OAH Docket No. 84-0330-32991

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Orderly Annexation of Certain Real Property to the City of Waconia from Waconia Township (MBAU Docket OA-1625/OA-1625-1)	**ORDER APPROVING ANNEXATION UPON SATISFACTION OF CONDITIONS**

On November 9, 2015, the city of Waconia (City) filed with the Office of Administrative Hearings a Joint Resolution for Orderly Annexation Between the Town of Waconia and the City of Waconia, Carver County, Minnesota (Joint Resolution), executed by the City and the Township of Waconia (Township). The Joint Resolution addressed the requested annexation of two parcels of real property consisting of approximately 70 acres (Property) owned by Waconia Public Schools, Independent School District No. 110 (School District) and presently located within the boundaries of the Township. Pursuant to Minn. Stat. § 414.0325 (2014), the City petitioned for an Order from the Chief Administrative Law Judge approving the orderly annexation of the Property, which Order would have the legal effect of detaching the Property from the Township and annexing it into the City.

Michael C. Couri, Couri & Ruppe, PLLP, appears on behalf of the Township. The City appears through David Hubert, Melchert, Hubert and Sjodin, PLLP. The School District appears through Patrick Devine, its Superintendent.

Based upon a review of the filings submitted by the City, Township and School District, and upon a review of matters of public record of which the Chief Administrative Law Judge takes judicial notice as noted below, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The parties to this proceeding include the City[1] and the Township.[2]

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

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[1] Minn. Stat. § 414.12, subd. 4(1) (2014).
[2] *Id*., subd. 4(2) (2014).

Parcel 1

The South Half of the Southwest Quarter of Section 22, Township 116, Range 25, Carver County, Minnesota, EXCEPTING THEREFROM the following described parcel:

> The East 659.44 feet of the Southeast Quarter of the Southwest Quarter of Section 22, Township 116, Range 25.

Parcel 2

That part of the East 659.44 feet of the Southeast Quarter of the Southwest Quarter which lies South of the North 894.89 feet thereof; together with that part of the West 10.00 acres of the Southwest Quarter of the Southeast Quarter which lies South of the North 894.86 feet thereof; all in Section 22, Township 116, Range 25, Carver County, Minnesota.[3]

3. The Property is located immediately adjacent to other properties owned by the School District that are operated as the Clearwater Middle School and the Waconia Senior High School, both of which are located completely within City boundaries.

4. The School District intends to use the Property to renovate and expand the middle school and the high school.[4]

5. Parcel 1, identified for tax purposes as Property ID Number 090220820 and made up of approximately 58.5 acres, was purchased by the School District on February 23, 2015.[5]

6. Parcel 2, identified for tax purposes as Property ID Number 090220800 and made up of approximately nine acres, was purchased by the School District on March 31, 2006.[6]

7. As properties used for public purposes, neither Parcel 1 nor Parcel 2 have generated any tax revenue for the Township since the dates they were purchased by the School District.[7]

8. In a related matter, filed by the City and the Township on August 24, 2015 pursuant to Minn. Stat. § 414.033, subd. 2(3) (2014), docketed as OAH Docket No. 84-

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[3] Ordinance No. 690, Exhibit (Ex.) A (Aug. 15, 2015).
[4] *See* Superintendent's Report, Waconia Board of Education (Apr.13, 2015), *available at* https://v3.boardbook.org/Public/PublicItemDownload.aspx?ik=36815707); *see also* Roadway Planning, Waconia Board of Education (May 8, 2015), *available at* https://sites.google.com/a/isd110.org/update/roadways.
[5] Carver County Property Report Card (Oct. 12, 2015), *available at* https://gis.carver.mn.us/publicparcel/.
[6] Carver County Property Report Card (Oct. 12, 2015), *available at* https://gis.carver/mn/us/publicparcel/.
[7] *See* Minn. Stat. § 272.02 (2014).

