



Offices in
Minneapolis
Saint Paul
St. Cloud

470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300 telephone
(612) 337-9310 fax
www.kennedy-graven.com
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By: OAH on May 7, 2019

Andrew M. Biggerstaff
Attorney at Law
Direct Dial (612) 337-9276
email: abiggerstaff@kennedy-graven.com

May 6, 2019

The Honorable Tammy L. Pust
Chief Judge, Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

Re: Ordering Annexation of Designated Property in Grey Cloud Township

Your Honor:

This firm represents the city of St. Paul Park, Minnesota (the "City"). I am writing to you to request that you order the annexation of certain designated property currently located in Grey Cloud Township, Minnesota, (the "Township") pursuant to a previously-approved settlement agreement between the City and the Township.

On December 21, 2004, the owner of property located within Grey Cloud Township filed a petition with the Office of Administrative Hearings requesting annexation of their property into the City. The administrative law judge who handled the matter initially concluded that annexation was appropriate, and the Township brought a court action seeking to invalidate this action. The district court upheld the ALJ's findings and order, but on appeal, the court of appeals concluded that the ALJ improperly added certain lands to the area to be annexed without complying with the statutory notice requirements.¹ The court of appeals remanded the matter with instructions that the matter be handled consistent with the court's opinion (i.e., that the statutory notice procedures be observed).

Upon remand, the ALJ re-noticed the matter and proceeded with the annexation. Upon request of the parties, the ALJ issued an order annexing a certain portion of the property included in the request on or around June 4th, 2008. The ALJ further ordered that the remaining parcels of land would be annexed pursuant to the terms contained in a Stipulation of Settlement (the "Stipulation") signed by both the City and the Township.

The Stipulation provided, in part, for the future annexation of certain real property from the Township into the City upon the occurrence of a certain event. According to paragraph 5 of the Stipulation, the parties agreed, and the ALJ approved, that

[a]t any time after the City orders the preparation of a report, pursuant to Minn. Stat. § 429.031, Subd. 1(b) to study the feasibility of a public improvement project that will impact any area within the subject property, the City may annex all of the subject property by filing a resolution with the Chief Administrative Law Judge declaring

¹ The legal issue presented on appeal was the ALJ's inclusion of certain lands into the annexation area which was not previously included in the required annexation notice.

that the subject property is annexed to the City, and that said resolution is brought pursuant to this Agreement. Thereafter, the Chief Administrative Law Judge must order annexation of the subject property upon finding the annexation to be consistent with this Stipulation and the Order of the Administrative Law Judge.

As evidenced in Resolution 1576, which was adopted by the City Council on April 15, 2019, the City has ordered a feasibility report, pursuant to Minn. Stat., § 429.031, subd. 1(b), for an area which includes improvements which will impact the property to be annexed. The City Council, by adopting Resolution 1576, further found that the annexation was consistent with the Stipulation and the Order of the Administrative Law Judge, and therefore declared the land annexed pursuant to the Stipulation.

Based on the foregoing, the City would respectfully request that you immediately order the annexation of the property, which is legally described on Exhibit A, attached hereto, into the city of St. Paul Park.²

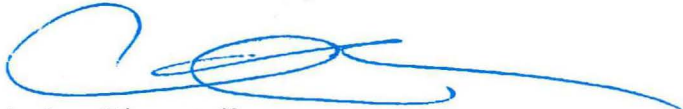
Attached to this letter, as Exhibit B, are the following documents:

1. A certified copy of Resolution 1576, adopted by the St. Paul Park city council on April 15, 2019;
2. A copy of the 2007 Court of Appeals opinion remanding the annexation matter to the district court;
3. A copy of the 2008 ALJ order and Stipulation of Settlement signed by the parties; and
4. A copy of Resolution 1560, a Resolution ordering a feasibility study for a project which impacts the subject area, adopted by the St. Paul Park city council on January 22, 2019.

Please feel free to contact me with any questions that you may have.

Sincerely,

KENNEDY & GRAVEN, CHARTERED



Andrew Biggerstaff
Attorney for the City of St. Paul Park

cc: Kevin Walsh, City Administrator, by email
Ronald H. Batty, City Attorney, by email

² This subject property is also identified in Exhibit A to the Stipulation.

EXHIBIT A

Legal Description of Lands to be Annexed

Island 1

Lots 1 through 7, inclusive, Block 115, Wertheimer's First Addition, Washington County, Minnesota;

Lots 1 through 11, inclusive, and Lots 21 through 30, inclusive, Block 116, St. Park Division No. 4, Washington County, Minnesota;

Lots 1 through 30, inclusive, Block 117, St. Park Division No. 4, Washington County, Minnesota;

Lots 1 through 30, inclusive, Block 118, St. Park Division No. 4, Washington County, Minnesota; and

Including all streets and alleys, and vacated streets and alleys, adjacent to all of the above described Lots.

Island 2

A tract of land in the Northeast quarter (NE ¼) of the Southwest quarter (SW ¼) of Section Thirteen (13), Township Twenty-seven (27) North, Range Twenty-two (22) West, described as follows, to-wit: Beginning at the intersection of the East and West Quarter line of said Section Thirteen (13) with the center line of County Road No. 75 as now established; thence West along the East and West Quarter line 401.94 feet to an iron stake; thence South 7 degrees East 254.90 feet to an iron stake, thence East 159.94 feet to an iron stake; thence North 220 feet to an iron stake; thence East 214.89 feet to the center line of County Road No. 75; thence North 7 degrees West along the center line of County Road No. 75 a distance of 33.25 feet to the point of beginning. Subject to rights of County Road No. 75. Containing 1.2 acres more or less.

EXHIBIT B

See following pages

CITY OF ST. PAUL PARK
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 1576

**RESOLUTION ORDERING THE ANNEXATION OF CERTAIN REAL PROPERTY
FROM GREY CLOUD ISLAND TOWNSHIP PURSUANT TO 2008 STIPULATION OF
SETTLEMENT AND ORDER**

WHEREAS, the owner of certain real property located in Grey Cloud Island township (the "Township") previously filed a petition for annexation (the "Petition") pursuant to Minnesota Statutes, section 414.031; and

WHEREAS, the city of St. Paul Park (the "City") supported the Petition and the Township objected to the Petition, triggering a contested hearing pursuant to state law; and

WHEREAS, the Office of Administrative Hearings held a contested case hearing on the Petition in 2005, and issued an order approving the annexation (the "2005 Order"); and

WHEREAS, the Township appealed the 2005 Order to the Minnesota court of appeals on the basis that the administrative law judge (the "ALJ") improperly added parcels to the annexation area without complying with the required statutory notice; and

WHEREAS, the court of appeals reversed and remanded to the ALJ, agreeing that the ALJ had failed to satisfy the required statutory notice, as outlined in the 2007 court of opinions decision attached hereto as Exhibit A; and

