

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENTS UNIT

In the Matter of the Consolidated  
Petitions of the City of Ranier and the  
City of International Falls for  
Annexation of Certain Unincorporated  
Lands in Koochiching County,  
Minnesota

**FINDINGS OF FACT,  
CONCLUSIONS AND  
ORDER**

The above-entitled matter came on for a public hearing before Administrative Law Judge Richard Luis, (ALJ), acting as an Annexation Judge under Minn. Stat. Chapter 414 on July 6-9, 2010, at the Koochiching County Courthouse in International Falls, Minnesota.

Jay T. Squires, Esq., appeared on behalf of Koochiching County (County). Matthew H. Hanka, Esq., appeared on behalf of the City of Ranier (Ranier). Joseph M. Boyle, Esq., appeared on behalf of the City of International Falls (I-Falls).

Various witnesses testified on behalf of the parties during the course of the proceedings. Various members of the public testified at the public comment portion of the hearing on July 6, and some members of the public submitted written materials, through July 16, 2010. The parties, through counsel, submitted post-trial memoranda. A public tour was conducted pursuant to Minn. Stat. § 414.031, subd. 3a. A joint informational meeting of Koochiching County and the City of International Falls was held on June 3, 2009, pursuant to Minn. Stat. § 414.0333, and a transcript of that meeting was made a part of the record.

By agreement of all parties, the deadline for the Judge's Order in this case is October 11, 2011.

**STATEMENT OF ISSUES**

1. Whether the Joint Petition for Orderly Annexation by Ranier and the County should be granted, or
2. Whether the Petition for Annexation by International Falls should be granted, or

3. Whether any of the area sought to be annexed under either Petition should remain unincorporated.

The ALJ will order that the Petition of Ranier and the County be granted in part, and that the Petition of International Falls be denied. It will be ordered that the Foreign Trade Zone (FTZ) and the French/Jameson/Other Residential Area, as defined in the body of this Order, be annexed to Ranier and that the Remaining Rural Land/Road Corridor Area, as defined in the body of this Order, will remain unorganized.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. Koochiching County has a present population of approximately 14,000.
2. There are no organized townships in Koochiching County. Consequently, areas outside city limits that would otherwise be governed by a town board are unorganized territory. The County Board acts as the municipal authority over this unorganized territory.
3. The City of Ranier is located along the Rainy River and Rainy Lake in Koochiching County. The City is presently 98 acres in size. Its present population is 173. According to records of the Secretary of State, there are 113 registered voters in Ranier.<sup>1</sup>
4. Virtually all of the City of Ranier's south border is contiguous to the Orderly Annexation Area. All of its eastern border, and approximately one-half of its western border, are contiguous to the Orderly Annexation Area.
5. The City of Ranier provides sanitary sewer services to its current residents through a contract with the East Koochiching County Sanitary Sewer District. The properties within the Orderly Annexation Area that would utilize sanitary sewer would be served through a similar arrangement. In fact, they are served through the East Koochiching County Sanitary Sewer District presently.
6. The City of Ranier owns and operates a municipal water service. Current residents of Ranier are served through this service, and properties within the Orderly Annexation Area that receive water service are presently also served, extraterritorially, by Ranier. If the Orderly Annexation Agreement is approved, water services would not change.
7. The City of Ranier provides for fire protection for its existing residents through a contract with the Koochiching Rural Fire Protection Association ("Rural Fire"). Residents within the Orderly Annexation Area also currently receive fire protection from

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<sup>1</sup> Ex. 30.

Rural Fire. If the Orderly Annexation Agreement is approved, fire protection would remain unchanged.

8. The Minnesota Department of Natural Resources (DNR) has primary jurisdiction over wildland fires. This jurisdiction would not change if the Orderly Annexation Agreement is approved.

9. The City of Ranier provides for law enforcement services to its existing residents through a contract with Koochiching County and the County Sheriff. The Orderly Annexation Area is also presently served by the County Sheriff. If the Orderly Annexation Agreement is approved, the expanded Ranier, including the Orderly Annexation Area, would continue to receive law enforcement services from the Sheriff's Department at no additional cost to Ranier.

10. The City of Ranier currently provides for street maintenance within existing City limits. If the Orderly Annexation Agreement is approved, 6.7 miles of public road would be added to the City of Ranier. The City would contract with Koochiching County to maintain the roads in the Orderly Annexation Area. The yearly cost to do so, including yearly set asides for capital improvements, has been estimated at \$77,000.<sup>2</sup>

11. Within the Orderly Annexation Area are residential properties that have been generally referred to in the hearings as the "French" and "Jameson" Additions. The "Jameson Addition" consists of the residential properties lying north of State Trunk Highway 11. The "French Addition" consists of residential properties lying south of State Trunk Highway 11.<sup>3</sup> The residential area within the Orderly Annexation Area includes areas referred to in hearings as Brennan's Beach and Three Points North. Taken together, the residential areas sought for annexation by Ranier has a population of around 450. Annexation of those areas would nearly quadruple the present population of Ranier.

12. The Orderly Annexation Area also includes approximately 40-80 acres of undeveloped land that has been referred to loosely in the hearings as the "Foreign Trade Zone" land ("FTZ"). The FTZ designation was sought in 2002, and granted around that time. Some of the land referred to at the hearing as within the "Foreign Trade Zone" parcel may not currently be within the federally-designated area.<sup>4</sup> The FTZ is jointly owned by the County and International Falls. The Koochiching Economic Development Authority (KEDA) is the entity with current authority to obtain grant money and other funds for development of the FTZ. At present, the land contains only the tracks of the Canadian National Railroad (CN) as it runs southeast of Ranier, and small buildings/side equipment associated with the railroad. All parties to this proceeding agree that the FTZ has great potential for future development, particularly for light

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<sup>2</sup> Transcript, Vol. 2A, p. 191, 1.2-6.

<sup>3</sup> Ex. 104B.

<sup>4</sup> Transcript Vol. 3A, p.p. 4-29; Ex. 254, Attachment A, Map #4. Much of the land in the FTZ was bought from or obtained by trade with a local landowner and developer named Ron Peterson.

industry and commerce associated with the large amount of rail traffic and import/export trade anticipated there.

13. The Orderly Annexation Area also consists of land located to the south and southwest of the French/Jameson/Other Residential Area, and FTZ area. This land is largely separated from the above areas by significant natural wetlands. The area is mostly undeveloped rural land comprised of wetlands; a hazardous waste landfill, called the "Moonlight Rock Landfill" (which is not within the Orderly Annexation Area, but is within the International Falls Petition); and a number of rural residential properties in the southeast corner of the Orderly Annexation Area.<sup>5</sup> This rural zone is populated by only a few households, whose residents live isolated existences and receive no municipal water or other services, except for the fire/police/ambulance coverage received in other unincorporated parts of Koochiching County.

14. The City of International Falls is located along the Rainy River. Its present population is 6,179. The City is presently 4,371 acres in size.<sup>6</sup>

15. A small percentage of International Falls's border is contiguous to the International Falls annexation area.<sup>7</sup>

16. The City of International Falls presently provides water and sewer service to its residents. Extension of water service from International Falls's present water line stub at the Highway 332 elbow (located in the southwestern portion of International Falls's annexation area) would be expensive; International Falls conceded the proper connection for water service to the FTZ area would be into Ranier water service lines. However, there is no agreement in place to allow International Falls to hook into the Ranier's water service.

17. The City of International Falls also provides for fire and police protection for its existing residents. The City of International Falls did not offer evidence that would indicate needs in the annexation area for law enforcement or fire protection services are not being met.

18. The City of International Falls also provides for street maintenance and improvements. There was no specific testimony in the record indicating an increased level of street maintenance is needed in the annexation area.

19. In the fall of 2007, residents of the French and Jameson Additions and Three Points North area petitioned the City of Ranier for annexation.<sup>8</sup> While the petitions used the word "adoption" rather than annexation, all the parties and entities

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<sup>5</sup> These residents testified at the public comment portion of the hearing that the likelihood they would ever be served by any municipal services was remote.

<sup>6</sup> Ex. 221.

<sup>7</sup> Ex. 7.

<sup>8</sup> Ex. 120, 10/11/07 Ranier Council minutes.

involved in the processing of the petitions clearly understood the import and meaning of the petitions.

20. In December 2007 and January 2008, the City of Ranier met with County representatives, representatives of the Arrowhead Regional Development Commission ("ARDC"), and legal counsel to discuss possible responses to the petitions.<sup>9</sup>

21. At its meeting on February 11, 2008, the Ranier City Council resolved to consider the annexation request(s) in the larger context of promulgation and adoption of a comprehensive City plan. The Council requested that Andy Hubley of the Arrowhead Regional Development Commission (ARDC) prepare a cost estimate for such planning, and asked him to identify possible grant funding.<sup>10</sup>

22. The City of Ranier ultimately engaged in a community planning process. The process began with an August 5, 2008, visioning session involving the public, attended by more than 50 people. The attendees participated in a mapping exercise to identify the assets and positive attributes of Ranier and the surrounding area.<sup>11</sup>

23. A second community planning session was held on September 8, 2008. The comments from the August visioning session were organized into themes: recreation; community/city organization; infrastructure; and economics. The minutes of the meeting demonstrate that the Council discussed the material.<sup>12</sup>

24. A third visioning session was held on October 14, 2008. At this session, the Ranier Council reviewed written draft recommendations. The ARDC memo summarizing this session contains a number of bullet points reflecting concepts to be ingrained into the Community Plan. Included in the memo was the following recommendation:

Develop a draft annexation statement that identifies when Ranier should consider annexation.

25. The general election for Ranier City Council was held in early November 2008. Ed Woods, Jr., an individual who commented at the OAH public hearing, was on the ballot for City Mayor. He was beaten by a write-in candidate: current Mayor Ed Oerichbauer. The record reflects that expansion of the City of Ranier through annexation was a key election issue.<sup>13</sup>

26. Many of the Ranier residents who spoke at the public hearing in this matter had the surname or maiden name of Woods. Most of these residents expressed disappointment in the current Ranier Council's decision to pursue annexation. The

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<sup>9</sup> Ex. 121, 12/10/07, 12/18/07 and 1/14/08 Ranier Council minutes.

<sup>10</sup> Ex. 121, 2/11/08 Ranier Council minutes.

<sup>11</sup> Ex. 122.

<sup>12</sup> Ex. 122.

<sup>13</sup> Transcript Vol. 1A, p. 1, 1.11-25.

"anti-annexation" faction in Ranier politics consists of Woodses and their political allies, who were not supported by the majority of Ranier voters in the 2008 election.

27. ARDC facilitated a fourth public visioning session on November 6, 2008. The meeting was opened up "for input from attendees." Included in the minutes of this visioning session were comments relating to the exploration of an independent Ranier water system (Ranier currently buys its water from I-Falls). Also included, from a land use perspective, were concerns about being able to regulate, through land use, possible negative effects from development.<sup>14</sup>

28. On January 27, 2009, a public hearing was held at the Ranier Community Building to discuss the final draft of the Ranier Visioning Plan. Public comment was received.

29. The Ranier Community Plan was officially adopted by the Ranier City Council in February, 2009.<sup>15</sup> The record suggests that, up until the Hearing, the "Visioning Plan" and the "Community Plan" were considered to be synonymous.

30. The Ranier Community Plan has a section dealing with infrastructure. With respect to water service, the Plan recognizes that Ranier provides significant water service outside its corporate limits, that water pipes are in poor condition, that replacement would be expensive, and that minimal funds were set aside for repairs. Consequently, the Plan recommends that Ranier work with the U.S. Department of Agriculture (USDA) Rural Development Agency to identify funding sources for water system repairs and upgrades. The Plan states:

Providing water to surrounding communities has raised issues including the deterioration of the water infrastructure. Replacing or upgrading the pipes in these areas would be expensive, especially considering that the City's water service area is much larger than the tax base. The water pipes that are outside of the City limits are in poor condition and it would likely be expensive to repair water main breaks.<sup>16</sup>

31. The City of Ranier has, pursuant to the Plan's recommendation, obtained a \$1,241,000 loan and a \$296,000 grant from USDA Rural Development for water line repair both inside and outside of its City limits.<sup>17</sup> At the hearing, the City of International Falls argued that the City of Ranier or its consultants misled the public about the loan/grant from USDA, suggesting the grant portion was represented by Ranier officials to be 45% of total cost, but, when awarded, was actually less (19%). Hearing testimony clarified that the reduced percentage resulted from a reduction in overall project costs.<sup>18</sup>

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<sup>14</sup> Ex. 122.

<sup>15</sup> While the minutes drafted by Clerk Nuthak refer to the "Visioning Plan", Kim Nuthak testified this reference is to the Ranier Community Plan ultimately adopted by the Ranier Council; Ex. 102.

<sup>16</sup> *Id.*

<sup>17</sup> Ex. 105; Transcript Vol. 3A, p. 132, 1.9-24.

<sup>18</sup> Transcript Vol. 2B, p. 125, 1.12-25; p. 126, 1.1-16; Vol. 2A, p. 243, 1.13-25.

32. The Community Plan, under the Infrastructure heading, also discusses annexation. The Plan states:

Asset: Opportunity for Annexation

Description: Rainer is situated on Rainy River, in the midst of unincorporated communities. Rainer provides water service to a number of residents that are not within the City, which greatly restricts the amount of funding available...

The Plan also states:

Recommendation A8: Rainer should develop an annexation statement that identifies when and if annexation should be pursued.

City of Rainer Annexation Statement

The City of Rainer will consider annexation of surrounding properties when: those areas are already served by Rainer water service, those areas are being considered to receive Rainer water service, or the areas have petitioned for annexation and it is economically viable for the City to annex the area. Rainer should make annexation decisions that reflect the Comprehensive Plan.<sup>19</sup>

33. The Community Plan also contains a discussion of the Foreign Trade Zone area. The Plan notes:

If the FTZ remains out of Rainer City limits, Rainer will have no authority to regulate adverse effects from the FTZ, including traffic, noise, and emissions.

The Plan, with respect to the FTZ area, contains the following recommendation:

Recommendation E1: Rainer should support the effort of connecting the Foreign Trade Zone with access into Rainer and investigate further the possibility of incorporating the Foreign Trade Zone into city boundaries. In the event that there is economic development (jobs or business opportunities) that results in or near the FTZ, Rainer will directly benefit. Rainer should perform a cost-benefit analysis and pursue incorporating the FTZ if it is in the City's best interest.<sup>20</sup>

<sup>19</sup> *Id.*, p.23.

<sup>20</sup> *Id.*, p. 26 (emphasis added.)

34. The Community Plan provides, with respect to recommendations within the Plan, that Ranier “should work to make the goals outlined in this Plan a priority by working through the action steps needed to follow through with each recommendation.”<sup>21</sup>

35. While Ranier acknowledged in response to International Falls’ prehearing discovery requests that it did not prepare a “formal” cost and benefit analysis concerning the annexation of the FTZ, City Clerk Kim Nuthak and Mayor Ed Oerichbauer noted that the City of Ranier did study and consider both costs and benefits in reaching the conclusion that annexation of the FTZ should be pursued.<sup>22</sup>

36. The study and consideration of costs and benefits described above, which was incorporated into Ranier’s budget, is consistent with the indication in the Ranier Community Plan that a “cost/benefit analysis” “should” be performed.

37. Section 6 of the Ranier Community Plan contains an Implementation provision. This section states:

After completion and adoption of the Comprehensive Plan the City should begin implementation of the Plan recommendations.

38. Ranier representatives met with the Koochiching County Management Committee on February 25, 2009. The Management Committee consists of two County Board members and County staff. The representatives discussed the possibility of annexation of the Orderly Annexation Area, timelines for the annexation, and annexation issues for further research.<sup>23</sup> While the City of International Falls suggested at hearings that Management Committee meetings were “secret” meetings, testimony indicated the meetings were always posted and open to the public, even if not subject to the Open Meeting Law.<sup>24</sup>

39. The County Management Committee met with Ranier representatives again on March 16, 2009, to further flesh out possible annexation issues.<sup>25</sup>

40. At the regular Koochiching County Board meeting on March 17, 2009, the Orderly Annexation topic was presented to the full County Board. The minutes of the meeting indicate the meeting was attended by Ranier residents Ed Woods, Bernie Woods, Naomi Woods, and Maryann Kasich (all individuals that testified during the public comment portion of the OAH hearing on July 6, 2010 to the effect they had inadequate notice of the City Council’s plans). The minutes of the meeting specifically reference the FTZ as being part of the discussion:

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<sup>21</sup> *Id.*, p. 27 (Emphasis added).