0331-32786, the City sought annexation of the same Property through a petition for approval of a City Ordinance (Ordinance). The following statements of fact relate to this annexation-by-ordinance proceeding:

a. In Section 7 of the Ordinance, the City acknowledged the Ordinance was subject to the provisions of Minn. Stat. § 414.036 (2014), and also acknowledged receipt of a $35,000 payment to the Township labeled as "TAX REIMBURSEMENT" and described as follows:

> Pursuant to Minnesota Statutes § 414.036, the City and Waconia Township have agreed that a single payment of $35,000 is payable to the Township as reimbursement for all or part of the taxable property annexed by this Ordinance. The payment has already been made and a copy of the Township's receipt acknowledging payment has been attached as Exhibit C (the "Receipt"). There are no special assessments assigned by the Township to the annexed property and no debt incurred by the Township prior to the annexation and attributable to the property annexed.

b. In Exhibit C to the Ordinance, the Township memorialized the following statements directed to the School District:

> "70 acres has been purchased by the Waconia Public Schools from the Waconia Township, as for annexation of the new school. **The agreement was made for the school to pay $500.00 per acre**. A check in the amount of $35,000.00 check number #5190040 was paid to the township on July 21, 2015."[8]

c. On October 13, 2015,[9] the Chief Administrative Law Judge issued Findings of Fact, Conclusions of Law, and Order Regarding Supplementation of Record wherein, in relevant part, the Township was required to furnish "factual and/or legal authority related to its practice of charging the City and/or the School District a fee of $500 per acre for tax reimbursement for the loss to the Township of the Property," given the lack of identified statutory or other legal authority for the Township's apparent practice of charging an "annexation tax reimbursement payment" and in light of the applicable law as noted in the Memorandum made part of the Order.

d. The Chief Administrative Law Judge amended and reissued her Findings of Fact, Conclusions of Law, and Order Regarding

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[8] Emphasis added.

[9] This filing was re-served on October 20, 2015 due to the original's return by the U.S. Postal Service related to an incorrect address.

Supplementation of Record on November 3, 2015 to include a November 10, 2015 deadline for the required supplementation.

e. On November 9, 2015, the City filed correspondence with the Office of Administrative Hearings wherein it stated as follows: "The City hereby withdraws its request to annex the Subject Property by ordinance."[10] The City further stated that "this withdrawal renders Judge Pust's order for information from the City moot…."[11]

f. The Township joined in the City's request for approval of the joint resolution and noted that it too "believe[d] that this previous request to annex by ordinance is now moot."[12]

g. Also attached to its November 9, 2015 filing, the City filed correspondence from the School District, dated October 27, 2015, wherein the School District states as follows:

> We are writing this letter to explain the Waconia Public School District outlook on the issues surrounding the annexation of school district property out of Waconia Township and into the City of Waconia. We have been working with the city and the township since June to get the land annexed into the city. As part of that process we paid a fee of $35,000, $500 per acre times 70 acres, to the township for the right to move the property from the township to the city. We did not agree with that assessment and asked to have the assessment waived. We were told no that we would have to pay the assessment and that they would not waive it. When we asked for a justification for the assessment they told us that they did not have to justify the assessment. We paid the fee to move the annexation process along.
>
> We are now in a position that we cannot get a permit to proceed with our project. With winter coming soon it is very important that this matter gets settled quickly. Failure to resolve this matter quickly will result in increased construction costs due to the extra costs to put foundations into frozen ground and inflation adjusted construction costs. This will potentially cost the district hundreds of thousands of additional construction dollars. All of this we were hoping to avoid by paying the $35,000 to the township. We have asked

[10] November 9, 2015 correspondence signed by Lane Braaten, Community Development Director for the City.
[11] *Id.*
[12] November 9, 2015 correspondence from Michael C. Couri, counsel for the Township.

> the township to give zoning authority of the property to the county who would then turn it over to the city of Waconia who would oversee the project and give final permit authority. The township will not agree to do this. Please help us!
>
> A timely resolution to this matter would be greatly appreciated.[13]

h. The last attachment to the City's November 9, 2015 filing was the Joint Resolution for Orderly Annexation executed between the City and the Township, filed in support of the City's and Township's "respectful[] request that an order approving the annexation be entered within 30 days," pursuant to Minn. Stat. § 414.0325 (2014).[14]

i. By virtue of the Chief Administrative Law Judge's issuance of Findings of Fact, Conclusions of Law, and Order of Dismissal with Prejudice issued on November 20, 2015, the City's annexation-by-ordinance proceeding was dismissed with prejudice.

9. As evidenced in the Joint Resolution, the City and the Township still desire and intend to have the Property detached from the Township and annexed to the City, as requested by the School District in furtherance of its efforts to meet the community's needs for expanded public school facilities.