WHEREAS, the ALJ subsequently satisfied the notification requirements and conducted a new hearing on or around April 22, 2008; and

WHEREAS, the ALJ issued an order on or around June 4, 2008 whereby the ALJ approved the annexation (the "2008 Order"), subject to a stipulated settlement entered into by the City and the Township (the "Settlement Agreement"), copies of which are attached hereto as Exhibit B; and

WHEREAS, the Settlement Agreement provided that certain real property identified therein (the "Subject Property") would be annexed to the City at such time as the City orders the preparation of a report to study the feasibility of a public improvement project that will impact any area within the Subject Property (the "Feasibility Report"); and

WHEREAS, the Settlement Agreement further provided that upon the City's ordering of the Feasibility Report, the City shall file a resolution with the Chief Administrative Law Judge declaring that the Subject Property is annexed to the City, and thereafter the Chief Administrative Law Judge "must order annexation of the subject property upon finding the annexation to be consistent" with the Settlement Agreement and the 2008 Order; and

WHEREAS, on January 22, 2019, the City adopted Resolution Number 1560 ordering the Feasibility Report for the Forest Edge Development Project, which includes improvements which will impact the Subject Area, a copy of which resolution is attached hereto as Exhibit C; and

WHEREAS, the annexation is consistent with the 2008 Order and Settlement Agreement.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of St. Paul Park, Washington County, Minnesota as follows:

1. Pursuant to the terms of the 2008 Order and the Settlement Agreement, the Subject Property is hereby declared annexed into the City.
2. The City Clerk shall transmit a copy of this Resolution to the Chief Administrative Law Judge with a request that she order such annexation as provided in the 2008 Order and Settlement Agreement.
3. Pursuant to the 2008 Order and the Settlement Agreement, the Township shall retain 100% of the real property taxes previously levied and payable in 2019 for the Subject Property. Further, pursuant to the 2008 Order and the Settlement Agreement, the City shall receive all taxes levied in 2019 by the City and the Township which are payable in 2020 or thereafter for the Subject Property.
4. No other payments shall be made by the City to the Township in conjunction with the annexation of the Subject Property.

ADOPTED this 15th day of April, 2019 by the City Council of St. Paul Park, Minnesota.


Sandi Dingle, Mayor

Attest:



Sharon Ornquist, City Clerk

EXHIBIT A

2007 Court of Appeals Opinion

In re the Matter of the Petition for the Annexation of Land to the City of St. Paul Park Pur... Page 1 of 11

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

STATE OF MINNESOTA IN COURT OF APPEALS A06-1738

In re the Matter of the Petition for the
Annexation of Land to the City of St. Paul Park
Pursuant to Minnesota Statute 414 (A-7212)

Town of Grey Cloud Island,
Appellant,

vs.

R. Gordon Nesvig,
Respondent,

D. R. Horton, Inc. - Minnesota,
Respondent,

City of St. Paul Park,
Respondent.

Filed July 31, 2007
Affirmed in part, reversed in part, and remanded
Hudson, Judge

Washington County District Court
File No. C2-05-7924

David T. Magnuson, Magnuson Law Firm, 333 North Main Street, Suite 202, Stillwater,
Minnesota 55082 (for appellant)

R. Gordon Nesvig, Box 255, Cottage Grove, Minnesota 55016 (pro se/co-counsel for respondent
Nesvig)

Laurie J. Miller, Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis,
Minnesota 55402 (for respondent D. R. Horton, Inc. - Minnesota and co-counsel for respondent
Nesvig)

James F. Shiely, Jr., Gearing & Shiely, P.A., 500 Degree of Honor Building, 325 Cedar Street,
St. Paul, Minnesota 55101 (for respondent City of St. Paul Park)

Considered and decided by Halbrooks, Presiding Judge; Lansing, Judge; and Hudson,
Judge.

<http://www.lawlibrary.state.mn.us/archive/ctapun/0707/opa061738-0731.htm>

5/27/2008

UNPUBLISHED OPINION

HUDSON, Judge

Appellant Town of Grey Cloud Island challenges the district court's order of July 19, 2006, affirming the Administrative Law Judge's (ALJ's) order allowing respondent City of St. Paul Park to annex certain land. Appellant argues that (1) the substantial-evidence test for annexation is not satisfied when only about one-quarter of the land in question is buildable and is part of the national park system; and (2) the ALJ's increase in the amount of land to be annexed is contrary to law. Because substantial evidence existed to support annexation, we affirm in part. But because the statutory procedures for annexing additional land were not followed, we reverse in part and remand.

FACTS

Respondent Gordon Nesvig (hereinafter "Nesvig") owns approximately 308 acres located in appellant Grey Cloud Island Township (hereinafter "Township"). Specifically, the property at issue is located immediately to the south of the City of St. Paul Park (hereinafter "City") on the Mississippi River and is bordered on the north and east by the City of St. Paul Park, on the west by the Dakota County line, and on the south by the Township of Grey Cloud Island. Respondent D.R. Horton, Inc. (hereinafter "Horton"), a developer, has an option to purchase the subject property from respondent Nesvig. The City, together with Horton and Nesvig, has been engaged in planning for development of the subject property for several years. The proposed development of 106 acres of the subject property consists of 653 units of mixed housing: single-family homes, twinhomes, townhomes, and multi-family units, including condominiums for senior housing. The rest of the property (about 200 acres) would be left natural. The ALJ found that the natural-resources inventory performed as part of the required Alternative Urban Area-wide Review (AUAR) determined "that a majority of the ecological settings on the property were moderate to very poor in condition, or very highly degraded." For example, the forested bluffs along the river were found to be highly degraded; there were high levels of erosion; and invasive species were causing further erosion.

The subject property is located within the Mississippi National River and Recreation Area (MNRRA), and is part of the National Park System. The MNRRA is a federal protection program administered in Minnesota through the Minnesota Critical Area Act, Minn. Stat. §§ 116G.01 -- .14 (2004), which has been implemented by Executive Order 79-19. The property is also located within the Mississippi River Corridor Critical Area, which was established by the 1979 executive order. The executive order also designated the area a “rural open space district.” The executive order mandated that rural open-space districts “shall be used and developed to preserve their open, scenic and natural characteristics and ecological and economic functions.” Exec. Order No. 79-19, 3 S.R. 1680, 1693 (Mar. 12, 1979). The executive order does not prohibit residential development in a rural-open-space district. “Local government units are directed to protect the Critical Area’s resources, prevent and mitigate irreversible damage, and enhance its public value.” *MN Ctr. for Envtl. Advocacy v. City of St. Paul Park*, 711 N.W.2d 526, 529 (Minn. App. 2006).