<sup>22</sup> Transcript Vol. 3A pp. 34, 1.18-25; 35, 1.8-15; 62, 1.18-25; 63, 1.1-25; 64, 1.1-15.

<sup>23</sup> Ex. 106, 2/25/09 Management Committee minutes.

<sup>24</sup> Transcript Vol. 4A, p. 38, 1.13-25; p. 39, 1.1-10.

<sup>25</sup> Ex. 106, 3/16/09 Management Committee Minutes.

In response to the Board Chair, the Mayor stated several items have been identified in the meetings with County staff - levy, election, census, sheriff services, roads, zoning, including the FTZ, addressing, fire protection...<sup>26</sup>

41. The March 17, 2009, Minutes of the County Board indicate that attendees were given, and they exercised, the right to be heard. Bernie Woods stated he was "adamantly opposed to the annexation." Naomi Woods "...was mad about the whole idea." Ed Woods "stated that water is the reason for the annexation, nothing else." The Ranier Mayor advised attendees an additional public forum was being scheduled for their input.<sup>27</sup>

42. A County Management Committee meeting was held on March 23, 2009. County and Ranier representatives continued to discuss annexation-related issues including tax levies, Local Government Aid (LGA), addressing, zoning, and budget.<sup>28</sup>

43. The possible Petition for Orderly Annexation was discussed at a Regular County Board meeting on April 14, 2009. The full County Board was present. Representatives of the City of Ranier were also present, as were five Ranier residents. At the April 14, 2009, meeting, the County Board indicated a desire to hold a joint public informational meeting, even though it was "not required in the orderly annexation process." The minutes reflect the desire to "get information out to the public." Further, the minutes reflect that the County Board wished to "...hear and consider comment before considering the resolution process."<sup>29</sup>

44. A Ranier public informational meeting on orderly annexation was held on May 4, 2009.<sup>30</sup>

45. A public notice of the meeting was published in the International Falls Daily Journal. The notice identifies all land within the Orderly Annexation Area, including the FTZ.<sup>31</sup> Many Ranier residents attended and spoke at the informational meeting.

46. On June 22, 2009, the Ranier City Council considered adoption of the Joint Resolution for Orderly Annexation. A notice of the meeting, again describing all lands in the Orderly Annexation Area (including the FTZ), was published in the International Falls Daily Journal on June 12, 2009.<sup>32</sup> Many residents of Ranier attended the Council meeting. The minutes of the meeting make it clear that the Joint Resolution was available to the public.<sup>33</sup> For example, resident Wayne Kasich "questioned item # 12 in the Resolution." The minutes indicate that Ranier resident Dianna Hoppingarner

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<sup>26</sup> Ex. 6, 3/17/09 County Board Minutes. (Emphasis added.)

<sup>27</sup> Ex. 106, 3/17/09 County Board Minutes.

<sup>28</sup> Ex. 106, 3/23/09 Management Committee Minutes.

<sup>29</sup> Ex. 106, 4/14/09 County Board Minutes.

<sup>30</sup> Exs. 106 and 106A.

<sup>31</sup> Ex. 107.

<sup>32</sup> *Id.*

<sup>33</sup> Ex. 121, Minutes of June 22, 2009.

referenced page 5 of the Resolution in her comments. The Ranier Council voted to adopt the Resolution.

47. The Joint Resolution, available at the June 22, 2009 Ranier Council meeting, includes a pictorial map of the entire Orderly Annexation Area, including the FTZ.<sup>34</sup>

48. The County Board, at its regular meeting on June 23, 2009, heard an update on the Ranier City Council action of June 22. The minutes of the June 23, 2009, County Board meeting reflect the attendance of various Ranier residents. The County Board voted unanimously to hold another public information session to "provide property owners in the unorganized area proposed for annexation an opportunity to provide their comments to the County Board."<sup>35</sup>

49. The County Board held an Informational Meeting on July 14, 2009. The minutes reflect that 37 people were in attendance, including City of International Falls Councilmember Tim "Chopper" McBride. Teresa Jaksa, County Coordinator, recalls that she had asked the contracted County Surveyor, Matt Gouin, to prepare a large map of the Orderly Annexation Area for use at the Informational Meeting. Mr. Gouin prepared the map prior to July 14.<sup>36</sup> The map was present at the County Board meeting on July 14.<sup>37</sup>

50. International Falls Councilmember Tim "Chopper" McBride does not recall a map at the July 14 meeting, but he was sitting in the back of the room "behind a lot of threatening people."<sup>38</sup>

51. The County Board formally considered the Joint Orderly Annexation Resolution at its meeting on July 28, 2009. Ranier residents again attended the County Board meeting, and were again allowed public comment. The County Board proceeded to adopt the Joint Resolution and Orderly Annexation Agreement.<sup>39</sup>

52. Christine Scottillo, Executive Director of the Boundary Adjustments Unit, presided over the initial OAH hearing on the Joint Resolution and Orderly Annexation Agreement, held on September 11, 2009. The City of International Falls appeared through its City Administrator Rod Otterness and City Attorney Joe Boyle. The minutes indicate the City of International Falls expressed opposition to the Orderly Annexation.<sup>40</sup> A City of International Falls Council Resolution opposing the orderly annexation was introduced.<sup>41</sup>

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<sup>34</sup> Ex. 101, Ex. B; County Ex. 3.

<sup>35</sup> Ex. 106, 6/23/09 County Board Minutes.

<sup>36</sup> Transcript Vol. 4C, p.8, 1.5-7.

<sup>37</sup> *Id.*, p. 2, 1.11-14; Transcript, Vol. 3A, p. 30, 1.17-20 (Nuthak testimony); Vol. 3A, p. 171, 1.3-11 (Oerichbauer testimony).

<sup>38</sup> Transcript Vol. 4B, p. 106, 1.30-81.

<sup>39</sup> Ex. 106, 7/28/2009 County Board Minutes.

<sup>40</sup> Ex. 106, 9/11/09 Minutes.

<sup>41</sup> Ex. 112.

53. On September 24, 2009, the City of International Falls City Council adjourned into closed session and reconvened into open session. It proceeded to adopt a Petition to Annex 590 acres of land to the City of International Falls.<sup>42</sup> With two exceptions, the land is also covered by the Orderly Annexation Agreement.<sup>43</sup> No public notice was given of this proposed annexation, no community planning process occurred prior to the action to annex, no public informational meetings were held prior to adoption of the petition, and no map was made available to the public.<sup>44</sup>

54. The International Falls September 24, 2009, Resolution sets forth the purpose(s) of the International Falls annexation request:

...The City is forced to take this action because the proposed annexation includes a part of the City Beach, the Foreign Trade Zone ("FTZ"), and land where any road to a FTZ would be built.<sup>45</sup>

55. The City of International Falls' Annexation Petition itself also indicates the purposes of the annexation:

The remaining land [aside from the FTZ]...is needed to extend the truck route of T.H. 332 to the Foreign Trade Zone and to Highway 11.<sup>46</sup>

56. The Informational Statement Form of the City of International Falls also sheds light on the purpose(s) of the International Falls annexation (aside from the FTZ and City Beach issues):

b. What type of development is proposed for the subject area?  
Road to Foreign Trade Zone ...<sup>47</sup>

57. At the June 3, 2010 informational meeting on the International Falls Annexation Petition (which the City had failed to previously conduct), City Administrator Otterness and City Attorney Boyle also confirmed that the purpose of the non-FTZ portions of the City of International Falls annexation area was for construction of a "road to the FTZ."<sup>48</sup> Otterness' testimony at the OAH hearing was in accord.<sup>49</sup>

58. The issue of the propriety, desirability, and feasibility of a "road to the FTZ" within the road corridor in the City of International Falls Annexation Petition was

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<sup>42</sup> Otterness Testimony, Transcript, Vol. 2A, p. 40, 1.13-20.

<sup>43</sup> Ex. 113.

<sup>44</sup> Otterness Testimony, Transcript Vol. 2A, p.40, 1.13-20.

<sup>45</sup> *Id.* (emphasis added.)

<sup>46</sup> Ex. 4 (bracketed material added.)

<sup>47</sup> Ex. 5.

<sup>48</sup> International Falls Mayor Mason indicated the City had no other purpose or plan for the road corridor area. Ex. 6, pp. 11 and 81. See, Ex. 6, p.p. 51 1.4-6 ("we haven't talked about anything else besides the need for a transportation corridor and a successful zone.")

<sup>49</sup> Transcript, Vol. 1, p. 120, 1.5-9.

thoroughly vetted and resolved in a prior administrative proceeding conducted by the Minnesota Department of Transportation under Minn. Stat. § 162.02, as described below.

59. On April 11, 2008, a Dispute Resolution Board ("DRB") met to consider Koochiching County's request to locate a road to the FTZ running north from the elbow of TH 332 to State Trunk Highway 11.<sup>50</sup> The new road would constitute the re-routing of the 332 truck route to TH 11.

60. International Falls City Administrator Otterness admitted at the hearing on July 6, 2010, that the City had an opportunity to be heard on its position of the desired routing of a truck route that would serve the FTZ.<sup>51</sup>

61. International Falls Public Works Director Gary Skallman acknowledged that the City of International Falls in fact did argue to the DRB that the best route for a road to the FTZ was a road from the elbow of 332 to the northeast to the FTZ:

Q: And in the DRB the Council – the City made the argument that their southwest to the northeast alternate route to the FTZ was the better route, didn't it?

A. Yes, I believe it did.<sup>52</sup>

62. The DRB process resulted in a written Recommendation to the MnDOT Commissioner. The written Recommendation summarizes the Findings of the DRB. The written Recommendation provides, in pertinent part:

- The City's position was that location of roads has critical economic and social impacts on communities. It is important to serve the FTZ with the new alignment, hence their proposed route.
- The County's proposed route to TH 11 serves the FTZ very efficiently.
- The City's proposed route is roughly 3 times longer than the County's proposed route. In addition it introduces several wetland issues, and would require the purchase of property, including the possibility of buying out a homeowner. This leads to a much more expensive option.

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<sup>50</sup> The County had asked the City to approve this routing, but the City had refused. Under Minn. Stat. § 162.02, the County had the right to request the convening of a DRB to consider the request. The DRB would make a recommendation to the MnDOT Commissioner.

<sup>51</sup> Transcript, Vol. 1, p. 125, 1.16-p. 126, 1.6.

<sup>52</sup> Transcript, Vol. 4D, p. 45 1.22- p. 46, 1.1.

- All things considered, the Board believed that the public is best served by the County's proposed route.<sup>53</sup>

63. The Commissioner of the Minnesota Department of Transportation considered the DRB's recommendation, and issued a 13 page written decision on February 12, 2009. In the decision, the Commissioner discusses the history of the Highway 332 re-routing efforts and the relative merits of the County's proposed route and the City's desire for an alternate southwest to northeast truck route to the FTZ. In considering the proposals, the Commissioner noted in his decision:

...the proposed County route is superior and merits approval.<sup>54</sup>

64. The City of International Falls appealed the Commissioner's decision to the Minnesota Court of Appeals. By decision dated January 26, 2010, the Court of Appeals affirmed the Commissioner's order. The Court of Appeals held that "the record shows that there is more than substantial evidence to support the Commissioner's decision..."<sup>55</sup> The Court of Appeals also rejected the City's arguments that MnDOT and the County conspired in an effort to achieve the result.<sup>56</sup>

65. The record in this matter demonstrates, as the DRB, MnDOT Commissioner, and Court of Appeals concluded, that the construction of the City of International Falls's desired route to the FTZ would be questionable from a cost and development standpoint.

66. The testimony of City of International Falls's Public Works Director, Gary Skallman, demonstrates that International Falls failed to conduct an analysis demonstrating that a southwest to northeast road to the FTZ (one of the very purposes of the I-Falls annexation) could be constructed feasibly. Mr. Skallman admitted:

- a. He had no expertise in wetlands;
- b. He was not a professional engineer and had no engineer license and no engineering degree;
- c. He could not prepare road project designs;
- d. No wetland delineation of the alternate route(s) had been done;
- e. No analysis had been done concerning ability to comply with state aid standards;

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<sup>53</sup> Ex. 10, p.3

<sup>54</sup> Ex. 11, p. 10.

<sup>55</sup> Ex. 12, p. 13.

<sup>56</sup> In this case, the City of International Falls suggests that the County and Ranier conspired to dupe International Falls and existing Ranier residents.

- f. No Environmental Assessment Worksheet (EAW) had been done;
- g. No consideration had been given to the existence of the hazardous landfill, or the landfill leachate lines; and
- h. No consideration had been given to the limited distance from the centerline of a rail line to the landfill (50' or less).<sup>57</sup>

67. Mr. Skallman admitted that the three possible City alternate routes to the FTZ discussed in his testimony were only "lines on paper."<sup>58</sup>

68. Doug Grindall, Koochiching County Engineer, established the history of efforts to re-route Highway 332, and the numerous development and cost issues associated with the City's preferred southwest to northeast route to the FTZ. Grindall has looked at the City's routing alternatives and found them to be unfeasible. He estimated that the total cost of the City preferred route approximated \$2.6 million. International Falls consulting engineer, Mike LeFrance, felt this estimate was too low.<sup>59</sup> Jeff Ledin of Ranier's consultants, Short, Elliot, Hendrickson (SEH), believes the cost would exceed \$4 million.<sup>60</sup>

69. The City of International Falls failed to produce admissible evidence during the hearing that International Falls had available funds to pay for its preferred alternate route to the FTZ. On the other hand, Koochiching County has already been awarded a federal grant to construct the north/south link from the elbow of 332 to TH 11. Record evidence indicates the County is presently in the process of completing actual construction plans for the work.

70. The north/south link from the 332 elbow to TH 11 to be built by the County will adequately serve the FTZ, and any truck traffic that may be generated from development of the FTZ.<sup>61</sup> County Engineer Grindall notes that TH 11 itself is adequate to carry the traffic and that the County intends to construct an ingress into the FTZ from Highway 11.<sup>62</sup> This evidence was un rebutted.

71. Chief Deputy Sheriff Brian Jespersion noted that the Sheriff's Office provides law enforcement services currently to the Orderly Annexation Area.<sup>63</sup> He believes services are adequate to meet the needs of the Area. The same services would be provided if the Orderly Annexation Agreement was approved, and those services, in Jespersion's opinion, would continue to be adequate. This testimony was un rebutted.

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<sup>57</sup> Transcript Vol. 4D p. 8 1.2- p. 18, 1.9.

<sup>58</sup> *Id.*, p. 18, 1.10-13.

<sup>59</sup> Transcript, Vol. 2A, p. 31, 1.1-4; Ex. 230.

<sup>60</sup> Transcript Vol. 2A, p. 216, 1.14-18.

<sup>61</sup> Testimonies of Grindall and Pavlak.

<sup>62</sup> Transcript Vol. 2A, p. 85, 1.20-p. 86, 1.12.

<sup>63</sup> Transcript Vol. 3B, p. 129, 1.21-p. 145, 1.5.

72. Quay Whitbeck of the Koochiching Rural Fire Protection Association (Rural Fire) noted that Rural Fire currently provides fire protection services to properties with structures in the Orderly Annexation Area. He believes these services are adequate to meet the fire protection needs of the properties, and that the services would remain adequate if the Orderly Annexation Agreement was approved.<sup>64</sup> This testimony was un rebutted, and International Falls Fire Chief Jerry Jensen agreed with Whitbeck.<sup>65</sup> It is noted that the services performed by Rural Fire amount to provision of equipment (pumper trucks), and that any actual firefighting on its behalf is done by I-Falls firefighters, pursuant to contract.