Based upon these Findings of Fact, the Chief Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Orderly annexations are governed by the provisions of Minnesota Statutes, chapter 414 (2014) (Municipal Boundary Adjustment Act) and, most specifically, by Minn. Stat. § 414.0325.

2. The Chief Administrative Law Judge is authorized to review and approve an orderly annexation pursuant to Minnesota Statutes, chapter 414, and Minn. R. 6000 (2015).

3. A municipality's attempt to annex property by orderly annexation is final on the effective date specified in the Order of Annexation approved by the Chief Administrative Law Judge.[15]

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[13] October 27, 2015 correspondence from ISD #110, Waconia Public Schools.
[14] November 9, 2015 correspondence signed by Lane Braaten, Community Development Director for the City.
[15] Minn. Stat. § 414.0325, subd. 4.

4. The Municipal Boundary Adjustment Act authorizes the Chief Administrative Law Judge to scrutinize proposed municipal boundary changes "to protect the integrity of land use planning in municipalities and unincorporated areas so that the public interest in efficient local government will be properly recognized and served."[16]

5. The orderly annexation statute provides:

> If a joint resolution designates an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration by the chief administrative law judge is necessary, the chief administrative law judge may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the resolution.[17]

6. Minn. Stat. § 414.036 sets forth the following with regard to the reimbursement of townships for the lost value of property annexed into an adjoining municipality:

> Unless otherwise agreed to by the annexing municipality and the affected town, when an order or other approval under this chapter annexes part of a town to a municipality, the order or other approval must provide a reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order. The reimbursement shall be completed in substantially equal payments over not less than two nor more than eight years from the time of annexation. The municipality must reimburse the township for all special assessments assigned by the township to the annexed property, and any portion of debt incurred by the town prior to the annexation and attributable to the property to be annexed but for which no special assessments are outstanding, in substantially equal payments over a period of not less than two or no more than eight years.

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

ORDER

1. Pursuant to Minn. Stat. § 414.0325, the Joint Resolution properly supports this Order.

2. Pursuant to the terms of the Joint Resolution and this Order, the Property is **ANNEXED** to the City **effective as of the Chief Administrative Law Judge's receipt of supplementation of the record**, from either or both of the parties, to sufficiently establish that the Township has legitimate and lawful authority to charge the City and/or

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[16] Minn. Stat. § 414.01, subd. 1b(3).
[17] Minn. Stat. § 414.0325, subd. 1(h).

the School District a fee of $500 per acre for tax reimbursement for the loss to the Township of the Property, which receipt will be acknowledged by further Order. The provided supplementation shall specifically address the following:

a. Identify whether the Township considers the annexation taxation reimbursement payment to constitute a tax, administrative fee, contracted payment or other authorized source of revenue, and specify all statutory or constitutional authority the Township relies upon in support of its authority to charge and collecting the annexation taxation reimbursement payment.

b. If the Township has adopted, by resolution or other official governmental action, any levy, assessment, ordinance or administrative fee schedule memorializing an annexation reimbursement policy, provide a copy showing proof of adoption.

c. Identify all property taxes paid or payable to the Township with respect to the Property, in the following respects:

a) Paid by the School District on Parcel 2 since 2006;

b) Paid by the School District on Parcel 1 since its purchase of the property in 2015; and

c) Paid by the prior owner(s) of Parcel 1 from 2006 through the date of its sale to the School District in 2015.

Dated: December 9, 2015

TAMMY L. PUST
Chief Administrative Law Judge

MEMORANDUM

This is the second filed proceeding whereby the parties seek to detach certain Property from the Township and annex it to the City. The requested annexation apparently meets an important public purpose: expansion of the community's public schools. The School District is anxious for the annexation to be finalized as its delay is causing financial hardship. Nevertheless, the Township and the City have chosen to delay the proceedings by voluntarily withdrawing their prior annexation-by-ordinance filing and refiling the present action under the orderly annexation statute. The only apparent purpose for this party-initiated delay is the Township's refusal to identify its lawful authority

to charge $500 per acre to a property owner wishing to avail itself of statutorily-allowed processes, notwithstanding that the Township was ordered to do so.