In March 2003, the City and the Township adopted resolutions providing for environmental review through an AUAR; a draft AUAR was completed in May 2003. In November 2003, a final AUAR was completed and submitted to the Environmental Quality Board (EQB)—the state entity responsible for ensuring the effectiveness of the environmental-review rules. Comments submitted during the review process from a total of 20 different agencies, local units of government, nonprofit organizations, and individual citizens were attached in the appendix of the AUAR. The Minnesota Department of Natural Resources (DNR) objected to the final AUAR in March 2004, but it withdrew all objections in May 2004 after further discussions and/or meetings with the RGU (responsible governmental unit, the City). The final draft of the AUAR was adopted by the RGU on May 17, 2004. The Minnesota Center for Environmental Advocacy (MCEA) filed a complaint challenging the final AUAR, arguing that the RGU’s decision of the adequacy of the AUAR was arbitrary and capricious and not supported by substantial evidence or contrary to applicable law. The district court granted summary judgment to the City. On appeal, this court affirmed in a divided opinion. *MN Ctr. for Envtl.*

On December 21, 2004, respondents Nesvig and Horton filed a petition with the Minnesota Office of Municipal Boundary Adjustments under Minn. Stat. § 414.031 (2004),
[1]
seeking annexation of the property by the City. Respondents had the support of the City, which adopted a resolution supporting the petition for annexation on October 18, 2004. See Minn. Stat. § 414.031, subd. 1(a)(3), (c) (2004) (governing initiation of a proceeding for the annexation of unincorporated property abutting a municipality).

In a letter dated February 28, 2005, the deputy commissioner of the Department of Administration delegated a final decision in this matter to the Office of Administrative Hearings pursuant to Minn. Stat. § 414.12, subd. 2(a) (2004). Appellant Township objected to the annexation petition, and a contested agency hearing was held before an ALJ from July 25 through July 28, 2005. The ALJ's order states that at the hearing, Nesvig proposed that his homestead and certain so-called "island" lots be included in the area proposed for annexation. The Metropolitan Council staff suggested that the "island" lots, which would be created if the original annexation petition was granted, be included in the annexation. The "islands" were located between the property proposed for annexation and the City of St. Paul Park. After the hearing, in an order issued on November 2, 2005, the ALJ approved the annexation. In accordance with the suggestions from Nesvig and the Metropolitan Council, the ALJ added Nesvig's 30-acre home parcel and two additional parcels ("islands") to the annexed land described in the petition. The hearing was not recessed and notice was not republished for the addition of these parcels to the annexation order pursuant to Minn. Stat. § 414.031, subd. 4(a) (2004).

Appellant challenged the ALJ's order of November 2, 2005, in district court under Minn. Stat. § 414.07 (2004). The district court order of July 19, 2006, affirmed the ALJ on all issues. Appellant filed this appeal, and this court issued an order construing the appeal to be from the district court order of July 19, 2006.

DECISION

I

Under Minnesota law, there are 14 factors that must be considered regarding an annexation petition. Minn. Stat. § 414.031, subd. 4(a) (2004). Annexation may be ordered, based on the factors listed in subdivision 4(a), upon finding: “(1) that subject area is now, or is about to become, urban or suburban in character; (2) that municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare; or (3) that the annexation would be in the best interest of the subject area.” *Id.*, subd. 4(b). “If only part of a township is to be annexed, the director shall consider whether the remainder of the township can continue to carry on the functions of government without undue hardship.” *Id.*, subd. 4(c).

Appellant Township argues that the record does not contain substantial evidence to support the ALJ’s order annexing the property, because (1) the property cannot become urban or suburban, as 75% of the property is unbuildable; and (2) the property cannot be developed as planned due to its environmental and land-use designations. An order of annexation enjoys a presumption of correctness. *McNamara v. Office of Strategic & Long Range Planning*, 628 N.W.2d 620, 625 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001). “Therefore, on review, we will not interfere with the decision unless the decision is either based on an erroneous theory of law or is not supported by substantial evidence in the record.” *Id.* (citing *Town of Forest Lake v. Minnesota Mun. Bd.*, 497 N.W.2d 289, 291 (Minn. App. 1993), *review denied* (Minn. Apr. 29, 1993)). Substantial evidence is defined as: “(1) more than a scintilla of evidence; (2) such that a reasonable mind might accept it as adequate to support a conclusion; or (3) more than ‘some evidence’ and more than ‘any evidence.’” *McNamara*, 628 N.W.2d at 627.

The reviewing court may not substitute its decision for that of the agency. *Township of Thomastown v. City of Staples*, 323 N.W.2d 742, 744 (Minn. 1982). When a district court acts as an appellate tribunal with respect to an agency decision, this court will independently review the agency’s record. *In re Hutchinson*, 440 N.W.2d 171, 175 (Minn. App. 1989), *review denied* (Minn. Aug. 9, 1989).

Here, the ALJ considered all 14 factors in its order, making extensive findings and supporting these findings with citations to the record. And although Minn. Stat. § 414.031, subd.

In re the Matter of the Petition for the Annexation of Land to the City of St. Paul Park Pur... Page 6 of 11
4(b), requires satisfaction of only one of the three annexation criteria, the ALJ found that all three were met: “[T]he subject area described in the Petition for Annexation is about to become urban or suburban in character. . . . [M]unicipal government in the area proposed for annexation in the petition is required to protect the public health, safety and welfare. . . . [A]nnexation to the city of the area described in the petition is in the best interest of the subject area.”

Appellant argues that there is not substantial evidence to support the ALJ’s finding on the first factor of Minn. Stat. § 414.031, subd. 4(b), regarding urbanization or suburbanization of the area. Appellant did not brief the other two criteria for annexation. Appellant has consequently waived appellate consideration of those issues. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (holding that issues not briefed on appeal are waived). Because the statute only requires the ALJ to find that at least one of the criteria is met, even if appellant were to succeed on its “urbanization” argument, the annexation is still supported by the other two criteria, which the ALJ found were also met and which appellant does not challenge. *See* Minn. Stat. § 414.031, subd. 4(b)(2, 3). Nevertheless, we have considered appellant’s urbanization-factor arguments and conclude that they are unpersuasive.

“Urban or Suburban” Factor

Appellant argues that there is not substantial evidence in the record to support the ALJ’s finding that the subject area is about to become urban or suburban, contending that only 74 of the 300 acres are buildable. Respondents argue that 106 acres are buildable and that, in any event, there is no requirement that unbuildable land remain under the control of the Township. The district court agreed with respondents, explaining that “[o]ne of the factors to be considered is the quantity of land and the natural terrain in the area.” *See* Minn. Stat. § 414.031, subd. 4(a)(2). Whether the land is buildable may be a consideration in this factor, but it does not control the outcome of the case. All 14 factors must be balanced to determine whether the area is about to become urban or suburban. *Id.*, subd. 4(a). The ALJ clearly considered such information and concluded that about one third of the property is buildable and that “[t]he present and projected population growth of the subject area and adjacent units of government suggests a trend towards

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urbanization.” There is ample support in the record for this finding: (1) Nesvig’s testimony stating that approximately 116 acres are buildable; (2) testimony by Schlichting of the Metropolitan Council stating that 106 acres are buildable; (3) Schlichting’s testimony that the property is part of a developing community; and (4) testimony by Uttley of the Metropolitan Council anticipating urbanization before 2010. Furthermore, the Township’s board supervisors admitted that the property was ripe for development and that the urbanization trend was moving south toward the subject property.