73. Wally Shold of the East Koochiching County Sanitary Sewer District noted that sanitary sewer service in the Orderly Annexation Area is provided through the East Koochiching County Sanitary Sewer District, and would continue to be provided by the East Koochiching County Sanitary Sewer District after annexation.<sup>66</sup>

74. Annexation of the French/Jameson/Residential Area to the City of Ranier would allow Ranier to deal more effectively with present and future water service line failures by increasing its ability to generate revenue to build capital improvement and replacement funds. It would also allow Ranier to begin to create a base for a separate and independent water system.<sup>67</sup>

75. The City of Ranier has obtained funding from the federal government for water line repair work. As a condition of the funding, the City was required to pledge its full faith and credit taxing authority to repay the funds if necessary. Absent having the residential properties within Ranier Boundaries, the City of Ranier could not levy ad-valorem property taxes on these properties.<sup>68</sup>

76. If the FTZ were ever developed, utility services would necessarily come from and through the City of Ranier. Ranier's water services exist very near the FTZ site. This fact was admitted by International Falls Public Works Director Gary Skallman.<sup>69</sup> The closest International Falls water services exist some miles distant, near the elbow of Highway 332. Lift stations exist within or immediately adjacent to the City of Ranier that would be utilized to provide sanitary sewer service to the FTZ. International Falls Councilmember Tim McBride, who serves also as Executive Director of the North Koochiching Sanitary Sewer System, noted that private citizens/developers of the FTZ area had a right to hook up into either lift station 4 or lift station 7.<sup>70</sup>

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<sup>64</sup> The DNR provides firefighting for the uninhabited rural areas within the Orderly Annexation Area, and would continue to do so if the orderly annexation was approved. Transcript, Vol. 3B, p. 166, 1.12-p. 167, 1.18.

<sup>65</sup> Transcript, Vol. 3B, p. 240, 1.3-1.8.

<sup>66</sup> Testimony of Shold.

<sup>67</sup> Ranier currently purchases water from the City of International Falls. Hearing testimony indicated Ranier residents pay twice the rates of International Falls users.

<sup>68</sup> Testimony of Oerichbauer.

<sup>69</sup> Transcript, Vol. 4C, p. 89, 1.17-24.

<sup>70</sup> Transcript, Vol. 4B, p. 34, 1.7-9.

77. The City of International Falls is a part owner of the FTZ, along with Koochiching County. As a part owner of the property, the City of International Falls would be able to control and manage development of the FTZ on whatever terms it desires, which could and presumably would be incorporated into purchase/development agreements.

78. The City of International Falls has economic development authority pursuant to Minn. Stat. Ch. 469. The City of Ranier does as well, as does Koochiching County. The City of International Falls suggested that it would not be able to use its economic development powers unless the FTZ was within its own city limits. This was a major reason offered by International Falls in support of its need and/or desire to annex the FTZ area.

79. Contrary to International Falls's assertion, adjacent and adjoining municipalities have utilized the Minnesota Joint Powers law in economic development endeavors. Minn. Stat. § 471.59, the Municipal Joint Powers law, authorizes municipalities to jointly exercise economic development authority. The Virginia-Eveleth Economic Authority is one example. International Falls City Administrator Rod Otterness acknowledged existence of that cooperative effort.<sup>71</sup>

80. Rod Otterness noted also that the International Falls City Council may find it politically questionable to spend economic development funds on a project within another city. Otterness acknowledged such a decision is a political one for the International Falls City Council to make, taking into consideration the regional benefits of economic development.<sup>72</sup>

81. The City of Ranier already experiences adverse impacts from trains traveling from Canada, through Ranier, and then heading south along the CN Railway. The primary intersection in Ranier can be blocked for up to 45 minutes.<sup>73</sup>

82. If the FTZ is developed, the utilization of the property, especially as it may impact train activities, may further negatively impact the City of Ranier and its residents.<sup>74</sup>

83. Activities in the FTZ might also have traffic, noise, odor, or other impacts on Ranier given the FTZ's immediate contiguity to the City of Ranier.<sup>75</sup>

84. Including the FTZ area within Ranier will allow Ranier to have some regulatory control over land uses within the site, yet still allow the City of International Falls to utilize economic development authority and power (along with the fact it is a co-

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<sup>71</sup> Testimony of Otterness.

<sup>72</sup> Transcript, Vol. 4D, p. 110, 1-10-p. 111, 1.3.

<sup>73</sup> Transcript Vol. 3A, p. 153, 1.11-p. 156.

<sup>74</sup> Transcript, Vol. 3A, p. 156, 1.18-22.

<sup>75</sup> *Id.*

landowner) to aid in actual development of the FTZ. It would also allow Ranier to provide utility services to the area.

85. Boise White Paper and Koochiching County own the large majority of the land within the rural portions of the annexation area. Boise opposes both proposals for annexation.<sup>76</sup> OfficeMax, the owner of the hazardous waste landfill, opposes International Falls's proposed annexation.<sup>77</sup> None of the rural residential property owners expressed support for annexation of the rural land.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Municipal Boundary Adjustments Unit of the State Office of Administrative Hearings has properly acquired jurisdiction over proceedings OAH 7-0330-20861-BA and 7-0330-21063-BA.

2. Minn. Stat. § 414.0325, subd. 1(h) provides that an Orderly Annexation Resolution/Agreement may provide that:

...no consideration by the chief administrative law judge [of the Office of Administrative Hearings – Municipal Adjustments] is necessary.

This Section indicates that OAH shall approve the annexation in accordance with the terms of the Orderly Annexation Resolution when the resolution contains the above language.

3. In this case, the City of Ranier and Koochiching County's original Orderly Annexation Resolution did not include the above language, but the Resolution was modified to include it, and the Amended Resolution was presented to OAH on April 29, 2010.

4. Assistant Chief Administrative Law Judge Bruce Johnson responded to the Amended Joint Resolution by letter dated May 7, 2010. The letter, citing *City of Wyoming v. Minnesota Office of Administrative Hearings*, 735 N.W.2d 476 (Minn. App. 2007), indicated that OAH had discretion to allow the scheduled hearings to proceed. The conclusion was premised on the existence of the City of International Falls competing annexation petition, and the directive in Minn. Stat. § 414.031 that a hearing "shall" be held on that petition.

5. Assistant Chief Administrative Law Judge Bruce Johnson's May 7 letter indicates that OAH will:

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<sup>76</sup> Ex. 28.

<sup>77</sup> Ex. 33.

...defer issuing an order addressing the Amended Joint Resolution until after the consolidated hearing is complete.

6. It is not appropriate to grant the Amended Joint Resolution of Ranier and the County because the Joint Petitioners have proven it is appropriate to order annexation of a part of the area Ranier seeks to annex, but not all of it.

7. The annexation petition of International Falls should be denied for the reasons discussed below.

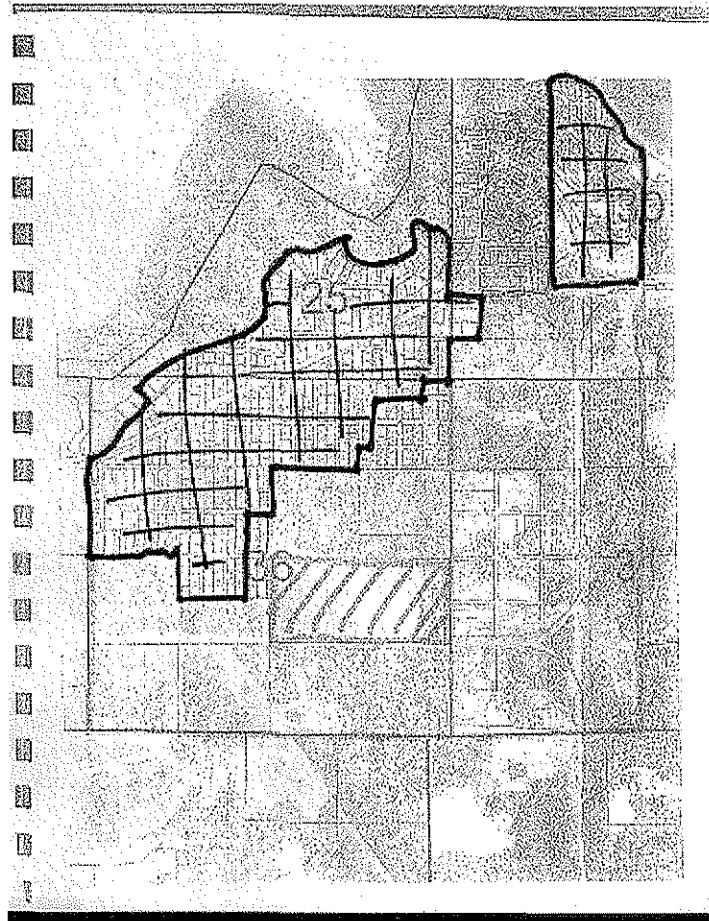
8. The Orderly Annexation request of Ranier and the County should be granted in part for the reasons discussed below.

9. Analytically, it is appropriate to consider the consolidated annexation requests as comprising three distinct areas.

### **Residential Areas**

10. The Orderly Annexation request seeks to add to the City of Ranier residential areas located along TH 11 to the north and south of the highway. These areas are presently served by Ranier water lines. These areas are not within the City of International Falls' petition.

11. These residential areas are identified pictorially as follows:



12. These residential areas are now or are about to become urban or suburban in character.

13. The City of Ranier is capable of providing, by itself and/or through contracts or collaborative arrangements with other entities or municipalities, government services required for these properties including but not limited to police, fire, utility and road maintenance services.

14. Annexation of these residential areas to the City of Ranier will be in the best interests of these residential areas, and that opinion is reflected in the annexation petition presented to the City of Ranier from residents of these areas.

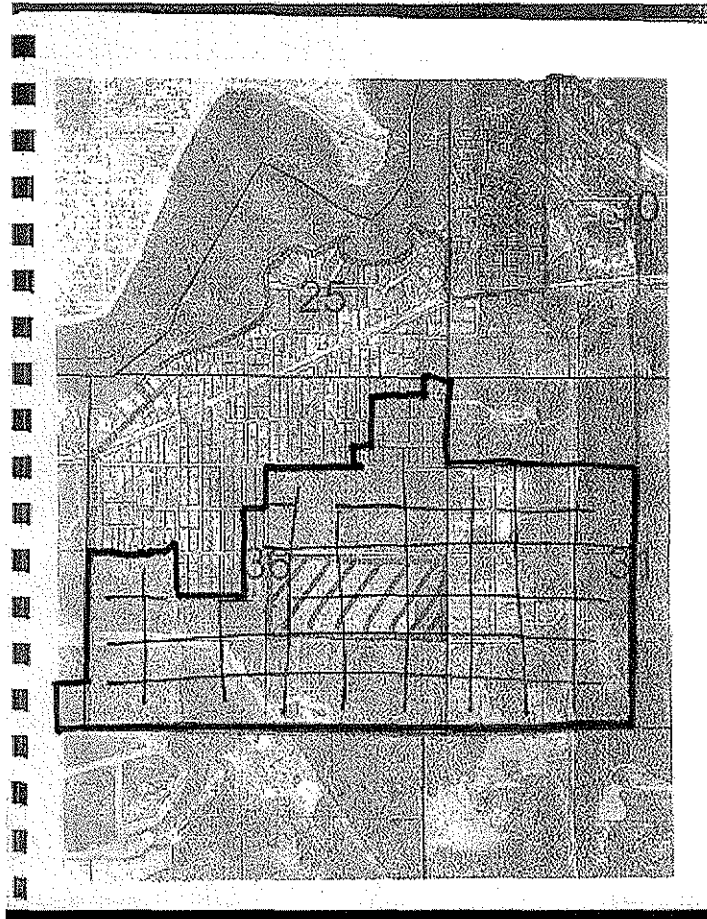
15. The factors in Minn. Stat. § 414.031, subd. 4, in light of record evidence, support the above conclusions as follows:

- a. The residential areas largely surround Ranier, and are contiguous to Ranier on Ranier's east, west, and south boundaries (Rainy Lake is to the north) (Factor 4);

- b. The residential areas are a logical extension of the more dense residential development of the City of Ranier. Ranier water lines serve most of the area already, and the Ranier Community Plan and visioning process recognize the logic of incorporation of surrounding residential areas (Factors 5 and 7);
- c. The residential areas currently ingress and egress, largely, onto TH 11. Annexation would not change transportation patterns. Roads in the residential areas would be maintained to the same standard as they currently are via contract with Koochiching County (Factor 6);
- d. Existing levels of government services are adequate to meet the needs of the residential areas. Core government services, i.e. police, fire, utilities, and roads, would remain unaffected; service levels would not diminish through annexation to Ranier (Factor 8); and
- e. Ranier prepared a post-annexation budget which provides for the continued level of needed and desired government services described above. Ranier is positioned to continue to provide services through contracts and collaborative agreements. No evidence indicated a need or desire for enhanced government services in the residential areas (Factor 11).

### **Rural Area**

16. Both the Orderly Annexation request and the International Falls annexation request seek to annex large amounts of land to the south of the French residential area and the FTZ. This collective area is shown, pictorially, as follows:



17. This area is not now, and is not about to become, urban or suburban in character. In fact, all record evidence offered suggests it is and will likely always be rural in character.

18. Municipal government, and the increased level of services and taxes it brings, is not required to protect the public health, safety and welfare of residents in this area.

19. Annexation of this area to either city would not be in the best interests of the subject area. In fact, each and every property owner in the area who offered an opinion on the merits of annexation of the area expressed opposition.

20. The increase in revenues to the annexing municipalities that would result from annexation of this land would bear no reasonable relationship to the monetary value of benefits conferred upon this area.

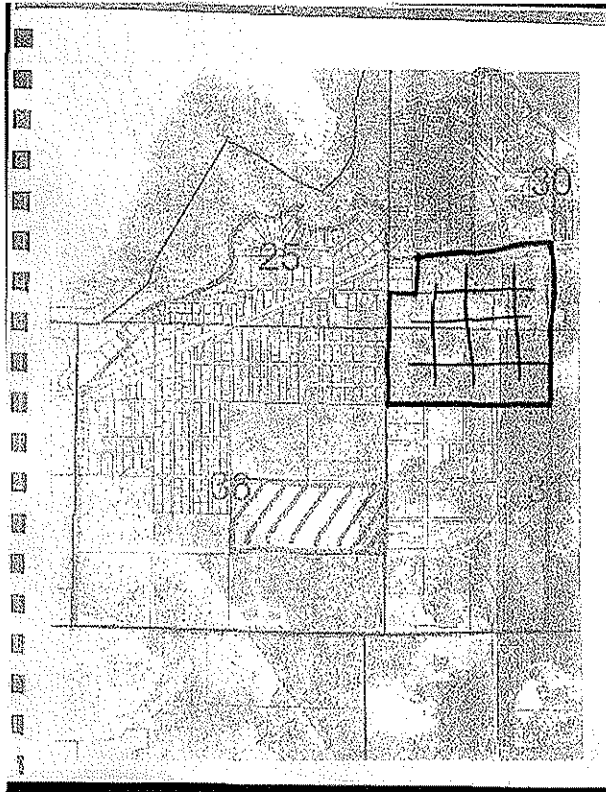
21. City of International Falls's idea to construct an "alternate road to the FTZ", serving as the re-routed truck route formerly designated as Highway 332, has not been proven to be feasible. That issue was addressed in the prior proceedings referenced herein in Findings of Fact paragraphs (54 through 64).

22. The factors in Minn. Stat. § 414.031, subd. 4, in light of record evidence, support the above conclusions as follows:

- a. Natural wetlands separate the developed residential areas along TH 11 from this area (Factor 3);
- b. Present and likely future land uses will be rural in character, thereby demanding a lower level of municipal services (Factor 5);
- c. Neither the Ranier Community Plan nor International Falls Strategic Plan contemplate development of this area (Factor 7);
- d. Existing levels of service provided to this unorganized territory meet its needs (Factors 8, 14 and 15);
- e. A closed hazardous waste landfill is best left in unorganized territory, away from any possible population growth (Factor 10);
- f. Neither Ranier nor International Falls would receive significant tax revenue from these lands (Factor 11); and
- g. The issue of the propriety of the construction of a "road to the FTZ" has been thoroughly vetted and addressed outside these proceedings (Factor 6)

### **Foreign Trade Zone Area**

23. Both the Orderly Annexation request and the International Falls annexation request seek to annex the Foreign Trade Zone Area. This area is identified pictorially as follows:



24. The FTZ is likely to become urban or suburban in character; it is directly contiguous to the large majority of the south boundary of the City of Ranier.