I. Minnesota's Boundary Adjustment Act Does Not Authorize the $500 Per Acre Fee.

Minn. Stat. § 414.036 defines the parameters of statutorily authorized compensation attributable to the loss of property annexed into an adjoining municipality:

> **Unless otherwise agreed to by the annexing municipality and the affected town**, when an order or other approval under this chapter annexes part of a town to a municipality, the order or other approval must provide a **reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order**. The reimbursement shall be completed in substantially equal payments over not less than two nor more than eight years from the time of annexation. The municipality must reimburse the township for all special assessments assigned by the township to the annexed property, and any portion of debt incurred by the town prior to the annexation and attributable to the property to be annexed but for which no special assessments are outstanding, in substantially equal payments over a period of not less than two or no more than eight years.[18]

By its terms, the statute directs that a municipality which loses property through annexation is entitled to "reimbursement … for all or part of the taxable property annexed." The term "reimbursement" means "to pay back or compensate (another party) for money spent or losses incurred."[19] Thus, to be "reimbursed" a municipality losing property to annexation must have incurred some loss. Because the municipality does not own the property being annexed, it is not losing the monetary value of the subject property; it never owned that value and therefore could not lose it. Instead, and at most, a municipality losing property to annexation loses the real estate taxes it has in the past collected from that property.

In light of this statutory directive, by order the Chief Administrative Law Judge questioned the parties' legal authority to collect a $35,000 annexation tax reimbursement fee from the School District for the annexation of property that: (1) is publicly owned; and (2) generates no taxes and thus does not support any claim for "reimbursement" of foregone taxable value. Rather than respond substantively to the Order, the City and the Township voluntarily withdrew the annexation-by-ordinance proceeding.

Contrary to their assertions, the parties' withdrawal of the former proceeding does not "moot" the legal issue presented by Minn. Stat. § 414.036. The statutory directive applies to orderly annexation proceedings in the same manner that it applies in

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[18] Minn. Stat. § 414.036 (emphasis added).

[19] *American Heritage Dictionary of the English Language, Fifth Edition* (2011).

annexation-by-ordinance proceedings.

Although neither party has stated such in its filings, it may be that they are relying on the "otherwise agreed" language of Minn. Stat. § 414.036 to avoid the result set forth in the statutory analysis detailed above. That is, they may read the statute to require reimbursement based on foregone taxes only in situations in which the parties have not "otherwise agreed" to demand payments from whomever and at whatever amounts they believe to be appropriate. If the Township and the City hold this position, it is not supported by the rules of English grammar[20] or Minnesota's rules of statutory construction.

Grammatically, Minn. Stat. § 414.036 is worded as follows:

> Unless otherwise agreed to by the annexing municipality and the affected town, when an order or other approval under this chapter annexes part of a town to a municipality, the order or other approval must provide a reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order.

The sentence consists of three clauses: an independent clause (highlighted in blue); and two dependent clauses (one highlighted in green; one highlighted in yellow). Because both of the dependent clauses begin with a subordinate conjunction ("unless" and "when") each dependent clause modifies the independent clause.[21]

The independent clause can stand on its own; it has a subject (*order or other approval*), verb (*must provide*), and direct object (*reimbursement … for all or part of the taxable property*), plus other modifiers of those primary parts of speech. In conformity with the rules of grammar, in essence it commands as follows: *the order must provide a reimbursement for all or part of the taxable property*.

The dependent clauses are exceptions: they limit the independent clause. Under the rules of statutory construction,[22] "provisos," or statutory exceptions,[23] "shall be construed to limit rather than to extend the operation of the clauses to which they refer." Under this authority, the exception in the first independent clause does not provide broad authority for avoiding the directive of the dependent clause altogether. Instead, it changes "*the order must provide a reimbursement for all or part of the taxable property*" into "*unless otherwise agreed, the order must provide a reimbursement for all or part of the taxable*

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[20] *See* Minn. Stat. § 645.08, subd. 1 (2014) ("In construing the statutes of this state, …(1) words and phrases are construed according to rules of grammar and according to their common and approved usage….")
[21] PURDUE OWL ENGAGEMENT, *1.2: Coordination and Subordination*, https://owl.english.purdue.edu/engagement/2/1/37/ (last updated Aug. 7, 2009).
[22] Minn. Stat. § 645.19 (2014).
[23] THE OFFICE OF THE REVISOR OF STATUTES, MINNESOTA REVISOR'S MANUAL (2013), at 290, § 8.18, *available at* https://www.revisor.mn.gov/office/2013-Revisor-Manual.pdf.

property."