The ALJ also found, and the record supports, that this increased population and the environmental inventory, which indicated that the condition of the property was moderate to very poor, favor annexation. Specifically, the ALJ determined that “[t]he ecological and environmental restoration proposed in the AUAR’s mitigation plan would be more likely to be achieved through the proposed urban development of the subject property than through low density development under the Township’s existing Comprehensive Plan.” The City, unlike the Township, is capable of providing the necessary services to the growing population, such as sewer systems, storm-water management and environmental maintenance of the area. There are copious findings in the ALJ’s 47-page order supporting his conclusion that the property meets all three subdivision 4(b) criteria for annexation. And each finding is supported by citation to the transcript or exhibits in the record. We conclude that there is substantial evidence to support annexation.

II

Appellant next argues that the property cannot be developed as planned due to its environmental and land-use designations. Appellant’s argument focuses on what appellant “believes are inconsistencies between the proposed development and Metropolitan Council policies and existing federal and state land use controls.” The parties agree that because the subject property is in the Critical Area, after a recommendation by the Metropolitan Council, the DNR must approve any amendment to the City’s comprehensive plan, which would include examining the proposed development for compliance with the Critical Area Act. Appellant

In re the Matter of the Petition for the Annexation of Land to the City of St. Paul Park Pur... Page 8 of 11
argues that the plan will never be approved because the density of the proposed development violates the requirements of the Critical Area Act and the rural open-space district. But the ALJ correctly observed: “[T]he subject property will remain in the Critical Area regardless of whether or not annexation occurs.” That is, whether or not the property is annexed, the Critical Area guidelines that protect the area’s natural resources will apply. In addition, the district court previously determined in the 2001 annexation petition that the Critical Area designation “cannot be a compelling factor in the denial of the annexation from Grey Cloud Island Township.”

Furthermore, DNR approval of a Critical Area Plan amendment, by definition, can only be obtained after the property is formally annexed by the City and an amendment is actually proposed. Indeed, before annexation, the City has no legal interest in, or jurisdiction over, the subject property. Finally, we agree with the ALJ’s conclusion that “[d]isapproval of a development cannot be presumed in light of the withdrawal by the DNR of its objections to the AUAR after modifications were made.” Accordingly, the ALJ did not err in declining to speculate on a DNR decision regarding an amendment to the City’s comprehensive plan that has yet to be drafted or proposed.

III

Appellant argues that the ALJ violated Minnesota law and denied the Township residents of the “island” lots their due-process rights by annexing the Nesvig homestead and “island” lots without first recessing the hearing and publishing notice of the proceedings. We review de novo whether the annexation violated a statute or constitutional rights because it is a question of law. *See Frost-Benco Elec. Ass’n v. Minnesota Pub. Utils. Comm’n*, 358 N.W.2d 639, 642 (Minn. 1984) (reviewing questions of law de novo). Appellant has the burden of proving beyond a reasonable doubt that the annexation violated constitutional rights. *McNamara*, 628 N.W.2d at 629.

Respondents argue that the Township is precluded from raising this issue on appeal because the Township did not raise it below. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (declining to consider issues that were not presented or decided by the district court). But

the administrative-hearing transcript clearly demonstrates that appellant objected to adding Nesvig's 30-acre homestead and the "island" lots to the proposed area for annexation. During the administrative hearing, the Township's attorney stated the following regarding the homestead: "Your Honor, I would object to adding [the homestead] to the petition, because obviously, that is not to become urban or suburban if it's a 30-acre parcel with one house and plans for one more." The Township's attorney also objected to inclusion of the "islands," noting that there would be issues with proper notice:

The town would, of course, object to that, and one reason, of course, is that this would take any number of residents of the town and, slam bang, they'd go into the City of St. Paul Park without prior notice or almost no notice of what's going to happen to them. . . .

The notice issue was clearly raised below and accordingly, we will address it.

Appellant Township argues that the ALJ failed to follow the statutes governing municipal-boundary adjustments when it annexed the Nesvig homestead and the "island" lots. Minnesota law permits the ALJ to modify the area to be annexed under certain conditions:

The director may alter the boundaries of the area to be annexed by increasing or decreasing the area so as to include only that property which is now or is about to become urban or suburban in character *or to add property of such character abutting the area proposed for annexation in order to preserve or improve the symmetry of the area*, or to exclude property that may better be served by another unit of government.

Minn. Stat. § 414.031, subd. 4(f) (2004) (emphasis added). In addition, Minn. Stat. § 414.09, subd. 1(e) (2004), governs the uniform procedures pertaining to municipal-boundary adjustments: "When the director exercises authority to change the boundaries of the affected area so as to increase the quantity of the land, the hearing shall be recessed and reconvened upon two weeks' published notice in a legal newspaper of general circulation in the affected area." *Id.*

In this case, the hearing was not recessed and notice was not published. Yet the ALJ's order unquestionably altered the area to be annexed, stating that "the area to be annexed should be increased from that set out in the original petition so as to include the area described in Findings of Fact Nos. 14 & 15 so as to improve the symmetry of the area." Findings of Fact

In re the Matter of the Petition for the Annexation of Land to the City of St. Paul Park ... Page 10 of 11
numbers 14 and 15 refer to Nesvig's 30-acre homestead and the two "island" lots.

Respondents argue that during the proceedings no party "suggested that the annexation hearing should be adjourned until notice could be published or provided to all residents of the Township 'island' parcels. . . . Nor did the Township suggest that to use the authority granted in Minn. Stat. § 414.031, subd. 4(f), would be unconstitutional." And with respect to Nesvig's homestead, it was Nesvig himself who proposed that his homestead be added to the area proposed for annexation.

[2]
But Nesvig has no authority to speak for the residents of the island lots. In any event, we must agree with appellant, who correctly argues that the ALJ was bound by and required to apply Minnesota law. *Atwood v. Holmes*, 229 Minn. 37, 42, 38 N.W.2d 62, 66 (1949) ("An issue of illegality not presented to the trial court, though it involves a mere error of law, may be considered for the first time on appeal if it involves a controlling legal principle or statute which, with respect to undisputed facts, the courts are judicially bound to know. Failure to present to the trial court that of which it is charged with judicial knowledge does not preclude its consideration for the first time upon appeal."). Here, the ALJ failed to recess the hearing and publish notice and thus did not adhere to the procedures prescribed by Minn. Stat. § 414.09, subd. 1(e).