25. Municipal government in the area proposed for annexation is required to protect the public health, safety and welfare; it will allow the property to utilize utilities in the City of Ranier in order to develop economically, and it will allow Ranier to exercise jurisdictional authority over the property to protect existing Ranier residents from any negative effects from FTZ usage and development.

26. Annexation of the FTZ to the City of Ranier will be in the best interests of the subject area.

27. The Joint Powers Law, Minn. Stat. § 417.59, authorizes the City of International Falls to continue to participate in economic development activity, if it wishes, in the FTZ area, even though it would be outside of International Falls's territory.

28. The factors in Minn. Stat. § 414.031, subd. 4, in light of record evidence, support the above conclusions as follows:

- a. The area will be able to physically and economically develop if it is in Ranier; utilities will be available on an economic basis, and KEDA, Ranier, International Falls and the County have the

authority, through Minn. Stat. § 471.59, to collaborate to make development happen (Factor 5);

- b. Annexation of the FTZ area to Ranier is contemplated by the Ranier Community Plan. Even if the International Falls "Strategic Plan" is a comprehensive plan, it makes no mention of the FTZ and no mention of annexation of the FTZ (Factor 7);
- c. Annexation of the FTZ area to Ranier will allow Ranier some control, in a regulatory sense, over activities in the FTZ area. This will allow Ranier to minimize potential adverse environmental effects that may follow if the FTZ is developed (Factor 10);
- d. Ranier can provide needed government services to the FTZ area on the most cost-effective basis; its tax rate is less than half of that of International Falls (Factor 11); and
- e. If the FTZ area is not annexed to Ranier or is annexed to International Falls, Ranier, as an adjacent community, would be adversely effected because it would lack regulatory control over activities that may well have an adverse effect on Ranier (Factor 13).

Based on the Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

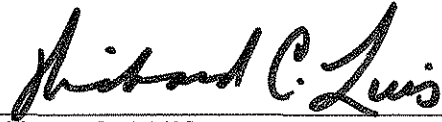
### **ORDER**

#### **IT IS ORDERED:**

1. The Joint Petition of Ranier and the County is **GRANTED, IN PART**, in that the Foreign Trade Zone (FTZ) and the French/Jameson Residential Area, are **ANNEXED** to the City of Ranier; and
2. The Petition of International Falls for Annexation of certain unincorporated lands in the County is **DENIED**; and
3. The Remaining Rural Land/Road Corridor Area included in the Joint Petition of Ranier and the County **REMAINS UNORGANIZED AND IS NOT ANNEXED**.
4. The area annexed to the City of Ranier is legally described in Appendix A.
5. Pursuant to Minn. Stat. § 414.12, subd. 3(a), and pursuant to agreement of the parties, the cost of these proceedings shall be divided as follows: to the City of Ranier 1/3; to Koochiching County 1/3; and to the City of International Falls 1/3.

6. This Order becomes effective upon issuance.

Dated: October 7, 2010



RICHARD C. LUIS  
Administrative Law Judge

Reported: Digitally Recorded

### NOTICE

Under Minn. Stat. § 414.07, this Order is the final decision in this case. Any aggrieved party may appeal to Koochiching County District Court within 30 days of the issuance of this Order, pursuant to Minn. Stat. § 414.07, subd. 2.

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within 7 days from the date of the mailing of the Order.<sup>78</sup> A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

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<sup>78</sup> Minn. R. 6000.3100.

## MEMORANDUM

### STATUTORY FACTORS AND STANDARDS

Minn. Stat. § 414.031, subd. 4 specifies 17 factors to be considered when determining whether an annexation request should be granted or denied. The factors are:

Subd. 4. **Relevant factors, order.** (a) In arriving at a decision, the presiding administrative law judge shall consider the following sources and factors:

- (1) recordings and public documents from joint informational meetings under section 414.0333 relevant to other factors listed in this subdivision;
- (2) present population and number of households, past population and projected population growth of the annexing municipality and subject area and adjacent units of local government;
- (3) quantity of land within the subject area and adjacent units of local government; and natural terrain including recognizable physical features, general topography, major watersheds, soil conditions and such natural features as rivers, lakes and major bluffs;
- (4) degree of contiguity of the boundaries between the annexing municipality and the subject area;
- (5) present pattern of physical development, planning, and intended land uses in the subject area and the annexing municipality including residential, industrial, commercial, agricultural and institutional land uses and the impact of the proposed action on those land uses;
- (6) the present transportation network and potential transportation issues, including proposed highway development;
- (7) land use controls and planning presently being utilized in the annexing municipality and the subject area, including comprehensive plans for development in the area and plans and policies of the metropolitan Council, and whether there are inconsistencies between proposed development and existing land use controls and the reasons therefore;
- (8) existing levels of governmental services being provided in the annexing municipality and the subject area, including water and sewer service, fire rating and protection, law enforcement, street

improvements and maintenance, administrative services, and recreational facilities and the impact of the proposed action on the delivery of said services;

- (9) the implementation of previous annexation agreements and orders;
- (10) existing or potential environmental problems and whether the proposed action is likely to improve or resolve these problems;
- (11) plans and programs by the annexing municipality for providing needed and enhanced governmental services to the subject area in a cost-effective and feasible manner within a reasonable time from the date of the annexation;
- (12) an analysis of the fiscal impact on the annexing municipality, the subject area, and adjacent units of local government, including net tax capacity and the present bonded indebtedness, and the local tax rates of the county, school district, and township;
- (13) relationship and effect of the proposed action on affected and adjacent school districts and communities;
- (14) adequacy of town government to deliver services to the subject area;
- (15) analysis of whether necessary governmental services can best be provided through the proposed action or another type of boundary adjustment;
- (16) if only a part of a township is annexed, the ability of the remainder of the township to continue or the feasibility of it being incorporated separately or being annexed to another municipality; and
- (17) information received by the presiding administrative law judge from the tour required under subdivision 3a.

Minn. Stat. § 414.031, subd. 4 not only contains the factors to be employed in the decision-making process involving an annexation request, but it also establishes the standard or standards to be employed by the decision-maker. Specifically, this provision indicates that annexation is appropriate:

- 1. If the land is now or is about to become urban or suburban;
- 2. If city government is necessary to protect the public health, safety and welfare;
- 3. If annexation is in the best interest of the land.

As discussed herein, application of the above statutory factors and standards dictates a conclusion that the Orderly Annexation request should be granted in part.<sup>79</sup>

**NEITHER THE DESIRE OF THE PROPERTY OWNERS FOR DUE PROCESS THAT IS GREATER THAN THAT REQUIRED BY STATUTE, NOR THE ALLEGED OPPOSITION OF EXISTING RANIER RESIDENTS, IS A BASIS TO REJECT THE ORDERLY ANNEXATION AGREEMENT**

The Administrative Law Judge requested that the parties brief a particular issue – whether the sentiment of Ranier residents that they didn't understand the scope of the annexation and/or their June 2009 petition opposing the annexation, would or could serve as a basis for denial of the Orderly Annexation request. The short answer is that they should not. The longer answer is that record evidence itself does not support the property owners' claim that they were intentionally misled or duped.

Minn. Stat. § 414.0325 sets forth the required process for initiation of orderly annexation. Subdivision one of this section simply requires that the Joint Resolution contain "a description" of the Orderly Annexation Area.<sup>80</sup> The Resolution contains legal descriptions.

Subdivision 1b of Section 414.0325 requires published notice of intent to include property within an orderly annexation area. It does not require the publication of a map. This section was complied with in that the published notices contain accurate and comprehensive legal descriptions of the Orderly Annexation Area.

The above statute dictates the process that was due and notices that were required to be given under Chapter 414. Several citizens commented during the public comment period that they felt they should have received individual mailed notices. But Chapter 414 does not require individual mailed notice.

There certainly are statutes that do require individual mailed notices. For example, Minn. Stat. § 394.26 requires counties to provide special mailed notices to property owners within 500 feet of a property seeking a variance. Minn. Stat. § 462.357 requires cities to give special mailed notice to property owners within 350 feet of a zoning amendment request.

In the context of annexation, no particular special mailed notice of a proposed Orderly Annexation is required. If the legislature wishes to require such a notice, it could certainly be added to the language of Minn. Stat. § 414.0325, subd. 1 and/or 1b. But that determination is for the legislature, not an Annexation Judge.

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<sup>79</sup> The Judge believes, after consideration of all record evidence and all the testimony of property owners within the Orderly Annexation Area, that portions of the areas sought both by Ranier and International Falls' petitions should remain unorganized, and continue to be governed by the County. These areas are identified in this Memorandum as the "Remaining Rural Land/Road Corridor Area."

<sup>80</sup> Here, the Orderly Annexation Joint Resolution contains the legal descriptions of the property within the Orderly Annexation Area and contains a hand drawn map utilizing an underlying plat map.

Moreover, the statute does not prescribe or require the publication of a pictorial map. Again, if the legislature wishes to impose such a requirement, the language to add to these statutes would not be difficult to draft.

In short, some residents expressed an expectation for greater notice of the proposed Orderly Annexation. They wanted a published pictorial map; they wanted individual notices. Notwithstanding their desires, the Orderly Annexation request complied with the procedural requirements of Chapter 414, and the desires for greater notice cannot serve as a basis for rejection of the Orderly Annexation request.

The record does not support a conclusion that the public witnesses were intentionally misled and duped into believing the scope of the proposed orderly annexation was different than it really was.

Much of the testimony in this case is from a relatively small number of politically-disgruntled Ranier residents who asserted they were misled in the public Orderly Annexation process. A number of witnesses for International Falls also were upset that they did not learn Ranier's intent to annex the FTZ until late in the proceedings.

Conspiracy allegations and allegations of "intentional duping" in this case are unsupportable. The Administrative Law Judge cannot conclude that intentional deception occurred. To conclude so is contrary to record evidence, as follows:

1. The Joint Orderly Annexation Resolution itself contains a pictorial map that visually illustrates the entire Orderly Annexation Area. The Resolution was available to and in the hands of the public at a June 22, 2009 Ranier City Council meeting. If the City of Ranier intended to dupe residents, why would it have included the pictorial map and provided the Resolution to residents?
2. Both the City of Ranier and Koochiching County published notices of public informational meetings, though not required by law. The notices contain legal descriptions of the entire Orderly Annexation Area. If the City of Ranier and County wanted to mislead residents, why would they voluntarily publish legal descriptions?
3. The County and Ranier collectively held 17 meetings (10 of which were meetings of the full bodies). If those parties sought to be silent about their true intentions, why would so many meetings have been conducted?
4. The County Surveyor prepared a large colored map of the Orderly Annexation Area, and it was present at the July 14, 2009 County public informational session.

5. Ed Woods, Jr. (a Ranier resident) presented to the court information he obtained in the public meeting processes leading up to the Orderly Annexation. Included in the information is a copy of a map of the Orderly Annexation Area stamped "Draft".<sup>81</sup> Why would the County and/or City apparently provide such a document if the specific intent was to deceive the public on the scope of the annexation?

Just as the notion of conspiracy has been rejected, the Judge declines to disapprove the Orderly Annexation due to the opposition within ranks of existing Ranier residents.

At the public comment period, an existing Ranier resident offered as an exhibit a purported petition of Ranier residents opposing annexation. Ex. 414. On closer review, the petition does not express ultimate opposition to the orderly annexation, but only transitory opposition based on the asserted lack of information available when the petition was executed.

It is noted that, the import of the petition was overemphasized and misstated. Originally, Ranier residents asserted 80 existing Ranier resident voters signed the petition. Later, that number was reduced to either 55 or 56. Even then, a review of the petition indicates it is duplicative.

In a representative democracy, as exists in our country, voters elect their fellow citizens to make important decisions on their behalf. We are not a pure democracy. If residents dislike or disapprove of the decision of the elected officials, their remedy is to vote them out of office. Here the Ranier City Council was duly elected by Ranier residents. Those residents that testified at the public comment portion of the OAH hearing almost uniformly testified they should be able to personally vote on the annexation.<sup>82</sup> But it is the Ranier City Council that is the body with the power to pursue annexation. The Ranier City Council determined it had enough information to judge that orderly annexation was an appropriate path for the City. Ultimately, time will tell if their decision continues to receive support of the citizens of Ranier. But, the decision was made with the proper cloak of authority, and the purported petition of "the vast majority of Ranier residents" is not a basis to disapprove the orderly annexation.

### **THE "REMAINING RURAL LAND/ROAD CORRIDOR AREA" SHOULD BE LEFT AS UNORGANIZED TERRITORY**

Analytically, it is easiest to consider the Orderly Annexation request, as stated previously, as three separate areas: 1) The French/Jameson/Residential Area; 2) the FTZ area; and 3) the Remaining Rural Land/Road Corridor Area.<sup>83</sup> Having considered

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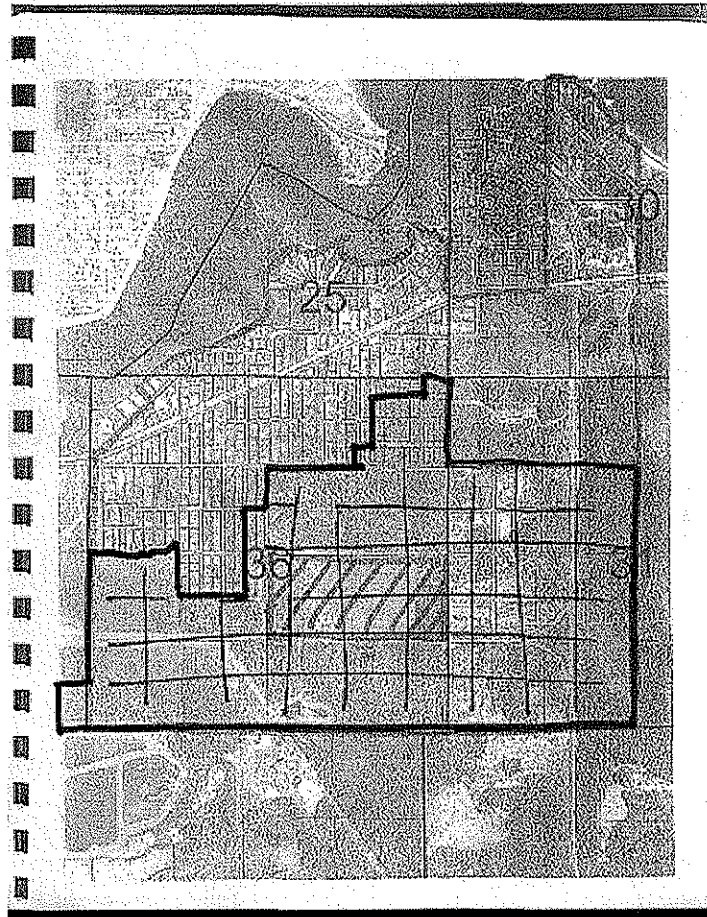
<sup>81</sup> Ex. 411.

<sup>82</sup> Transcript, Vol. 1, p.p. 63-74.

<sup>83</sup> The comparable area within the scope of the International Falls petition has been referred to as the "road corridor area."

the record evidence and testimony as it came in through the OAH hearing, it is Koochiching County's position that the Remaining Rural Land/Road Corridor Area should remain unorganized. In other words, both the Orderly Annexation request and the International Falls petition seeking annexation of this area should be denied. A pictorial identification of this area is as follows:

#### REMAINING RURAL LAND/ROAD CORRIDOR AREA



Geographically, the Remaining Rural Land/Road Corridor Area is separated from the French Addition, (South of TH 11) by natural wetlands. It is isolated and largely uninhabited. The few residents that live in this area live in the far southeast corner of the area. International Falls Councilmember Tim "Chopper" McBride testified the area is largely undevelopable.<sup>84</sup>

Minn. Stat. § 414.031, subd. 4 (3), indicates that natural terrain, physical features, general topography, soil conditions and natural features are proper considerations in the annexation decision. In this case, the natural wetlands and hydric soils that run between the Remaining Rural Land/Road Corridor Area and the French Addition are those types of features that are contemplated by factor (4). They separate

<sup>84</sup> Transcript, Vol. 4B, p. 115, 1.6-8.

developed and developable areas along TH 11 from land that is not and likely will not ever be developed.