Apparently ignoring these rules, the parties seem to read the exception ("unless otherwise agreed") to expand the effect of the dependent clause. That is, they rely on the "unless otherwise agreed" phrase to change "a reimbursement for all or part of the taxable property" into "a reimbursement [based on whatever other criteria the parties have] "otherwise agreed." This reading is not in compliance with Minnesota's rules of statutory construction, as it allows the exception ("unless otherwise agreed") to expand the effect of the dependent clause rather than limit it.

Reading the statute within the governing rules, it is clear that the parties can agree that they prefer not to have the issue of reimbursement addressed in the Annexation Order. Choosing not to have the reimbursement provision memorialized in the Annexation Order does not, however, allow the parties to avoid the statute's measurement criteria for reimbursement charges ("all or part of the taxable property annexed") and superimpose their own measurement criteria ($500 per acre). Therefore, it appears that the Township's annexation tax reimbursement charge of $500 per acre violates the statute's direction that the municipality be reimbursed merely for "all or part of the taxable property annexed."

II. The Township Has Not Identified Other Legal Authority in Support of the Fee.

As they have failed to identify any authority within Minn. Stat. § 414.036, or any other provision of Chapter 414, in support of the practice of charging a per acre annexation reimbursement fee, neither have the Township or the City identified any other authority in law for this practice. "[M]unicipalities have no inherent powers and possess[es] only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred."[24] The Minnesota legislature has authorized municipalities to generate revenue by tax or by fee.[25] With

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[24] *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 820 (Minn. 1966); *N. States Power Co. v. City of Granite Falls*, 463 N.W.2d 541, 543 (Minn. Ct. App. 1990).

[25] *See* Minn. Stat. §§ 366.01-.27, 412.251, 462.353, subd. 4(a) (2014). An overview of the general view of municipal revenue generation options is set forth in *SDCO St. Martin, Inc. v. City of Marlborough*, 5 F.Supp.3d 139, 142-43 (D. Mass. 2014), as follows:

> "Cities and towns have no independent power of taxation." *Opinion of the Justices,* 378 Mass. 802, 393 N.E.2d 306, 310 (1979). "A municipality does not have the power to levy, assess, or collect a tax unless the power to do so in a particular instance is granted by the Legislature." *Silva v. City of Attleboro,* 454 Mass. 165, 908 N.E.2d 722, 725 (2009).
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> In addition to general taxes, a municipality may also charge fees for the use of specific municipally provided services or as an exercise of police power. *See Denver St. L.L.C. v. Town of Saugus,* 462 Mass. 651, 970 N.E.2d 273, 274 (2012). "There are two kinds of fees, 'user fees based on the rights of the entity as proprietor of the instrumentalities used' and 'regulatory fees,' 'founded on police power to regulate particular businesses or activities.' " *Id.* (quoting *Emerson College v. City of Boston,* 391 Mass. 415, 462 N.E.2d 1098, 1105 (1984)). Sewer charges would be an example of a lawful user fee. *See Town of Winthrop v. Winthrop Housing Authority,* 27 Mass. App. Ct. 645, 541 N.E.2d 582, 583–84 (1989).

respect to levying or assessing taxes, municipalities only have the authority "granted to them by Constitution or the statutes."[26] Neither a town's general police powers nor its statutory authority to engage in land use planning activities provides any additional authority to generate revenue outside of its existing ability to levy taxes or impose administrative fees.[27]

In an effort to avoid the tax or fee issue, the Township may insist that its reimbursement charge is authorized as a matter of contract. Any such effort would be would be problematic on many levels. First, the exercise of purely governmental functions is generally done by ordinance; it is the "business or proprietary powers of [a] municipality" that lend themselves to contract.[28] Exercising discretion to support, or oppose, a proposed annexation is a purely governmental function. Second, it is clear that the School District is not a party to the Orderly Annexation Agreement or any other contract relevant to this proceeding. In fact, the record indicates that the School District did not reach a "meeting of the minds"[29] with the Township with regard to the fee; it appears that it was merely forced to hand over $35,000 in public funds in order to "purchase" the Township's acquiescence to the initial annexation-by-ordinance proceeding.