Appellant also argues that the ALJ failed to apply and analyze the 14 statutory factors in section 414.031, subd. 4(a), in relation to the additional annexation of the homestead and "island" lots. We decline to address this issue given our holding that the ALJ erred by not providing notice and an opportunity for hearing prior to annexing the homestead and "island" lots.

Because the statute required the ALJ to recess the hearing and to publish notice for the annexation of the homestead and "island" lots, we reverse that portion of the annexation order and remand for proceedings consistent with this opinion. Because the record contains substantial evidence to support the ALJ's order annexing the original subject property, we affirm the remainder of the annexation order.

Affirmed in part, reversed in part, and remanded.

[1]

This is the second annexation petition. Nesvig filed the first one in 1999, involving about 600 acres he owned in the Township. There were six days of hearings, district-court orders, a remand to the ALJ, a settlement agreement (which was allowed to expire in 2004), and ultimately Nesvig withdrew his request for further review of the ALJ's order in October 2004. *See MN Ctr. for Envtl. Advocacy v. City of St. Paul Park*, 711 N.W.2d 526 (Minn. App. 2006) (holding that the final AUAR in this case was not inadequate as a matter of law).

[2]

Moreover, Nesvig's authority to waive the statute's notice requirements—even with respect to his own homestead—is far from clear.

EXHIBIT B

2008 Order and Settlement Agreement



DATE: JUNE 4, 2008

OFFICE OF ADMINISTRATIVE HEARINGS

NO. 7866 P. 1/10/08



FAX TRANSMISSION

OFFICE OF ADMINISTRATIVE HEARINGS
600 NORTH ROBERT STREET
ST. PAUL, MN 55101
651-361-7900
FAX: 651-361-7936

No. of Pages 18
(Including this cover)

DATE: June 4, 2008

TO: R. Gordon Neavig
James F. Shiely, Jr.
David T. Magnuson

FAX NO.: 651-458-8439
Fax No. 651-223-5111
Fax No. 651-439-5641

FROM: George A. Beck
Administrative Law Judge
Telephone: (952-924-0372)

RE: *In the Matter of* the Petition for the Annexation of Certain Land to the City
of St. Paul Park Pursuant to Minnesota Statutes 414 (A-7212)
OAH Docket No. 1-2900-16529-2

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Attached please find the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Order in the above-entitled matter.

IF THERE ARE PROBLEMS RECEIVING THIS TRANSMISSION, PLEASE CALL:
Nancy J. Hansen @ 651-361-7884.



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

Mailing Address:
P.O. Box 64620
St. Paul, Minnesota 55164-0620

Voice: (651) 361-7900
TTY: (651) 361-7878
Fax: (651) 361-7986

June 4, 2008

Christine Scottillo, Executive Director
Municipal Boundary Adjustments
600 North Robert Street
St. Paul, MN 55101

Re: *In the Matter of the Petition for the Annexation of Certain Land
To the City of St. Paul Park Pursuant to Minnesota Statutes 414 (A-7212)*
OAH Docket No. 1-2900-16529-2

Dear Ms. Scottillo:

Enclosed herewith and served upon you by hand delivery is the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Order in the above-entitled matter. Our file in this matter is now being closed.

Sincerely,

A handwritten signature in cursive script that reads "George A. Beck".

GEORGE A. BECK
Administrative Law Judge

Telephone: (852) 924-0372

GAB:nh

Encl.

Cc
R. Gordon Nesvig
James F. Shiely, Jr.
David T. Magnuson

OAH DOCKET NO. 1-2900-16529-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for the
Annexation of Certain Land to the
City of St. Paul Park Pursuant to
Minnesota Statutes 414 (A-7212)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
and ORDER**

The above matter came on for hearing before Administrative Law Judge George A. Beck on Tuesday, April 22, 2008 at the City Hall in the City of St. Paul Park, Minnesota. The hearing concluded on that date and the parties were directed to file written memoranda after the hearing, the last of which was received on May 20, 2008. The record closed on that date.

R. Gordon Nesvig, Esq., Cottage Grove, Minnesota 55016, appeared representing himself. James F. Shiely, Jr, Esq., Gearin & Shiely PA, 325 Cedar Street, Suite 500, St. Paul, Minnesota 55101-1015 appeared representing the City of St. Paul Park. David T. Magnuson, Esq., Magnuson Law Firm, 333 N. Main St., Suite 202, P.O. Box 438, Stillwater, Minnesota 55082 appeared representing Grey Cloud Island Township.

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.031 and 414.12. Any person aggrieved by this Order may appeal to the Washington County District Court by filing an application for review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.¹

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order to the Administrative Law Judge within seven days from the date of mailing of the Order.² If a request is submitted, other parties have seven days from the date of the service of the request to respond. A request for amendment does not extend the time for appeal to the District Court from the Order of the Administrative Law Judge.³

¹ Minn. Stat. § 414.07, subd. 2.

² Minn. Rule pt. 6000.3100.

³ Minn. Rule pt. 6000.3100.

STATEMENT OF THE ISSUE

The issue in this proceeding is whether or not annexation should be granted for the parcels of land described at Finding of Fact No. 2 based upon the factors set out in the statute.⁴

Based upon all of the testimony, exhibits, and the full record in this proceeding, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History

1. In a decision dated July 31, 2007, the Minnesota Court of Appeals reversed a portion of the November 2, 2005 Order of the Administrative Law Judge in this matter and remanded the case for proceedings consistent with its opinion.⁵ The Court determined that notice provided in the prior proceeding was inadequate for the Nesvig homestead property and certain "island lots".

2. The legal description for the Nesvig Homestead property is set out at Finding of Fact No. 14 of the November 2, 2005 Order and Exhibit A of the May 2, 2008 Stipulation of Settlement executed by the parties. The legal description of the "island lots" was set out in Finding of Fact No. 15 of the November 2, 2005 Order and in Exhibit A of the Stipulation.

3. A Notice of the April 22, 2008 hearing, including the legal description cited in the preceding Finding of Fact, was published in the South Washington County Bulletin for two consecutive weeks on April 9, and April 16, 2008, as required by statute.⁶ Additionally, the Notice of Hearing was served by mail on the Washington County Assessment/Taxpayer Services and Elections Director, Washington County Planning and Zoning, the City of St. Paul Park, Grey Island Township, the City of Inver Grove Heights, Independent School District No. 833, the League of Minnesota Cities, the Metropolitan Council, the State Demographer, the Minnesota Department of Health, the Minnesota Pollution Control Agency, the Minnesota Department of Revenue, the Minnesota Department of Agriculture, and all attorneys involved in this proceeding. The Notice was also posted at the City of St. Paul Park City Hall and the Grey Island Township Town Hall. A Grey Island Township newsletter dated April 19, 2008 contained notice of the hearing and was mailed to residents.

4. No Notices of Appearance were filed by any property owner or other person in order to acquire party status under Minn. Stat. § 414.12 subd. 4(4).

⁴ Minn. Stat. § 414.031.