The plans, or lack of plans by the involved cities also reflect the rural character of this area. Ranier sought to include the area because it felt it was the most likely supplier of water for the area (based on a 1995 study), and because of a desire for a geographically simple annexation area. The City of International Falls introduced no evidence in the OAH hearing that the Remaining Rural Land/Road Corridor Area would or could be developed (the "Road to the FTZ" issue is discussed below). In fact, Mayor Mason testified at the June 3, 2010 public informational meeting that the City of International Falls had no development plans for the area (save its desire for the "Road to the FTZ").

Factor (5) of Section 414.031, subd. 4, also supports leaving this third area unorganized. Factor (5) requires the court to consider existing and intended land uses in the subject area. Here, the existing land uses are rural and undeveloped uses (inclusive of the few residents who have and seek to maintain elbow room to live quietly, maintain horses, and hunt). Here, the annexation would have no impact in the nature of land uses. This is not a case where a city seeks to annex an area to provide services and develop it. Rather, all hearing evidence indicated the Remaining Rural Land/Road Corridor Area will, due to its characteristics and features, remain undeveloped.

Factor (7) in Section 414.031, subd. 4, also requires consideration of comprehensive plans for development of the area. Here, the City of International Falls has no Comprehensive Plan. Ranier has the adopted Community Plan which discusses annexation, but not of the Remaining Rural Land/Road Corridor Area in particular.

Factor (8) of Section 414.031, subd. 4, discusses existing levels of government services, and the impact annexation would have on them. In this case, the record clearly supports a conclusion that the Remaining Rural Land/Road Corridor Area receives each and every government service it needs in the absence of annexation. Law enforcement services are provided by Koochiching County. Brian Jespersen, Chief Deputy, testified that, given the area's rural character, law enforcement needs are minimal. He testified that existing service through the Sheriff's Department is adequate. Annexation to Ranier would not bring any increase in level of service. Annexation to International Falls would not bring an increased level of service that is needed and presently unmet.

Fire protection, like police protection, would not improve by annexation of the Remaining Rural Land/Road Corridor Area to either city. Quay Whitbeck of Rural Fire testified that Rural Fire serves residential properties in the Remaining Rural Land/Road Corridor Area now, and would continue to do so if the Remaining Rural Land/Road Corridor Area was annexed to Ranier. He testified the DNR has jurisdiction, in any scenario, over wildland fires. While International Falls maintains a fire department, no evidence indicated that annexation of this area to International Falls would supply an unmet need for a higher level of fire service. For example, no evidence was offered of a

fire-related situation in this rural area, historically, that might have been better addressed or met by service from International Falls's fire department.

With respect to water and sewer service, none of the properties in the Remaining Rural Land/Road Corridor Area are served by sewer and water, and the record does not indicate a likelihood that the area would need or demand such services, given its character. These facts suggest a conclusion this area should remain unorganized, when Factor (8) is considered.

Factor (10) in Section 414.031, subd. 4, also weighs in favor of leaving this area unorganized. Factor 10 requires the consideration of "existing environmental problems". The middle of this Area contains a hazardous waste landfill that is monitored by the MPCA. Public testimony discussed the hazardous contents of the landfill. Other comments discussed the leachate lines running in the area. Still other comments discussed affected wildlife. Given an option, it would seem public policy would support a conclusion that such hazardous areas are best left in undeveloped areas outside city limits and away from as many human activities as possible.

Factor (12) of Section 414.031, subd. 4, requires the consideration of fiscal impacts on the annexing municipality and the subject area. In this case, record evidence indicates that there would exist no reasonable relationship between the services provided to the area and increased revenue to the annexing municipality. County Auditor Bob Peterson testified that the total yearly increased tax revenue that would inure to Ranier would be less than \$1,000<sup>85</sup>, and the total revenue to International Falls would be less than \$2,000.

Factors (14) and (15) of Section 414.031, subd. 4 also require consideration of the adequacy of existing municipal services, and, if inadequate, whether annexation might bring to the area needed but unprovided service(s). In this case, the evidence is clear and un rebutted. There is no evidence that suggests that current municipal government in the Remaining Rural Land/Road Corridor Area is inadequate. To the contrary, given its rural character, all police, fire, water, sewer, administrative, recreational, educational, and road needs of the area are presently being met.

The City of International Falls might suggest that it has many departments, a large budget, and half the County's population. While these facts may be true, if the land does not need an "enhanced" level of government services that might be provided by, admittedly, the largest city in the County, then Factors (14) and (15) would support a conclusion that annexation should not be approved: the land should be left unorganized.

Finally, and perhaps most importantly as it relates to the International Falls petition, Factor (6) in Section 414.031, subd. 4, requires consideration of "potential transportation issues." This factor supports denial of both requests, and in particular,

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<sup>85</sup> This did not include the rural residential properties in the southeast corner of the Orderly Annexation Area that were not within the International Falls Annexation Petition.

denial of the International Falls petition seeking annexation of the area for a "road to the FTZ."

In this particular case, a professed underlying purpose for International Falls's annexation of the Remaining Rural Land/Road Corridor Area is to pursue the establishment of an extension of the existing truck route from the 332 elbow to the FTZ to serve possible truck traffic that may result from FTZ development. But, when the very underlying purpose of the annexation is unsupportable or untenable, the annexation must be rejected.

The Joint Petitioners argue that, as a threshold matter, International Falls is barred by collateral estoppel from arguing that the re-routed truck route to serve the FTZ should be its desired southwest to northeast route rather than the northerly link from the 332 elbow to TH 11 (called Highway 155) that the County is presently in the process of constructing.

The doctrine of collateral estoppel precludes the relitigation of issues that have previously been determined in later separate actions. *Friends of the Riverfront v. City of Mpls*, 751 N.W.2d 506, 589 (Minn. App. 2008). Collateral estoppel provides that a legal question or a fact issue that has been determined by a court of competent jurisdiction cannot be relitigated in a subsequent action between the same parties or their privies. *Kaiser v. Northern States Power Co.*, 353 N.W.2d 899 (Minn. 1984). Collateral estoppel applies to administrative hearings when the administrative entity acts in a quasi-judicial capacity. *Friends of the Riverfront*, 751 N.W.2d at 589. See also OAH Case No. P-5496/6-06-98 (ALJ held licensee could not relitigate issues in one administrative hearing where they had previously been decided in a prior quasi-judicial administrative hearing.)

It is asserted by Ranier and the County that the elements of collateral estoppel exist in this case. The City was a party to the MnDOT litigation, and the City admitted, through Rod Otterness' testimony, that it had a full and fair opportunity to present its position. And, there was a final decision. The City therefore is unable to argue that its desired routing is better than the present route to serve the FTZ that is being constructed by the County.

It has been noted that the administrative agency that has true expertise in transportation matters, and its Commissioner, have already determined the FTZ road routing issue, and that the Annexation Judge must defer to those determinations.

It is unnecessary to decide this issue. Even if collateral estoppel does not apply to the City of International Falls's argument that it needs to annex this area for a road corridor, the record supports a conclusion that one of the purposes of International Falls's annexation, establishing a new road to the FTZ, is neither necessary nor practical.

In its case-in-chief, Koochiching County, through County Engineer Doug Grindall and others, provided substantial testimony concerning economic and developmental impediments to construction of a road to the FTZ from the elbow of 332 overland northeast to the FTZ. Grindall testified as to significant wetland problems. Justin Berg of the Koochiching County Soil and Water Conservation District testified of the precise location of wetlands. Grindall, Berg and International Falls City Administrator Rod Otterness himself testified that under the Wetland Conservation Act, wetlands may not be destroyed if the destruction can be "avoided". In this case, the County's direct link to TH 11 to serve the FTZ, a route that provides the link without substantial destruction of the identified wetlands, would constitute avoidance.

Engineer Grindall noted that compliance with state aid standards was also an impediment to construction of a southwest to northeast road to the FTZ. To meet state standards, a road of 10-ton capacity would require 100-120 feet of right-of-way.<sup>86</sup>

Engineer Grindall noted that cost was also a factor that made consideration of a southwest to northeast route unfeasible. Grindall projected the cost of such a road at \$2.6 million-plus; the City's own estimate suggested it was greater.<sup>87</sup> The City of Ranier's consultant, Jeff Ledin, put the cost higher yet (\$4,116,000).<sup>88</sup>

County Engineer Grindall has considered all the alternate routes for the re-routing of 332. He testified a "road to the FTZ" from southwest to northeast was not, in his opinion as County Engineer, in the best interests of the transportation network.<sup>89</sup>

No evidence was introduced by International Falls to support its "vision" of an alternate road to the FTZ. No evidence was introduced that International Falls had the funds or even a funding plan to pursue the road. International Falls requested federal funding in April, 2009, but the request was denied.<sup>90</sup> No evidence rebuts any of Grindall's testimony concerning the lack of economic and developmental feasibility of a southwest to northeast road.

### **THE "FOREIGN TRADE ZONE" AREA SHOULD BE ANNEXED TO RANIER**

Both the Orderly Annexation Area and the International Falls petition include the FTZ area.<sup>91</sup> After the statutory factors are applied to the record, the ALJ concludes that the FTZ area should be annexed to the City of Ranier. A pictorial identification of the "FTZ Area" is as follows:

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<sup>86</sup> Transcript, Vol. 1A, p. 104, 1.16-24.

<sup>87</sup> Transcript, Vol. 2A, p. 36, 1.1-4.

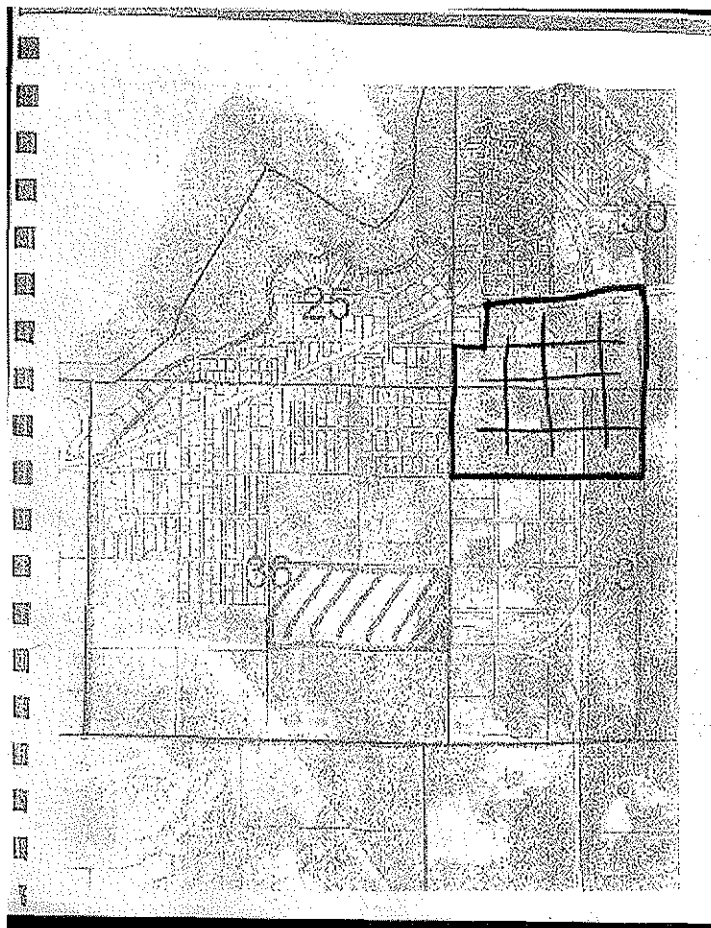
<sup>88</sup> Transcript, Vol. 2A, p. 219, 1.14-18.

<sup>89</sup> Transcript, Vol. 2A, p. 84, 1.14-25.

<sup>90</sup> Ex. 261.

<sup>91</sup> It is noted that, the "FTZ area" may not be completely within a foreign trade zone. Ex. 254, Attachment A, Map #4.

## FTZ AREA



Factor (4) of Section 414.031, subd. 4 requires consideration of the degree of contiguity of the boundaries between the annexing municipality and the subject area. In this case, the FTZ area is immediately contiguous to the City of Ranier – to most of the City's south border. To the contrary, the FTZ is not contiguous to International Falls.<sup>92</sup>

Factor (5) of Section 414.031, subd. 4 considers physical development in the annexation area, and how annexation would affect physical development. This factor implicates a major argument of the City of International Falls: that the site would be deprived of International Falls's economic development experience, expertise, and power absent annexation.<sup>93</sup> The Administrative Law Judge is not persuaded by this argument.

When the City of International Falls and Koochiching County acquired the property prior to 2002 with the intent of economic redevelopment, I-Falls made no

<sup>92</sup> If the remaining area/road corridor area is left unorganized, as it should be, the absence of contiguity would be fatal to the International Falls petition – non-contiguous lands may not be annexed.

<sup>93</sup> Boyle Opening Argument, Vol. 1, p. 87, 1.3-6.

attempt to annex it, which suggests it believed development did not depend on annexation.

The ALJ notes a vehicle for economic development administration for the FTZ area already exists, regardless of whether the FTZ area is inside or outside International Falls's city limits. Specifically, the Koochiching Economic Development Authority (KEDA) was created by statute specifically to administer joint Koochiching County economic development projects.<sup>94</sup> A review of KEDA's website demonstrates its continuing involvement in the FTZ property.<sup>95</sup> KEDA will continue to administer the FTZ post-annexation.<sup>96</sup> I-Falls Administrator Rod Otterness, in his testimony, recognized this by acknowledging that Paul Nevanen, the Director of KEDA, is "better qualified than I" to determine the economic development potential of the FTZ area.<sup>97</sup> KEDA in fact is the entity that applied for foreign trade zone designation in 2002.<sup>98</sup> International Falls itself, in its Annexation Information Statement, states:

Pursuant to Minnesota Laws 1987, Chapter 182, the Koochiching Economic Development Authority has primary jurisdiction for planning for economic development and has designated this area as the location for a foreign trade zone.<sup>99</sup>

Efforts to designate at least some of the land in this area as a foreign trade zone occurred in 2002, over eight years ago. Those efforts did not require inclusion of the FTZ in International Falls's city limits. International Falls did not take the position that annexation was necessary in 2002, when development efforts were undertaken, and it seems inconsistent to take such a position now, eight years later.

In short, annexation of the FTZ area to International Falls to expose it to International Falls's asserted economic development expertise and authority is not and has not been necessary as acquisition, FTZ designation, and marketing of the property have occurred historically. The fact that the City of International Falls is part owner, and that KEDA is the statutory collaborative economic development entity administering the FTZ anyway, satisfies these concerns.

Also, the ALJ is not persuaded by the City of International Falls's argument it cannot exercise its economic development powers extraterritorially.

Minn. Stat. § 471.59, the Municipal Joint Powers Law, allows municipalities (counties, cities, economic development entities) to cooperate, extraterritorially, in the exercise of common powers. In the context of economic development, International Falls, Ranier, and Koochiching County all have common economic development

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<sup>94</sup> Transcript, Vol. 4A, p. 41, 1.2-25.

<sup>95</sup> See, [www.businessupnorth.com](http://www.businessupnorth.com). Exs. 204 and 205.

<sup>96</sup> Transcript, Vol. 4A, p. 50, 1.3-8.

<sup>97</sup> Transcript Vol. 4D, p. 98 1.3-8.

<sup>98</sup> Ex. 254.

<sup>99</sup> Ex. 221, Attachment to Factual Info/Question #6.

powers. Whether the FTZ area was annexed to Ranier, or even stayed in the County, International Falls would clearly have the legal authority to expend funds and exercise statutory economic development powers to the benefit of the FTZ development.

An example of the above is the Joint Powers Agreement between the cities of Eveleth and Virginia.<sup>100</sup> Through the JPA, the Cities have created VEEPA. VEEPA has jurisdiction over a business park that serves to benefit both communities, and that is in whole or in part outside one of the respective city's limits. Since International Falls does not need to annex the FTZ property to exercise economic development power, that basis for its Annexation Petition is undermined.

Economic Development projects often have regional benefits, and by necessity, often require local governments to collaborate. Rod Otterness, in his testimony, described a current example of collaboration: the Grand Mound redevelopment. Otterness testified that the Grand Mound is outside city limits, yet International Falls is working on the project because it is a "tremendous asset for the area."<sup>101</sup> In the same way, local governments can work together to encourage and foster economic development in the FTZ area without any alleged implications resulting from city boundaries.