The Township has very clearly imposed a $500 per acre charge against either the City or the School District.[30] There is no evidence in the record substantiating the Township's legal authority to do so, either as a levied tax or an administrative fee duly imposed by ordinance enacted in a public meeting. Therefore, the record currently does not support a finding that the charge is authorized by Minnesota law.

III. The Orderly Annexation Statute Allows the Conditions Included in this Order Approving Annexation.

> Whether a charge is a lawful fee or an unlawful tax "must be determined by its operation rather than its specifically descriptive phrase." *Denver Street,* 970 N.E.2d at 275. In *Emerson College,* the Supreme Judicial Court identified the three traits that distinguish fees from taxes.
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> > Fees "[1.] are charged in exchange for a particular government service which benefits the party paying the fee in a manner 'not shared by other members of society' [;] ... [2.] are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge" [;] ... "and" [3.] ... are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses.
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> *Denver St.,* 970 N.E.2d at 275 (alteration in original) (quoting *Emerson College,* 462 N.E.2d at 1105).

[26] *State v. City of Ely*, 151 N.W. 545, 546 (Minn. 1915) (citing *Sewall v. City of St. Paul*, 20 Minn. 511 (Gil. 459); *State v. District Court*, 44 Minn. 244, 46 N. W. 349; 27 Am. & Eng. Enc. (2d Ed.) 869)).

[27] See *Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681, 683-84 (Minn. 1997); *Great W. Indus. Park, LLC v. Randolph Twp.*, 853 N.W.2d 155, 157 (Minn. Ct. App. 2014).

[28] *Borough of Belle Plaine v. N. Power Co.,* 142 Minn. 361, 172 N.W. 217 (1919)

[29] *Minneapolis Cablesystems v. City of Minneapolis*, 299 N.W.2d 121, 122 (Minn. 1980).

[30] It is clear from the record that the School District paid the charge; however, it is not clear whether the School District paid the charge on behalf of the City or on its own behalf.

Minn. Stat. § 414.0325 allows a city and a township to jointly agree to the orderly annexation of property upon specified terms. The orderly annexation statute recognizes that municipal authorities, working together, are well positioned in appropriate cases to determine what property is "appropriate for annexation, either currently or at some point in the future, pursuant to the negotiated terms and conditions set forth in [a] joint resolution."[31] The statute thus sets forth a streamlined process whereby municipalities can designate unincorporated property as "in need of orderly annexation," and then seek an order of annexation relative to portions or the total of the designated area over time, in compliance with the negotiated terms of the joint resolution. Prior public notice of this action is not required if the owners of all property within the designated orderly annexation area have petitioned for annexation.[32]

While the filing of the joint resolution confers jurisdiction on the Chief Administrative Law Judge over the terms of the joint resolution and annexations in the designated area, the parties to a joint resolution can limit that jurisdiction in two ways. First, by including specific language in the joint resolution the parties can foreclose the Chief Administrative Law Judge from altering property boundaries in annexation matters.[33] Second, the parties to a joint resolution can avail themselves of the following statutory provision:

> If a joint resolution designates an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration by the chief administrative law judge is necessary, the chief administrative law judge may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the resolution.[34]

The Chief Administrative Law Judge is mindful that the Joint Resolution in question contains a verbatim recitation of the statutory language allowing "review and comment" but noting that "no consideration by the chief administrative law judge is necessary."[35]

Some may argue that the "review and comment" provision of the statute provides an effective substitute for a direct judicial examination and identification of the lawful basis for the Township's fee-charging practice, in that the comments contained in an annexation order are publicly available for review and discussion. Experience has proven otherwise. The Office of Administrative Hearings, and the formerly designated authorities in municipal boundary adjustment matters including the Department of Administration,

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[31] Minn. Stat. § 414.0325, subd. 1(b).
[32] *Id.*, subd. 1b.
[33] *Id.*, subd. 1(g).
[34] *Id.*, subd. 1(h). Note: In an unpublished decision of the Minnesota Court of Appeals, this provision has been found to create "a legal duty to order the annexation of the property. OAH [can] review and comment on the resolution for the property at issue, but it [is] required to order the annexation within 30 days." *City of Waite Park v. Minnesota Office of Admin. Hearings*, A05-1888, 2006 WL 1985457, at *6 (Minn. Ct. App. July 18, 2006). Unpublished decisions of the Court of Appeals are not precedential and should not be cited as binding precedent. *Vlahos v. R&I Const. of Bloomington, Inc.*, 676 N.W.2d 672, 676 (Minn. 2004); *see* Minn. Stat. § 480A.03, subd. 3(c) (2014).
[35] Minn. Stat. § 414.0325, subd. 1(h).