⁵ Town of Grey Cloud Island v. Nesvig, (Minn. Ct. App. July 31, 2007) (Unpublished Opinion - A06-1738)

⁶ Minn. Stat. § 414.09, subd. 1(d).

Statutory Factors

5. Findings of Fact No. 1-207 of the prior Order dated November 2, 2005 are incorporated into this Order.

6. The Nesvig homestead property is presently surrounded by the City after the 2005 annexation. The owner of the property supports its annexation into the City of St. Paul Park and believes that it presently meets all of the statutory requirements for annexation.⁷

7. Island Lots No. 1 consists of approximately 14 residences and is surrounded by the City after the 2005 annexation. Two property owners in this area testified at the hearing that they oppose annexation.

8. Island Lot No. 2 is a parcel located midway between Island Lots No. 1 and the Nesvig homestead and is surrounded by the City after the 2005 annexation. It consists of approximately 1.2 acres of land. The owner of this property opposes annexation at the present time.

9. The parties to this proceeding, namely Mr. Nesvig, the City of St. Paul Park, and the Township of Grey Cloud Island have entered into a Stipulation of Settlement which is attached to this Order and incorporated by reference.

10. The parties have all agreed to the immediate annexation of the Nesvig homestead property into the City of St. Paul Park.

11. The parties have all agreed to the annexation of the Island Lots described above at a point in the future, but not immediately, as set out in detail in the attached Settlement Agreement.

12. The parcels that are the subject of this proceeding are within the Mississippi River Critical Area and therefore the City must amend its Comprehensive Plan to accommodate the parcels and have those amendments approved by the Metropolitan Council and the Minnesota Department of Natural Resources.

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. §§ 414.031 and 414.12.

⁷ See attached map for location of the parcels described in these findings.

2. That proper notice of the hearing in this matter has been given.
3. That the subject area described in Finding of Fact No. 2 is about to become urban or suburban in character.
4. That municipal government in the area described in Finding of Fact No. 2 is required to protect the public health, safety and welfare.
5. That annexation to the City of the area described in Finding of Fact No. 2 is in the best interest of the subject area.
6. That the remainder of the Township can continue to carry on the functions of government without undue hardship.
7. That annexation to another adjacent municipality would not better serve the residents of the subject property.
8. That the remainder of the Township would not suffer undue hardship due to annexation.
9. That the Memorandum attached to the Order dated November 2, 2005 at pp. 40-47 is incorporated into this Order by reference.
10. Minn. Stat. § 414.031, subd. 6, provides that "The annexation shall be effective as of the date fixed in the annexation order or on a later date fixed in the annexation order."
11. Minn. Stat. § 414.063 provides that "After notice and hearing as provided in section 414.09, the director may include provisions of joint agreements between political subdivisions in the orders."
12. That the Stipulation of Settlement, executed by the parties on May 2, 2008 and attached hereto, is incorporated into this Order and given full force and effect.
13. That these Conclusions of Law are arrived at for the reasons set out in the Memorandum that follows and which is incorporated into these Conclusions of Law by reference.


Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT the property described as the "Nesvig Property" in Exhibit A attached to the Stipulation of Settlement is immediately annexed, as of the date of this Order, to the City of St. Paul Park.

IT IS FURTHER ORDERED THAT the property described as "Island 1" and "Island 2" in Exhibit A attached to the Stipulation of Settlement may be annexed to the City of St. Paul Park under the terms of the Stipulation of Settlement.

Dated this 14 day of June, 2008.


GEORGE A. BECK
Administrative Law Judge

Reported: Tape Recorded.
One Tape.

MEMORANDUM

The Minnesota Court of Appeals affirmed the annexation of the land which was described in the original Petition in this matter into the City of St. Paul Park. It reversed the annexation of three smaller parcels (the "island lots") because they had not been included in the published notice as required by statute. That notice has now been provided in this proceeding. The "island lots" are completely surrounded by the City.

The record compiled in 2005 and the testimony of Gordon Nesvig in this reconvened proceeding fully supports a conclusion that the statutory requirements for annexation of the Nesvig homestead property have been met. The homestead property is surrounded by the City after the 2005 annexation, which was approved by the Court of Appeals. Furthermore, the parties have stipulated and agreed in their Stipulation of Settlement that the Nesvig property may be immediately annexed by the City. Mr. Nesvig supports annexation and testified that he believed his property met the statutory requirements for annexation. No one opposed annexation of the Nesvig homestead and its annexation to the City is ordered effective immediately.

Three property owners within the "island lots" area testified at the hearing that they opposed annexation, at least at the present time. They could see no advantage to annexation for the property owners. One testified that the septic systems were working properly and another that road improvements were unneeded. However, the record does support a conclusion that the "island lots" do meet the statutory prerequisites for annexation. And no evidence or argument was advanced that would provide a basis for distinguishing treatment of the "island lots" from the surrounding area.

The Township was also opposed to the *immediate* annexation of the island lots, but entered into a stipulation of settlement with the City that allows annexation to proceed at such time as the City decides it is necessary to proceed with a public improvement project in that area. The Township recognizes that annexation will happen, but agrees with the property owners that it should not be imposed until there is a need to do so, in order to provide public improvements. The Stipulation of Settlement executed by the City, Township and Mr. Nesvig provides that the City may annex the "island lots" when it orders preparation of a report to study the feasibility of a public improvement project impacting that area. The annexation is accomplished by the filing a resolution with the Chief Administrative Law Judge who then must order the annexation if it is consistent with the parties' Stipulation of Settlement and this Order.

A memorandum from an Assistant Attorney General, requested by the parties, expressed a concern about the authority to implement the proposed settlement in the context of a § 414.031 proceeding since that statute focuses on the conditions existing at the time of a decision and the statute does not specifically authorize a deferral of the annexation. The memorandum also expresses a concern that adoption of the stipulation would mean that this Order would be dictating the outcome of a separate subsequent proceeding. The memorandum suggests that a more appropriate way of accomplishing annexation of the "island lots" would be by a joint resolution of the City and Township under Minn. Stat. § 414.0325. The parties have resisted this suggestion because it requires initiation of a separate process that requires additional newspaper publication, an informational meeting, and additional legal fees. They believe that their agreement accomplishes the same goal without additional process.

This Order *does* focus on the conditions that exist in the Nesvig homestead and the "island lots" at present, however. The record supports a decision that those areas presently satisfy the statutory requirements for annexation. Speculation that five or ten years from now the areas will be less urbanized is not consistent with the facts in this record. The effect of the parties' agreement merely delays the annexation date consistent with the Township's desire to allow its residents to remain in the Town until public improvements are required. Minn. Stat. § 414.031, subd. 6, does provide that an annexation may be ordered to be effective on a later date fixed in the annexation order. While the

agreement does not provide a specific date, it is consistent with the apparent legislative recognition that a delay may be appropriate and that an annexed area is unlikely to become less urban in nature. A delay in implementation is clearly sanctioned in §414.0325 which suggests that the legislature does not disapprove of an agreed upon delay. No cogent reason has been advanced that suggests why the authority in §414.0325 would preclude a similar outcome by agreement under §414.031.