Factor (7) of Section 414.031, subd. 4, as stated previously, considers the existence of comprehensive plan(s) that relate to the annexation area. In this case, the City of International Falls has no Comprehensive Plan. While it has a strategic plan with general goals in certain areas, City Administrator Rod Otterness admitted on cross-examination that the strategic plan makes no mention of annexation.<sup>102</sup> It also makes no mention of the FTZ.<sup>103</sup>

In contrast, the City of Ranier does has a Community Plan that discusses annexation, and contemplates potential annexation of the FTZ to Ranier.

Factor (11) of Section 414.031, subd 4, contemplates an analysis of the need for government services, and the ability of the annexing municipalities to provide cost-effective services. In this case, if the FTZ area were annexed to Ranier, the area would receive all needed services in the most cost-effective fashion.<sup>104</sup> There is also unrebutted testimony indicating police protection would be adequate, fire protection would be adequate, and street maintenance would be adequate. Also, provision of water service to the area of the "cost-effective and feasible" nature contemplated by Factor (11) is available from Ranier to the adjacent FTZ. The City of International Falls did not dispute this argument by Ranier, but noted Ranier had a history of allowing and would likely still allow International Falls to hook into the Ranier line.

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<sup>100</sup> The Judge takes official notice of this public document.

<sup>101</sup> Transcript, Vol. 4D, p. 93, 1.6-13.

<sup>102</sup> Transcript, Vol. 2A, p. 42, 1.3-7.

<sup>103</sup> *Id.*

<sup>104</sup> The Record shows the City portion of the tax bill from Ranier will be less than ½ what it would be if International Falls annexes the property. Testimony of County Auditor Peterson.

Factor (13) of Section 414.031, subd. 4, requires consideration of how an annexation would affect "adjacent...communities". This factor comes into play when one considers the effect an International Falls annexation of the FTZ area might have on Ranier.

The Ranier Community Plan recognizes Ranier's interests in being able to exert some control over development of adjacent lands. This concern is specifically discussed as it relates to the FTZ area, and serves as a basis for the Plan's recommendation that the FTZ be considered for annexation. Mayor Ed Oerichbauer testified of the City of Ranier's concern about how activities in the FTZ could "spill back" to Ranier.<sup>105</sup>

What has been termed in this proceeding as the "second busiest railroad port of entry into the U.S. from Canada" enters this country through Ranier, not through International Falls. Trains travel from Canada into Ranier (and vice versa) and they slow as they pass a shed that sporadically X-rays boxcar contents. As a train passes through Ranier, it proceeds to the FTZ area, and the staging area recently constructed by the Canadian National (CN) Railway. Currently, 18 trains run each way each day. Trains are often two miles long.<sup>106</sup>

Testimony at the OAH hearing discussed the stoppage of trains across the main road into and out of Ranier. Testimony indicated some stoppages approximate 45 minutes.<sup>107</sup> Consequently, if the FTZ were to develop further, any railroad-oriented uses could exacerbate this problem. Also, due to the proximity of existing Ranier's limits, odor, traffic, and noise within the FTZ might also present concerns. For these reasons, it is appropriate to give Ranier the ability to regulate the FTZ activities. A way to do that is to grant to Ranier the exercise of municipal authority via annexation. The ability to control and manage development in this area is important. International Falls still would have that ability, as an owner, and as a member of KEDA, notwithstanding municipal boundaries, but Ranier would not unless it is allowed to annex the FTZ.

The pertinent factors in 414.031, subd. 4, weigh in favor of annexation of the FTZ area to Ranier. Such an annexation would provide adequate (but not unneeded) levels of service in the areas of law enforcement, fire and utilities. Ranier's Community Plan contemplates the annexation; International Falls's "strategic plan" does not. Water service to facilitate economic development would come from Ranier. Ranier's south border is nearly completely contiguous to the FTZ area, International Falls's border is not. Ranier's taxes would be one-half those of International Falls.<sup>108</sup> Ranier would be able to regulate development in the FTZ area to protect itself from the effects of being the "second busiest port of entry in the U.S." Finally, a chief International Falls basis for

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<sup>105</sup> Transcript, Vol. 3A, p. 156, 1.18-22.

<sup>106</sup> Transcript, Vol. 3A, p. 153, 1.11-p.156.

<sup>107</sup> Transcript, Vol. 3A, p. 153, 1.11-p.156. This is particularly an issue in an emergency services context.

<sup>108</sup> This may constitute an economic development incentive to businesses that might wish to locate in the FTZ.

annexation – the ability to use economic development expertise and power, can exist without annexation.

### **THE FRENCH/JAMESON/OTHER RESIDENTIAL AREA SHOULD BE ANNEXED TO RANIER**

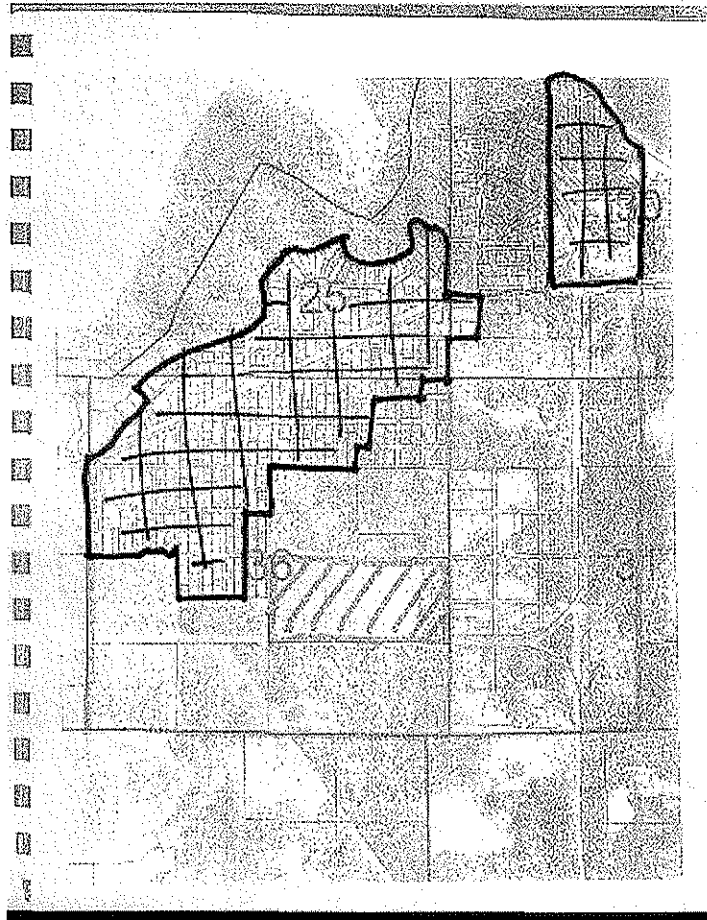
The Judge adopts Ranier's arguments in support of annexation of the French/Jameson/Residential Area into Ranier. International Falls makes no argument against Ranier's annexation of that area, and the arguments made against that annexation by some residents of "existing" Ranier are discounted, for reasons specified above. For the record, the arguments against annexation of "French and Jameson" are included below, in the Summaries of Public Comments.

On July 16, 2010, a Petition containing 26 signatures of residents of the Brennan's Beach neighborhood, which area lies east of existing Ranier, was filed with the ALJ.<sup>109</sup> None of the signatories spoke at the public hearing, and the evidentiary hearing record contains virtually no mention of this land. The petition includes a cover letter detailing reasons to leave Brennan's Beach unincorporated, but no connection is made between the unsigned letter and the pages of signatures. The signatures are undated, so their import is discounted. See generally, Minn. Rules Chapter 8205. There is no demonstration that the cover letter was authored by the signatories, or that it was seen by them, or that it existed at the time the listing was signed.

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<sup>109</sup> Summary of Written Comments, pghs. 20 and 21.

## FRENCH/JAMESON/OTHER RESIDENTIAL AREA



Annexation by the City of Ranier would be in the best interest of the French/Jameson/Other Residential Area.

After applying the statutory factors at Minn. Stat. § 414.031, subd. 4, to the record of this matter, the ALJ concludes that the French/Jameson/Other Residential Area should be annexed to the City of Ranier. The individual factors are discussed below.

Factor (1) is satisfied because the City of Ranier held many open public meetings prior to the filing of the Orderly Annexation Petition. The record shows that Ranier engaged in extensive public planning and developed a complete record related to the Orderly Annexation.

Factor (2) is satisfied because, in connection with the present provision of water service to most of the developed portions of the Area, Ranier plans a water service improvement project which has obtained USDA funding, to be applied on behalf of the citizens in the Orderly Annexation Area.

Factor (3) is met because the record shows the natural terrain and general topography favor Orderly Annexation by the City of Ranier. The neighborhoods involved are logical and natural extensions of the existing Ranier borders.

Factor (4) is satisfied because the boundaries of the City of Ranier are contiguous to the areas constituting the French/Jameson/Other Residential Area.

Factor (5) is satisfied because Ranier's Community Plan identifies annexation as a solution for funding concerns related to the waterlines that currently fall outside of Ranier's city limits, where Ranier currently has the duty to provide water.

Factor (6) is satisfied because Ranier's projected post-annexation budget includes post-annexation transportation related issues.

Factor (7) is satisfied. Ranier engaged in a multi-year community visioning session that culminated in a Community Plan, which it intends to use to guide its actions. The annexation of the Area in question was recommended under the Plan.

Regarding zoning, the Plan calls for the future development of a Ranier planning and zoning ordinance. Until Ranier adopts a zoning ordinance, the Area being annexed will be governed by the County's zoning ordinance.

Factor (8) has been satisfied by Ranier. It is in the best position to provide adequate, cost effective and needed municipal services to the French/Jameson/Other Residential Area. Regarding water, annexation results in an expanded tax base for Ranier, which will serve to ensure continued water service to the Area. The record shows that the management of the sanitary sewer system will continue as it is at present, with sewage being treated by the North Koochiching Waste Water Treatment Board, and no change will be seen in the way sanitary sewage is collected and managed. Currently, there are no concerns with the way the sanitary sewer system is managed in the Area proposed for annexation.

The record establishes that the current systems of fire protection and law enforcement will continue after annexation.

Factor (9) does not apply.

Factor (10), dealing with existing or potential environmental problems, has been satisfied by the City of Ranier. The record shows that the municipal water service of Ranier, which provides water service to the French and Jameson Additions, contains lines that are deteriorating. To meet that problem, Ranier has obtained funding from USDA Rural Development for a water project related to those lines. The proposed annexation will give Ranier an expanded tax base which will assist with dealing with future waterline maintenance and expansion, including expansion of Ranier's water service into other Residential Areas. The record shows that the proposed Orderly

Annexation will improve or resolve water issues for the area sought for annexation by Ranier.

Factor (11) is satisfied with respect to the French/Jameson/Residential Area. Ranier currently serves residents of the French and Jameson Additions with water service, and plans to repair waterlines in those areas. Any other areas outside of the French and Jameson Additions where Ranier does not currently provide water service are proximate to Ranier, so that City is positioned to provide cost-effective and fully adequate municipal services.

Statutory Factor (12) has been satisfied. The fiscal impact of the proposed Orderly Annexation will be an expanded tax base which will help ensure Ranier's financial independence and to assist with needed water service repairs and future maintenance. The record establishes that Ranier has contacted County officials for assistance in preparing a post-annexation budget.

Statutory Factor (13) is not applicable.

Statutory Factor (14), adequacy of town government to deliver services to the subject area, has been satisfied. The record shows that Ranier's government is adequate to provide all capable and needed governmental services to the proposed Orderly Annexation Area, including the French/Jameson/Other Residential Area.

The record establishes that Ranier is in a satisfactory position to provide necessary governmental services to the proposed Orderly Annexation Area. Therefore, Statutory Factor (15) has been met by Ranier.

Statutory Factor (16) is not applicable. Any areas of unorganized townships not annexed to Ranier will continue with their present governmental services.

Regarding Factor (17), the information received by the Administrative Law Judge from touring the subject area is consistent with a conclusion that Ranier is in the best position to service the Orderly Annexation Area, including the French/Jameson/Other Residential Area.

**R.C.L.**

## **SUMMARY OF PUBLIC COMMENTS**

Public oral testimony was taken by the Administrative Law Judge in this matter at the Koochiching County Court House in International Falls on the afternoon and evening of July 6, 2010. A period of time, through the close of business on July 16, 2010, was allowed for the filing of written comments from members of the public. The Oral Comments from July 6 and the Written Comments received through July 16, 2010, are summarized below.

### **ORAL PUBLIC COMMENTS- JULY 6, 2010**

1. None of the commentators opposed to Ranier's annexation of "French and Jameson" established, or alleged, that the City of Ranier failed to meet any legal notice or filing requirements necessary as procedures for approval of an annexation petition respecting either the "French and Jameson" area or the Foreign Trade Zone (FTZ).

2. Bernard (Bernie) Woods was the first of a number of public commentators who spoke in opposition to the City of Ranier's Petition to Annex the area known generally as the "French and Jameson Additions".

3. Bernie Woods is the son of Ed Woods, Sr., who helped design and oversee the water system for Ranier over a span of several decades, starting in the 1960s. Ed Woods, Sr., was nicknamed the "Water Wizard".

4. The office of Mayor in Ranier carries a two-year term. The only candidate who filed for Mayor in 2008 was Bernie Woods's brother, Ed Woods, Jr. Ed Woods, Jr. was defeated in the general election by a write-in candidate, current Mayor Ed Oerichbauer.

5. Mr. Oerichbauer was a City Council member prior to the 2008 election, and is in the group on the Council that Bernie Woods accused of being "dissemblers" at the Public Hearing on July 6, because these members of the Council supposedly kept the City's annexation plans secret from the rest of the citizens of Ranier.

6. Bernie Woods noted that, just prior to the 2008 election, one of the prominent citizens of Ranier, who had a long history of service on the City Council and once was Mayor, mailed a letter to most of the City's voters, which letter was not mailed to Mr. Woods or selected others who share his views on municipal affairs. Mr. Woods argues that the letter (Exhibit 404), which promotes annexation of the French and Jameson Additions and endorses the write-in candidacies of Ed Oerichbauer for Mayor and Dan Klocek for Trustee (member of the Council), was the major factor in electing Oerichbauer and Klocek over the candidates who had actually filed for election.

7. Bernie Woods criticized the Ranier City Council for convening "visioning sessions", facilitated by officials from the Arrowhead Regional Development

Commission (ARDC), without revealing their true agenda, which was to annex the residential neighborhoods known as the French and Jameson Additions. The annexation of such territories would more than triple the present population of "existing" Ranier, and the anti-annexation group believes that residents from the newly-acquired territories would soon be running the City. Woods invited residents of the French and Jameson Additions area to form their own city. In the alternative, Mr. Woods suggested that the City of Ranier, if annexation is not accomplished, form a Water District with the French and Jameson Additions area.

8. Arden Barnes, a person involved for many years in Ranier's municipal affairs, was concerned about how the various issues involved in these Consolidated Petitions have divided the local communities along various lines, depending on the issue involved. She noted in particular that "everybody in Ranier is not huggy/kissy".

9. Ms. Barnes, while noting that she did not agree totally with the views presented by Bernie Woods, stressed that she questioned the motives of the City of International Falls in its desire to acquire the Foreign Trade Zone. She believes International Falls wants the FTZ in order to gain a corridor to the residential areas that lie near County Road 11 for the several miles the road continues to its end at Sha-Sha Resort. Ms. Barnes notes that, if International Falls can acquire the neighborhoods all the way to Sha-Sha, it will have a tremendous increase in its tax base because many of the residential properties in the area between the FTZ and Sha-Sha are highly valued and owned by affluent people. Ms. Barnes noted also that the City of International Falls's plan to build a road across the Moonlight Rock area is unnecessary, given that Highway 11 is a perfectly good road and access to the FTZ could be gained by building a much shorter road off Highway 11, south from the "Big Vic" statue that serves as the symbol of welcome to the City of Ranier.