Office of Strategic and Long-Range Planning and the Minnesota Municipal Board, have been issuing written comments on the practice of townships charging fees outside the terms of the statute at least as far back as 2004,[36] to no avail. Over time, these comments have raised at least two concerns relative to the application of Minn. Stat. § 414.036: (1) the statute allows reimbursement only "for all or part of the taxable property," and yet certain townships charge a standardized per acre fee no matter the taxable value of the subject property; and (2) the statute defines reimbursement as "between the municipality and the town," yet many townships directly charge the per acre fee to the property owner. From the fact that these processes continue, it seems reasonable to conclude that the municipalities that engage in this practice, including Waconia Township, have not re-examined it in light of the dictates of Minn. Stat. § 414.036 as identified in the "review and comment" provisions of earlier annexation orders.

While the statute appears to require the Chief Administrative Law Judge to "order the annexation in accordance with the terms of the resolution," the statute also confers jurisdiction on the Chief Administrative Law Judge "over the various provisions in [the joint resolution."][37] In the present case, the Joint Resolution provides: "The Township acknowledges that, by agreement of the parties, all tax reimbursement payments required by Minnesota Statues [sic] § 414.036 have been satisfied."[38] As the Chief Administrative Law Judge has jurisdiction over this provision of the Joint Resolution, she is entitled to request supplementation of the record regarding how the $500 per acre charge constitutes "reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order," in that the "[annexation] order must" provide for such.[39] It is difficult to imagine how the Property, which generates no property taxes to the Township because it is owned by a public entity, could be required to "reimburse" the Township at the rate of $500 per acre for lost taxes. It is just as difficult to imagine how it is that the $35,000 paid by the School District constitutes reimbursement "between the municipality and the town" as the statute allows.

Though the Joint Resolution indicates that the "taxation reimbursement" is acknowledged "by agreement of the parties," the School District's filing in the annexation-by-ordinance proceeding, recited in part below, legitimately draws that characterization into question:

> As part of that process we paid a fee of $35,000, $500 per acre times 70 acres, to the township for the right to move the property from the township to the city. We did not agree with that assessment and asked to have the assessment waived. We were told no that we would have to pay the assessment and that they would not waive it. When we asked for a justification for the assessment they told us that they did not have to justify

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[36] *See In the Matter of the Orderly Annexation Agreement Between the City of Belle Plaine and the Town of Belle Plaine Pursuant to Minnesota Statutes 414*, OA-1042-1 (Nov. 10, 2004).
[37] Minn. Stat. § 414.0325, subd. 1(c).
[38] Joint Resolution, at 2, ¶ 5.
[39] Minn. Stat. § 414.036.

the assessment. We paid the fee to move the annexation process along.[40]

While there are many descriptors that might be reasonably applied to the School District's position on the actions of the Township as described above, "agreement of the parties" does not appear to be one of them. Nor does the demanded, and paid, check for $35,000 provide evidence in the record that the tax reimbursement payment was made in "substantially equal payments over not less than two nor more than eight years from the time of annexation" as required by the statute. Therefore, the record is inadequate at present to fully support a finding of legal compliance, which is inherent in the issuance of any Order by the Chief Administrative Law Judge.

The orderly annexation statute provides the Chief Administrative Law Judge with the authority to make an annexation order effective at a date later than the date of the Order's execution.[41] Accordingly, the Chief Administrative Law Judge has issued this Order Approving Annexation in which the parties are required to supplement the record with regard to the Township's legal authority to demand payment from the School District of the $500 per acre fee, and has made the Order Approving Annexation effective upon the date that legally sufficient supplementation is received and acknowledged.

T. L. P.

[40] October 27, 2015 correspondence from ISD #110, Waconia Public Schools.

[41] *See* Minn. Stat. § 414.0325, subd. 4 ("The chief administrative law judge's order shall be effective upon the issuance of the order **or at such later time as is provided in the order**." (Emphasis added.)