Concern was also expressed that the agreement might restrict the City's statutory right to pursue annexation. However, the final Stipulation of Settlement provides that any challenge to the City's annexation of the "island lots" under the terms of the agreement will release it from the agreement and allow it to pursue any process of annexation authorized by statute.

The use of the Orderly Annexation statute to implement an agreement of this nature, at least outside of a §414.031 proceeding, has apparently been common in the past. In this case, however, the matter has been contested through a full hearing procedure. As the parties point out, the proposed annexation has been at issue for almost ten years. They seek to put an end to that battle through their stipulation. As the Township newsletter stated:

It is hoped that the long going and costly annexation of a total of 600 acres to St. Paul Park will be terminated by a settlement agreement proposed by our township. It will allow those households on Third, Fourth and Fifth Streets between Fourteenth and Fifteenth Avenues to remain in the township until actual development commences.

The adoption of a stipulation by the parties also seems to be encouraged by the legislature through Minn. Stat. § 414.063 which specifically provides that joint agreements between political subdivisions may be incorporated in orders after notice and hearing under section 414.09, the statute that governed the hearing in this case.

The parties' agreement to put an end to a ten year battle without further process should be respected. It is consistent with statute, and, in fact, the procedure they propose is similar to that under §414.0325, the Orderly Annexation statute. Under either that statute or this Order, the Office of Administrative Hearings retains the authority to finally order the annexation as agreed to by the City and Township. The Stipulation of Settlement is therefore incorporated into this final Order.

G.A.B

A7212 St. Paul Park

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

File No. 1-2900-16529-2

IN THE MATTER OF THE PETITION FOR THE)	
ANNEXATION OF CERTAIN LAND TO THE)	
CITY OF ST. PAUL PARK PURSUANT TO)	STIPULATION OF
MINNESOTA STATUTES 414)	SETTLEMENT

WHEREAS, this matter has, or will, come on for public hearing on Tuesday, April 22, 2008, beginning at 9:30 a.m. at the St. Paul Park City Hall, 600 Portland Avenue, St. Paul Park, Minnesota, before Administrative Law Judge George A. Beck.

WHEREAS, at the Hearing, the parties have, or will, inform the Administrative Law Judge that they have reached a settlement of all issues pending in this matter, and have incorporated their agreement into the following Stipulation, which they present to the Administrative Law Judge for his consideration and approval.

NOW THEREFORE, the parties hereby agree upon the conditions for the annexation of the lands described in Exhibit A, and hereby set forth their agreement in this Stipulation as follows:

1. That the Notice of Hearing dated March 21, 2008, was duly published, served, and posted pursuant to Minn. Stat. §414.09 and the decision of the Minnesota Court of Appeals in this matter (A06-1738).
2. That the Administrative Law Judge may incorporate the terms of this Stipulation into his final Order.

3. That immediately upon the entry of an Order by the Administrative Law Judge that incorporates the terms of this Stipulation, the Nesvig Property, as described in Exhibit A, is annexed to the City. Following annexation of this property, the City shall receive the taxes levied on this property as set forth in Paragraph 6 hereof.

4. That the remainder of the property described in Exhibit A (hereafter referred to as the subject property) is surrounded by the City, and the annexation of said property, as outlined in this Stipulation, will better serve both the City and Town, and the Property owners.

5. At any time after the City orders the preparation of a report, pursuant to Minn. Stat. §429.031, Subd. 1(b) to study the feasibility of a public improvement project that will impact any area within the subject property, the City may annex all of the subject Property by filing a Resolution with the Chief Administrative Law Judge declaring that the subject property is annexed to the City, and that said Resolution is brought pursuant to this Agreement. Thereafter, the Chief Administrative Law Judge must order annexation of the subject property upon finding the annexation to be consistent with this Stipulation and the Order of the Administrative Law Judge.

In the event that any person, firm, corporation, the Town, or any other entity, takes legal action of any kind, including, but not limited to, objection, motion, summons and complaint, Order to show cause, or any other proceeding to contest or delay the annexation of the subject property by the resolution and order process as set forth in this Stipulation of Settlement and the Order of the Administrative Law Judge incorporating this Stipulation of Settlement, the City may, in its sole discretion, dismiss this proceeding as to the subject property, and thereafter proceed immediately with any statutory procedure to annex the subject property, including, but not limited to, annexation by ordinance.

6. In the years between this Stipulation, and the year of annexation, the Town shall retain 100% of the property taxes levied on the subject property by the Town. In the year of annexation, the Town shall retain 100% of the property taxes payable in the year of annexation (levied by the Town the previous year). After the year of annexation, the City will receive all of the taxes levied by the City on the subject property, and any taxes levied by the Town in the previous year. If the annexation occurs so late in the year that the state and the county can not get the records changed in time, resulting in the Town receiving the taxes on the subject property in the year after annexation, the Town will forward those taxes to the City.

7. Since no special assessments, charges or debts have been or will be assigned to the Property by the Town, no payments to the Town are or will be required to be reimbursed by the City to the Town.

8. This Stipulation will be in full force and effect immediately upon the document being fully executed by all parties hereto, and approved by the Administrative Law Judge. If the annexation of the remainder of the subject property does not occur by the year 2020, the Order will terminate on January 1, 2021 as to the subject property. Thereafter, the City may pursue any statutory procedure to annex the subject property.

The Grey Cloud Island Town Board of Supervisors this 28 day of April, 2008.

BY: TOWN OF GREY CLOUD ISLAND

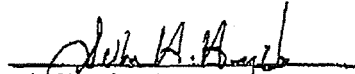
By Richard C. Adams
Richard Adams, Chair
Board of Supervisors

ATTEST:

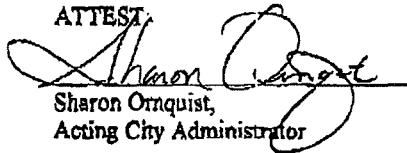
Richard E. Mullen
Richard Mullen, Town Clerk

The City of St. Paul Park, this 24 day of April, 2008.

BY: CITY OF ST. PAUL PARK


John Hunziker, Mayor

ATTEST:


Sharon Ornquist,
Acting City Administrator

May 2, 2008


R. Gordon Nesvig, Petitioner

EXHIBIT A**Nesvig Property**

The Northwest Quarter of the Northwest Quarter (NW ¼ of NW ¼) Section Twenty-four (24), EXCEPT that part of the Northwest Quarter of the Northwest Quarter (NW ¼ of NW ¼) in said Section Twenty-four (24) lying on Grey Cloud Island, consisting of ten (10) acres, more or less, Washington County, Minnesota. All in Township Twenty-seven (27) North, Range Twenty-two (22) West.