10. While noting that "Ranier should concentrate on its own water system", Ms. Barnes added that the potential for economic development in the Foreign Trade Zone was enormous, given that Canada is contemplating building a railroad that would connect Hudson Bay directly with Fort Francis and Ranier. In summary, Ms. Barnes stated

"So I think the picture for the volume of imports, I think the sky is the limit and I think that, all things considered, I think I don't know why International Falls should have anything to do with the port of entry. I mean, with Foreign Trade Zone, unless they want to participate as a customer..."<sup>110</sup>

11. John McCarthy is a local property owner who has been employed as the City Administrator in Dundas, near Northfield, Minnesota, the last four years, but previous to that was Executive Director of the North Koochiching Sanitary Sewer District, and served three terms as an International Falls City Councilor. He analogized the relationship of Dundas to Northfield as comparable to that of Ranier to International Falls. Both Dundas and Ranier have significant rail traffic.

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<sup>110</sup> Transcript, Afternoon Public Hearing, 7/6/10, at 48.

12. Mr. McCarthy supports the Petition of International Falls to annex the Foreign Trade Zone (FTZ) area because of the capability of that city to provide the necessary services to an urbanized area, which it is hoped the FTZ will become.

13. Mr. McCarthy stressed that International Falls has fully staffed and developed police and fire departments, and a fully equipped street department for services such as snowplowing. He noted that Ranier has not adopted a zoning code, and that the areas proposed for annexation by Ranier would lose the zoning authority currently possessed by the County if Ranier's Annexation Petition is accepted.

14. Terry Lahmayer is not opposed generally to the idea of annexation, but is extremely upset about the "hidden process" undertaken by the officials of the City of Ranier in this matter, and therefore does not support Ranier's Petition. She is upset because, although meetings were held for discussion of Ranier's annexation ambitions, no meaningful discussion or debate was allowed.

15. Ms. Lahmayer is upset further because, by the time "most of us realized what was going on", ... "the Ranier Mayor and Council had already petitioned the County Board to jointly adopt the annexation proposal"<sup>111</sup> Ms. Lahmayer noted that the letter of the law had been fulfilled, because meetings were indeed held, but that she believes the spirit of the law was not fulfilled because Ranier's citizens never had the chance to stop the process once it had begun. Rather, the maneuverings of the City Council left the citizens of Ranier "disenfranchised."

16. Everett Ramsey resides in the Alberta Park area, which is part of the territory the City of Ranier seeks to annex. Although asked to join in the petition in favor of annexation, signed by a large number of residents in his area, Mr. Ramsey refused to sign it, and he supports the position taken by Bernie Woods.

17. Mr. Ramsey believes the annexation effort by the City of Ranier is "the most misguided operation I've ever seen."<sup>112</sup> Mr. Ramsey would support annexation of the FTZ by International Falls, and an extension of water and sewer service by that city all the way to Sha-Sha.

18. Mr. Ramsey also supports the building of a road between the present area of International Falls and the FTZ, stating "If it requires a road to be put in, get with it."<sup>113</sup> He also would support building an access road from County Highway 11 to the FTZ, as advocated by Arden Barnes.

19. Edward Bernath supports the annexation by International Falls of the Free Trade Zone area. He cited the economic development success on the part of the City of International Falls on some other projects such as the "ORSI Project", a wood fiber

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<sup>111</sup> Transcript, Afternoon Public Hearing, 7/6/10.

<sup>112</sup> Transcript, Afternoon Public Hearing, 7/6/10 at 63.

<sup>113</sup> Id, at 65.

plant adjacent to the Rainy River, which was built with money raised by International Falls and a grant from the United States Department of Housing and Urban Development (HUD). Mr. Bernath was a member of the International Falls City Council for approximately 15 years, until 2002.

20. Marjorie Brenning has been on the Ranier City Council for thirteen years. She was not on the Council when it approved the present Petition for Annexation by her City, and she believes that the process would have been much more fair if the citizens of Ranier had been given the opportunity to vote on whether to proceed with annexation.

21. Naomi Woods is disillusioned by recent behavior by the members of the Ranier City Council who are supporting that City's Annexation Petition. She noted that what began as a "visioning process" turned into an Annexation Petition "... without any discussion, no input. We knew more about a chili feed last winter than we did about this plan."<sup>114</sup>

22. Ms. Woods expressed concern that a number of people that live in "Jameson" have marginal incomes and are struggling economically.<sup>115</sup> Ms. Woods believes it is a dangerous financial practice to annex people into the community of Ranier without sufficient funding, and points to an example of people losing their homes because of high sewer assessments, which occurred in Cloquet, Minnesota.

23. Ms. Woods is concerned that if Ranier acquires the "French and Jameson" area, whether the City would be able to provide municipal services, and questions whether it is necessary to fix the sewer system in the first place. She believes it is functioning decently at this time.

24. Ms. Woods is "...sickened by the lack of information, the total disrespect to the people in our community and also French and Jameson... It's turned all our good friends against each other and it's brought out the worst in the community."<sup>116</sup>

25. Naomi Woods complained "it just makes my head spin 'cause it doesn't make any sense to me. And it looks – I don't like being lied to. I feel like I've been lied to or information has been withheld."<sup>117</sup> Ms. Woods is concerned also that the Annexation Petition for Ranier seeks to acquire "Three Points North," an affluent area, because citizens of "existing" Ranier and the rest of the French and Jameson Additions, who possess far fewer means, will be subsidizing the sewer costs of such affluent people.

26. Naomi Woods did not allege that the procedures undertaken by the Ranier City Council in connection with its Annexation Petition were illegal.

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<sup>114</sup> Transcript, Afternoon Public Hearing, 7/6/10, at 78.

<sup>115</sup> Transcript, Afternoon Public Hearing, 7/6/10, at 78.

<sup>116</sup> Id, at 79.

<sup>117</sup> Id, at 80.

27. Ron Peterson owns an extensive amount of land in the vicinity of the Foreign Trade Zone, and has involved himself in a land swap near that area with the City of International Falls. Mr. Peterson favors the granting of the petition for annexation by the City of International Falls. Mr. Peterson was "disappointed in ... Mayor Ed", whom he alleges delayed announcing to him the City of Ranier's intention to annex the FTZ.<sup>118</sup>

28. Ward Merrill spoke in favor of the Petition by the City of International Falls to Annex the FTZ, because he believes International Falls is in a better position "by far" with its capabilities, resources, and interest to develop things to their full potential.<sup>119</sup>

29. George Konecny was upset by all the arguing and wondered aloud why we can't all just get along. He implied that he leans toward consolidation of the entire area into one governmental unit because "In unity we stand, divided we're going to fall."<sup>120</sup> Generally, Mr. Konecny supports the efforts of the City of International Falls, and he compliments its "wonderful" Mayor, Council, Police Department and Fire Department.

30. David Trompeter was the author of Exhibit 404, the letter distributed to many of the residents of Ranier just before the November 2008 election that swept Ed Oerichbauer into the Mayor's seat. Mr. Trompeter served thirty five years on the Ranier City Council, six of them as Mayor. Mr. Trompeter supports annexation of the French and Jameson area in order to build a larger population base for the funding of improvements in the City of Ranier's water system. He envisions Ranier having its own water treatment plant someday, so that it will not have to purchase water from International Falls (which is the present situation).

31. Mr. Trompeter believes that development of its own water plant by Ranier will result in a cheaper water supply than the present arrangement of purchasing that supply from International Falls. He does not support acquisition of the Foreign Trade Zone by Ranier.

32. Mr. Trompeter acknowledges the need for major repairs to the water lines owned by the City of Ranier. The water system is over fifty years old, has cast iron lines that are breaking, and in places a person can push their finger through them because of the decay and rust.<sup>121</sup> To Mr. Trompeter, it makes simple common sense to spread out the expenses involved in improving the City of Ranier's water system among more people, which would be accomplished by annexing the French and Jameson areas.

33. Gerald Arason supports International Falls's petition to develop and annex the Foreign Trade Zone, which he assumes would be followed by the construction of a

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<sup>118</sup> Transcript, Afternoon Public Hearing, 7/6/10, at 86.

<sup>119</sup> Id, at 98.

<sup>120</sup> Id, at 100.

<sup>121</sup> Transcript, Afternoon Public Hearing, 7/6/10, at 105.

road between International Falls and the FTZ. Further, he does not oppose the acquisition of the French and Jameson Additions by Ranier.

34. Maryann Kasich, a sister of Bernie and Ed Woods, Jr., opposes the annexation plans of the City of Ranier because she believes it cannot pay for what it proposes to take on. Ms. Kasich noted also that the amount of grant money represented to Ranier citizens by the Council has dropped significantly, from a 45% match to 19%. She also faults the statements made on behalf of the Council by the consultants from the Arrowhead Regional Development Commission (ARDC), and the manner in which the ARDC's facilitators acted to split up those attending its meetings, breaking into groups having narrow agendas, so that individuals who came to speak to certain specific topics were stifled.

35. Ms. Kasich acknowledged that the City Council, and the lawyers representing them during the annexation process, have met all the legal requirements for annexation.<sup>122</sup>

36. Ms. Kasich remains upset that the citizens of Ranier were never invited by the Mayor and Council to ask them what they thought about the annexation issue. She noted that one City official may have commented about annexation during the "visioning" meetings conducted by the City.

37. Ms. Kasich challenges the position taken by the Council for the City of Ranier that the Council did not ask for a Joint Annexation Resolution with the County until after extensive discussions at meetings. Rather, she recalls they were meetings where "we could go and barely get a word in edgewise."<sup>123</sup>

38. Ms. Kasich was upset also because many of the key meetings were conducted during the summer, when many of Ranier's permanent residents are away.

39. Ms. Kasich is concerned also that there is no solid budgetary proposal for financing the extended services that will be required if the annexation of the French and Jameson neighborhoods is approved. She noted that the City had planned earlier to "depend" on Local Government Assistance (LGA), which has not come to fruition.

40. Ms. Kasich noted that the final, "swing" vote among the County Commissioners, that of Chairman Hanson, was swayed in favor of the Joint Annexation Resolution only after a representation was made that a certain level of grant monies (from the U.S. Department of Agriculture) would be available if Ranier's Annexation Petition was adopted. Ms. Kasich noted that, in the end, the amount of the grant that Ranier can anticipate is less than half of the amount represented initially and at the time of the vote by the County Commissioners.

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<sup>122</sup> Evening Public Hearing, 7/6/10, at 17.

<sup>123</sup> Transcript, Evening Public Hearing, 7/6/10, at 19.

41. Ed Woods, Jr. served on the Ranier City Council from 1988 to 1992, and had filed for election to the Mayor's post in 2008. He was defeated by Ed Oerichbauer, who received all write-in votes.

42. Mr. Woods is concerned about, and opposes, any further annexation on the part of the City of Ranier, until it fixes its existing water lines. He believes that "economics" do not support a replacement of the water lines at this time for the French and Jameson Addition areas. He noted also that there was a suspicious shut off of the City's municipal water during the morning of Election Day 2008 (November 4).

43. On November 4, 2008, Ed Oerichbauer defeated Mr. Woods, 62 votes to 34. As of that time, there were 107 registered voters in the City of Ranier.<sup>124</sup>

44. Mr. Woods also was upset about how the Ranier City Council did not come forward adequately to announce its true intention, which was to proceed for annexation, until just before the election in 2008, after which there was only one "visioning session" at which the matter could possibly be discussed. That visioning session did not take place until after the Joint Annexation Resolution of the City and the County.

45. Morgan Bergstedt owns property near Moonlight Rock, in an area which Ranier seeks to annex, but has not been petitioned for annexation by International Falls. He stated specifically that he "doesn't accuse anyone of not meeting requirements,"<sup>125</sup> but that he is opposed to being annexed by anyone unless they give him municipal services. Mr. Bergstedt does not believe municipal services will be forthcoming from the City of Ranier in the foreseeable future.

46. Mary LePage is a resident of the Jameson Addition who is not in favor of being annexed by anyone. She is concerned that if her area is annexed by Ranier the County will stop providing services, and she asks how are we going to pay for those services? Ms. LePage wonders whether the City of Ranier would hire the County, for instance. She also stated that there have been problems connected with her water pipes, and wondered whether the City of Ranier could not join with the County, or some other entity, to form a Water District, which might be able to get funding and fix and maintain the current piping system.

47. Rick Blanchard was a member of the Councils of International Falls and South International Falls for eighteen years, from 1988 to 2006. Mr. Blanchard believes that economic development is the major issue involved in this proceeding, and that the City was fortunate to acquire the FTZ. He supports International Falls's Petition for Annexation, citing the past success in obtaining grant money for the ORSI Project.

48. Cindy Dumais-Black is a neighbor of Morgan Bergstedt in the Moonlight Rock area. She believes that she will never see water and sewer where she lives, so

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<sup>124</sup> Website of Minnesota Secretary of State, at "Election Reporting System."

<sup>125</sup> Evening Public Hearing, 7/6/10, at 50.

wonders why she should pay into the City of Rainer for such services provided to other people. Ms. Dumais Black is against Rainer's annexation proposal, as a result.

49. Phil Williams faults the mayor of Rainer for a total lack of communication while noting that he believes the Foreign Trade Zone will never materialize into anything and that International Falls can have it.

50. Mr. Williams is upset that, although a majority of the voters in the city of Rainer signed a Petition opposed to Rainer's annexation plans, the Council proceeded to enter into a Joint Resolution for Annexation with Koochiching County. Mr. Williams entered the Petition as Public Exhibit 414.

51. Mr. Williams testified to the presence of deer with "no hair on their lower legs" and hairless beavers, living in the area of the Moonlight Rock Landfill, which he calls the area's equivalent of "Love Canal."<sup>126</sup>

52. Michael Jaksa, an attorney in International Falls, supports the annexation petition of the City of International Falls. Annexation of the foreign trade zone makes sense to Mr. Jaksa, simply because that city owns the property.

53. Mr. Jaksa cited several statistics designed to show that further economic development is necessary for the City of International Falls and the surrounding area to sustain itself economically. He believes if Rainier annexes the FTZ, there will be real practical problems, including a reluctance by the citizens of International Falls to put tax money into the improvement of land not belonging to them, but supporting the improvement of land within a different city. Mr. Jaksa maintains that the City of International Falls, in partnership with Koochiching County, has the resources and wherewithal to develop the Free Trade Zone, manage and govern it.

54. Terry Lahmeyer testified in the evening session that she was particularly upset because Rainer's Mayor had promised her that the people would definitely have a say, and that the city would take whatever time was needed to engage in debate and discussion over the annexation issue. She stated that newly-elected mayor Oerichbauer failed to inform her that the process had already been started to enter into a joint resolution with the County for annexation and "there was no going back."<sup>127</sup>

55. Ms. Lahmeyer and Maryann Kasich noted at the evening public hearing that the number of people signing the Anti-Annexation Petition, 57, was indeed lower than what had been represented earlier in the proceedings (80). Ms. Kasich explained that 57 people signed, whereas the other people could not be contacted because they were not present. Only 19 people refused to sign, so the ratio of people who signed in support of resisting annexation, as opposed to people who refuse to sign the Petition, was approximately 3 to 1.<sup>128</sup>

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<sup>126</sup> Evening public hearing, 7/6/10, at 68.

<sup>127</sup> Evening public hearing, 7/6/10 at 79.

<sup>128</sup> Evening public hearing, 7/6/10 at 83.

56. Bernie Woods returned in the evening to challenge the remarks made by David Trompeter. He stated that Mr. Trompeter has repudiated the letter he circulated just prior to the 2008 election. Whereas, in his remarks at the public hearing in this proceeding, Mr. Woods believes Mr. Trompeter ignored his earlier representations that he had "repudiated annexation."<sup>129</sup>

57. Mr. Woods also challenged Mr. Trompeter's statement to the effect that it was "illegal" for Rainer to fix water lines outside of Rainer, because although you can't take tax money from property taxes in Rainer for such purpose, you can certainly dedicate a Water Fund from your water rates that you charge people outside of Rainer and then any fixing can be funded from that.

58. Mr. Terry Randolph appeared and noted that he, Cindy Dumais-Black, and Mr. Bergstedt constitute the "neighbors" in the "Moonlight Rock" neighborhood. He noted also that there were no discernible benefits available to him from Rainer's Proposed Annexation of the area in which he and his neighbors live. He stated also that a road to the Free Trade Zone through the Moonlight Rock area was unnecessary, because all that is needed is to drop a road from Big Vic, south one mile. It makes no sense to Mr. Randolph to build a road through a swamp and a couple of other areas of questionable utility when all you need is to drop a road one mile south from the main highway (Trunk Highway 11).

