require that the writ not issue.

Minn. Stat. Chap. 414 creates the Minnesota Municipal Board and gives it broad authority over the drawing of municipal boundaries. In Minn. Stat. §414.01 (1996) the legislature set out extensive findings as a basis for the creation of the Board. It is true, as Petitioners argue, that the portion of Minn. Stat. §414.0325, Subd. 1 upon which Petitioners rely was passed after the enactment of §414.031. However in the instant case the landowners had filed their petition first, and the Board prepared to proceed with that petition. Since §414.0325 was not made an express exception to §414.031, in this case there appears to be a conflict between the statutes: §414.031 tells the Board to proceed with the landowners's pending petition, while §414.0325 orders the Board to grant Petitioners' joint resolution. In order to avoid the conflict and give effect to both statutes, I conclude that the

proper construction of §414.0325 is to apply it to cases where no petition for the same property has been received at the time the Board receives the joint resolution. I am aware that the case of Village of Farmington v. Minnesota Municipal Com'n, 170 N.W.2d 197 (Minn. 1969), abrogated the "first-in-time-first-in-right" rule. The above statutory construction does not conflict with the holding in Farmington, because in the instant case the Board can consider both the landowners' petition and Petitioners' joint resolution simultaneously. As the Supreme Court noted in Farmington:

> These provisions [Chap. 414] contemplate that the commission will be confronted with conflicting petitions. It is clear therefore that the legislature necessarily intended to authorize simultaneous consideration of such petitions. Such authority not only is consistent with the legislative purpose and design of c. 414 when considered as a whole, but also appears necessary if the commission is to fulfill its intended role and function of aiding, advancing, and authoritatively controlling the orderly expansion of existing municipalities . . .
> Id. at 202.

For these reasons, I believe the appropriate legislative intent of §414.0325 was not to divest the Board of its broad grant of discretion in cases where the joint resolution was received by the Board while a petition prusuant to §414.031 was already pending.

Accordingly, I conclude that Petitioners are not entitled to a writ of mandamus, and the attached Order denies their petition.

F:\baytown.ord B. P.