Island 1

Lots 1 through 7, inclusive, Block 115, Wertheimer's First Addition, Washington County Minnesota;

Lots 1 through 11, inclusive, and Lots 21 through 30, inclusive, Block 116, St. Park Division No. 4, Washington County Minnesota;

Lots 1 through 30, inclusive, Block 117, St. Park Division No. 4, Washington County Minnesota;

Lots 1 through 30, inclusive, Block 118, St. Park Division No. 4, Washington County Minnesota;

Including all streets and alleys, and vacated streets and alleys, adjacent to all of the above described Lots.

Island 2

A tract of land in the Northeast quarter (NE ¼) of the Southwest quarter (SW ¼) of Section Thirteen (13), Township Twenty-seven (27) North, Range Twenty-two (22) West, described as follows, to-wit:
Beginning at the intersection of the East and West Quarter line of said Section Thirteen (13) with the center line of County Road No. 75 as now established; thence West along the East and West Quarter line 401.94 feet to an iron stake; thence South 7° East 254.90 feet to an iron stake; thence East 159.94 feet to an iron stake; thence North 220 feet to an iron stake; thence East 214.89 feet to the center line of County Road No. 75; thence North 7° West along the center line of County Road No. 75 a distance of 33.25 feet to the point of beginning. Subject to rights of County Road No. 75. Containing 1.2 acres more or less.

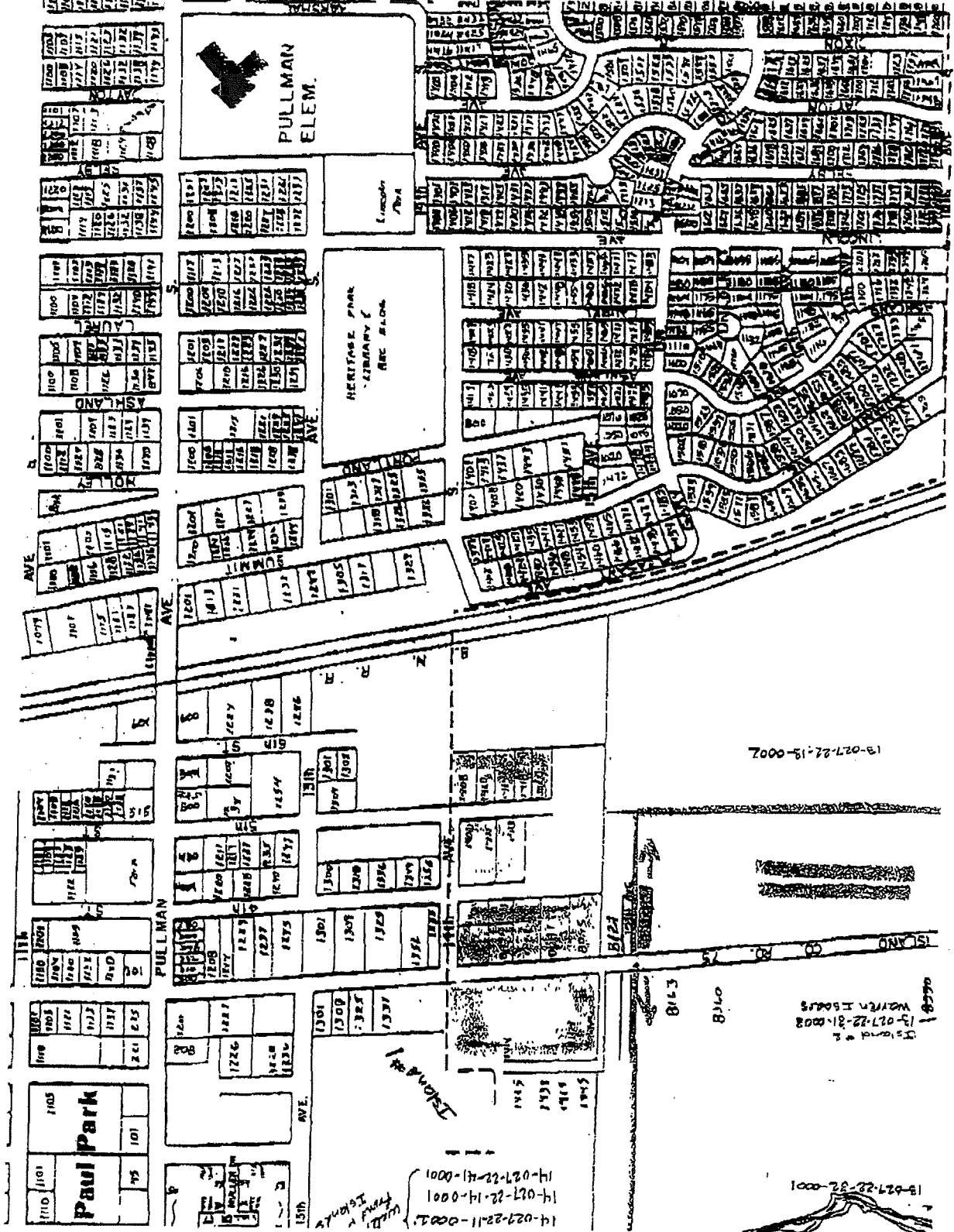




EXHIBIT C

Resolution 1560

CITY OF ST. PAUL PARK

WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 1560

**RESOLUTION ORDERING FEASIBILITY REPORT FOR THE
FOREST EDGE DEVELOPMENT PROJECT**

WHEREAS, it is proposed to improve the following streets and utilities through installation, construction and reconstruction of public streets, sidewalks, storm sewer, sanitary sewer, watermain, and other appurtenant improvements, and to assess the benefited property for all or a portion of the cost of the improvement, pursuant to Minnesota Statutes, Chapter 429,

1. 1st Street from 14th Avenue to 13th Avenue
2. Main Street from 14th Avenue to 13th Avenue
3. 14th Avenue from the proposed cul-de-sac approximately 300 feet west of proposed Main Street to 3rd Street.
4. 13th Avenue proposed cul-de-sac to existing west terminus of 13th Avenue

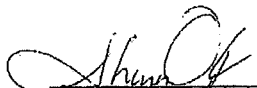
**NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
ST. PAUL PARK, MINNESOTA:**

That the proposed improvement, called Forest Edge Development Project be referred to the City Engineer for study and that that person is instructed to report to the council with all convenient speed advising the council in a preliminary way as to whether the proposed improvement is necessary, cost-effective, and feasible; whether it should best be made as proposed or in connection with some other improvement; the estimated cost of the improvement as recommended; and a description of the methodology used to calculate individual assessments for affected parcels.

Adopted this 22nd day of January 2019 by the City Council of St. Paul Park, Minnesota.


Sandi Dingle, Mayor

ATTEST:


Sharon Ormquist, City Clerk