59. Douglas Grindall, the Koochiching County highway engineer, noted that there were three possible ways to attempt to build a road from the present border of International Falls to the Foreign Trade Zone, without using Highway 11. Mr. Grindall believes that none of them are practicable. One alternative involved to attempting "squeeze" a road right-of-way for a surface that would bear the weight of heavy trucks between the southern end of the Moonlight Rock Landfill and the railroad tracks running parallel to the southern border of the Landfill. The other two alternatives would involve going to the west and north of the Moonlight Rock Landfill through an area that is swampy and forested heavily.

60. Brian Briggs, who spent eight years on the International Falls City Council, noted that he is against the annexation plans of the City of International Falls. Mr. Briggs lives just east of the "Second Bridge," which is the only part of the City of International Falls that lies to the east of Second Creek.

61. In Mr. Briggs's particular residential location, he pays water and sewer to the City of Rainier and the East Koochiching Sanitation District, respectively, just as everyone else residing east of Second Creek and west of the City of Ranier (predominantly the French and Jameson Additions). Because Mr. Briggs lives in an isolated part of International Falls (East of Second Creek), where he pays for municipal services to International Falls, in addition to his water and sewer service payments to Ranier and "East Kooch", he feels he is being "double-taxed."

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<sup>129</sup> Evening public hearing, 7/6/10 at 94.

62. Mr. Briggs believes it makes no sense for the City of International Falls to annex hundreds of acres of swamp land to build a 2.2 million dollar road just to get to the Free Trade Zone. He pointed out that, so far, only one business has attempted to set up within the FTZ, and that business failed. He believes the logical way for routing traffic to the Free Trade Zone would be to build an improved road south of the "Big Vic" statue.

63. Mr. Briggs advocates taking a 2.2 million dollar development fund and using it for direct development expenses without going through annexation by the City of International Falls and all the associated expenses. He has no problem if Ranier annexes the FTZ.

64. Mr. Briggs is also not opposed to having the City of Ranier annex his residential property, and he would like to be removed from the City of International Falls.

65. Cindy Dumais-Black stated in the evening hearing that it would be impossible to build a road that can carry heavy trucks on the swamp land that lies between the point where Highway 332 makes its 90-degree turn and the Free Trade Zone, because the land is "30 feet deep of muskeg."<sup>130</sup>

### **SUMMARY OF WRITTEN PUBLIC COMMENTS**

1. John Bruggeman, who served on the Ranier City Council and was once its Mayor, strongly supports the Annexation Petition of Ranier because the water system in the Jameson and French Additions needs extensive repairs which could be financed better by annexing that area and having the citizens there help pay for the water services. Because the City, which now has only 96 acres of area, has nowhere else to grow geographically, a larger city would provide a bigger pool of candidates for City Council. Because Koochiching County has no township government system, the annexation of French and Jameson by Ranier would give those people a more direct voice in government. If Ranier does not annex the French and Jameson areas, the City of International Falls is likely to in order to bolster its population and keep it over the level of 5,000 people, which qualifies it for certain categories of aid for which smaller cities would not be eligible.

2. Sue Swendsen, a resident of Ranier, believes the community will need the addition of Jameson and French Additions to increase the tax base to maintain water and sewer lines. She is persuaded by Mayor Oerichbauer that a grant can be obtained for water maintenance only if annexation of the area to benefit from the grant is accomplished.

3. Edna Doris is a property owner in the Jameson Addition who supports the City of Ranier's petition because it is necessary to ensure that French and Jameson

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<sup>130</sup> Evening Public Hearing, 7/6/10, at 120.

Additions will have City water. If Ranier does not annex those areas, she fears being annexed by the City of International Falls.

4. Lorraine (Laurie) Hedlund is opposed to Ranier's Annexation Petition, because of the process that was used, which she believes was flawed from the beginning because little or no information was given to the residents concerning the pros and cons of annexing any areas outside of existing Ranier. She notes that the citizens of Ranier were not given facts, data, graphs, maps or anything that would support the desire of the Council to go ahead with annexation. Ms. Hedlund, along with her husband, take the credit for authoring the Petition signed by residents of Ranier in opposition to the annexation plans of the Council.

5. Laurie Hedlund indicated that while 107 registered voters were living in Ranier at the time of the 2008 general election, 98 of whom voted in the mayoral race, their total of 57 signatures represented well over half of the registered voters in the community. She believes that the process employed by the City Council failed to let citizens truly understand what was at stake during the process of formulation of the Annexation Petition.

6. Ms. Hedlund also introduced a statement prepared by her husband, Andy Hedlund, which he presented as a resolution for consideration by the Council advancing the proposition that the Council authorize a non-binding vote by Ranier residents and property owners, asking them whether or not they favor annexation.

7. Andy Hedlund is a former Ranier City Council member, who notes that while there were 11 water breaks during a 27 day period in the Ranier system between October 24 and November 19, 2007, they were due to excessive pressure, which has now been reduced, and two of the remaining three breaks were in an area where the water line has been replaced. The City has now gone 22 months without a water line break. Therefore, Mr. Hedlund argues that it was inappropriate to rush into annexation to solve a "phantom" imminent water line crisis. He is concerned also that the citizens of existing Ranier will be "swallowed up" in the annexation, which will add 450 people to their small community of 173 residents.

8. Wilbur Tveit filed a letter in support of Ranier's Annexation Petition noting that the opposition to annexation has been articulated mostly by a "family group" living in Ranier.

9. George Konecny filed a letter of support for the International Falls annexation petition, articulating that his true desire is for a merger of the two cities.

10. Sue Swendsen filed another letter stating that when her husband Andy Swendsen, was on the City Council both as a Council member and as Mayor, he was "frequently harassed and personally attacked" by citizens who were led by a small but influential group.

11. Barbara Plasky filed an e-mail to the effect that her husband, Robert Plasky, was a person who originally filed the Petition that "started the ball rolling" for consideration by Ranier to annex the French and Jameson Additions. The Plaskys live in the French Addition. They want to join with Ranier because of "too many questionable decisions made by International Falls."

12. Tami Walls filed a letter favoring Ranier's Proposed Annexation.

13. Ron Herivel, Sharon Frank and Jim Black, residents of International Falls, support the Petition for Annexation by their City, which they praise for having the resources to develop the FTZ, and note that International Falls was successful with the ORSI Project and the Riverfront Development.

14. Cindy Dumais-Black filed a letter stating that, so long as her area is not annexed into Ranier, she favors the petition of Ranier over that of International Falls.

15. Kim Sherwood, a business owner in International Falls, supports the effort to connect that community with the FTZ, by way of granting International Falls's Annexation Petition.

16. International Falls Councilmember Cynthia Jaksa noted it is important that the City of International Falls annex the Foreign Trade Zone to ensure that they have the governing authority to proceed with developments in that territory. She provided further details about the City's successful record in the economic development area.

17. Kathryn Volin, President of Grand Voyageur Group, LLC, filed a letter that challenges the statement of Brian Briggs, who has questioned the spending of \$1.3 million for infrastructure expenses along International Falls's riverfront. Her company has purchased a 70-acre parcel in International Falls for the purpose of economic development, largely based on the positive impressions made by the leadership of the City of International Falls, particularly Mayor Shawn Mason. Ms. Volin praises Mayor Mason and her staff for being available "24/7" and being able to give "110%." Ms. Volin believes everyone connected with International Falls's development is very capable and will be able to handle any challenges the FTZ might present.

18. Joann Finstad, who owns a resort on Rainy Lake known as "The Lakeview", supports the annexation efforts of the City of Ranier in order to "help establish financial independence and increase the tax base." She supports Ranier's petition to have jurisdiction over the FTZ because she anticipates it will help with taxes and, more importantly, provide "a platform to address the heavy traffic, noise and pollution with the Railroad."

19. Ms. Finstad also notes that a small group of influential Ranier residents who currently oppose the annexation have historically opposed changes in the City.

20. Approximately 26 residents of the Brennan's Beach neighborhood, whose area is proposed for annexation by the City of Ranier, filed a Petition with the Administrative Law Judge in opposition to that particular part of Ranier's Annexation Petition. The petition notes, in part:

"We did not request to be annexed by the City of Ranier, nor were we notified of Ranier's intent. We were not aware of Ranier's intent until Tuesday, July 19, 2009, when by chance, a Ranier resident advised that we were included. (By this date the Koochiching County Board had already held their hearings on the matter and we were unable to make a presentation prior to their affirmative vote the following week.)"

21. Brennan's Beach Petitioners question how the City of Ranier can possibly handle all the snow plowing, street maintenance, fire protection, law enforcement and other costly programs expected of a city in the areas they hope to annex. The petition notes that all publicity prior to the vote by the Koochiching County Board on this issue referred only to Jameson Addition, French Addition and Three Points North. The petitioners suggest the establishment of a Water District, or a system similar to what currently exists at North or East Koochiching Sanitary Districts, to solve any water line and sewer issues, short of proceeding with annexation.

22. Gayle Rognerud, a 25-year veteran of the International Falls City Council, noted that the members of the Koochiching Economic Development Authority, who run the Foreign Trade Zone, were never informed of the pending annexation of the FTZ by Ranier. Ms. Rognerud serves as the City of International Falls Council's representative on the KEDA. Councilor Rognerud is concerned that if the FTZ is not added to the city limits of International Falls, the Zone will not be developed in a timely manner and the full use of all economic development tools available will not be undertaken.

23. Morgan Bergstedt wrote to support the desire of International Falls to acquire the FTZ.

24. Robert Ewald noted that the City of International Falls, rather than proceed with an Orderly Annexation, is just trying to take the Foreign Trade Zone (which is wrong). It is logical for Ranier to annex that territory because it supplies the water, the East Koochiching Sanitary District supplies the sewer, and the County Sheriff supplies law enforcement. He considers the Annexation Petition for that territory by International Falls to be a simple "land grab".

25. Dave Kunath of International Falls filed a letter to explain a term ("clarifier") that had been used during the testimony of Jerry Jensen, the International Falls Fire Chief.

26. John Bruggeman of Ranier filed an email to clarify that the Petition circulated by Laurie Woods (Hedlund) asking the Ranier City Council to delay action on the Orderly Annexation, about which Ms. Hedlund represented that the Petition's

signers were opposed to annexation, is a misstatement. Mr. Bruggeman remembers that Ms. Hedlund told him the signatures were only to support slowing the process, rather than to record a "NO" vote.

27. Toni Gjavenis is a resident of the Moonlight Rock neighborhood who did not appear to testify orally. In her letter, Ms. Gjavenis states that she does not wish to be annexed by the City of Ranier.

28. Thomas Hall wrote to support the City of Ranier's proposed annexation of the French and Jameson Additions and the Foreign Trade Zone. Mr. Hall notes that the City of Ranier is fiscally prudent and responsible, it has done well in managing its municipal liquor store and park system, there would be administrative efficiency to having the FTZ in Ranier's jurisdiction, which already includes the U.S. Customs House and the Railroad Office, and that the Canadian National Railroad violated an understanding with the City when it built its tracks through Ranier in 1906, to the effect that while there would be noise, inconvenience and fire danger caused by the trains, that the City would receive derivative economic benefits from the rail traffic. Those benefits have not been realized and Mr. Hall argues that the jobs and tax revenue that the FTZ is expected to generate belong rightfully to Ranier.

29. June and Walt Nelson, residents of Ranier, support the annexation proposed by the City of Ranier and state that they were misled by signing the "delay petition."

30. Dan Klocek is the Ranier City Council member who was elected by write-in vote during the same 2008 election when Ed Oerichbauer was elected Mayor by write-in. In his letter, Mr. Klocek notes that the water lines through French and Jameson are "old and brittle", and are the source of 90% of the water breaks and repairs in the City's water system.

31. Mr. Klocek notes that the "vocal minority of residents in the City of Ranier who have been opposed to the idea of annexation of the proposed area since the very beginning" are not opposed to water main replacements, but are simply afraid that Ranier might change. That "vocal minority" are the people who voiced their opinions strongly at the public comment portion of the hearing, according to Mr. Klocek.

32. The Administrative Law Judge received a letter from Arden Barnes, who has lived in Ranier all of her 81 years. She argues that International Falls's sole interest in the FTZ is to gain a corridor to Rainy Lake and the "high rent district".

33. Terry Randolph filed an email to confirm his testimony at the public hearing, to the effect that he does not wish to be annexed by the City of Ranier.

34. Diane Edens, Executive Director of the Housing and Redevelopment Authority of International Falls, and resident of Ranier, wrote to support Ranier's Petition for Annexation. She is saddened by the fact that the elected officials in Ranier are

under attack by a group that "gathered in force in opposition to the annexation" at the Public Hearing.

35. Joan Evanoff, a 76-year-old widow, wrote in to praise the vision of Mayor Oerichbauer and the present City Council.

**APPENDIX A**  
**(Page i of iii)**

**LEGAL DESCRIPTION FOR FRENCH/JAMESON/OTHER RESIDENTIAL AREA**

All of those portions of Section 35 and 36, Township 71 North, Range 24 West and Section 31, Township 71 North, Range 23 West, Koochiching County, Minnesota, described as follows:

- A. That part of the South half of the Southeast Quarter of the Southeast Quarter, said Section 35, which lies east of Trunk Highway 332 as located in 2010;
- B. All that portion of the Southwest Quarter, said Section 36, which lies south of the existing platted areas;
- C. That part of AMERICAN SUBURBS COMPANY'S ROSE PARK ADDITION TO INTERNATIONAL FALLS, according to the recorded plat thereof, which lies east of the westerly right of way of THIRD AVENUE and its extension to the northerly and southerly plat limits;
- D. That part of AMERICAN SUBURBS COMPANY'S EAST SIDE ADDITION TO INTERNATIONAL FALLS, according to the recorded plat thereof, which (i) lies east of the westerly right of way of THIRD AVENUE from its southerly extension to the south plat limits and to its northerly extension to the north right of way of FIFTH STREET, said point being the southeast corner of Block 2; (ii) and which lies south of the northerly right of way of FIFTH STREET from the southeast corner of Block 2 to its easterly extension to the east plat limits;
- E. The Southeast Quarter of said Section 36 and the Southeast Quarter of the Northeast Quarter and the Southwest Quarter of the Northeast Quarter, said Section 36;
- F. The westerly 33 feet of said Section 31, which is located within: (i) BEDELL'S ADDITION TO INTERNATIONAL FALLS, according to the recorded plat thereof; (ii) CLARKE'S FIRST ADDITION TO INTERNATIONAL FALLS, MINN, according to the recorded plat thereof; (iii) the Southwest Quarter in said Section 31;
- G. That part of ALBERTA PARK, according to the recorded plat thereof, which (i) lies east of the easterly right of way of Viola Avenue from its southerly extension to the south plat limits to the northwest corner of Lot 23, Block 8; (ii) and lies south of the

**APPENDIX A**  
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northerly line of Lot 23, Block 8 and its extension easterly across the alley to the northwest corner of Lot 8, Block 8 and continuing easterly on the northerly line of said Lot 8 and its extension to the east plat limits;

- H. That part of the PLAT OF FIRST ADDITION TO RANIER, according to the recorded plat thereof, which (i) lies south of the southerly right of way of First Street, from its westerly extension to the west plat limits to the northeast corner of Block 7, same being on the westerly right of way of Aldrich Avenue; (ii) and lies east of the westerly right of way of Aldrich Avenue from its southerly extension to the south plat limits to its northerly extension to the North plat limits.

**APPENDIX A**  
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**LEGAL DESCRIPTION FOR FTZ /PROPOSED ANNEXATION AREA**

All of that portion of the Southwest Quarter of Section 30, Township 71 North, Range 23 West, Koochiching County, Minnesota, which lies south of the southerly Right of Way of State Trunk Highway No. 11 as located in 2010 and south and east of the northerly and westerly right of way lines of County Road 113 as located in 2010, which abut Lots 1 through 5, Block 3, RIVERSIDE PARK;

And all of Government Lot 1 and the Northeast Quarter of the Northwest Quarter, all in Section 31, Township 71 North, Range 23 West, Koochiching County, Minnesota.