

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of Certain
Real Property to the City of St. Paul Park
from Grey Cloud Island Township
(MBAU Docket OA-1739/OA-1739-1)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER OF ANNEXATION**

This matter involves a joint effort by the City of St. Paul Park (City) and Grey Cloud Island Township (Township) to annex into the City certain identified property currently located in the Township.

Andrew Biggerstaff, Kennedy and Graven, Chartered, appears on behalf of the City. David Magnuson, Magnuson Law Firm, appears on behalf of the Township.

Pursuant to an order dated June 19, 2019, the parties appeared for a Prehearing Conference on June 20, 2019, after which the record in the matter was closed.

Upon review of all the files and proceedings herein, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

Orderly Annexation

1. The Municipal Boundary Adjustment Act (Act), at Minnesota Statutes section 414.0325 (2018), sets forth a process whereby a city and adjacent township may designate identified property for future annexation pursuant to agreed upon terms. Known as “orderly annexation”, the statutory process is intended to facilitate the orderly and planned adjustment of municipal boundaries in a manner that best meets the needs of the city and township that are signatories to the agreement.

2. The Act provides that municipalities’ submission of a joint resolution to the Office of Administrative Hearings confers jurisdiction to the Chief Administrative Law Judge over future annexations in the designated area.¹

3. In relevant part, the Act also provides that “[a]n orderly annexation agreement is a binding contract upon all parties to the agreement[.]”²

¹ Minn. Stat. § 414.0325, subd. 1(c).

² Minn. Stat. § 414.0325, subd. 6.

4. The Act sets forth various requirements for notifying the public about the potential for orderly annexation of property, which notice must be given before annexation is commenced.³

Factual Background

5. In November 1999, R. Gordon Nesvig filed petitions for the annexation of approximately 600 acres that he owned in the Township, some to the City of St. Paul Park and some to the City of Cottage Grove.⁴ Following a properly noticed hearing on the annexation petitions, in October 2000 the City and Township entered into a joint resolution for orderly annexation for that portion of the property located east of County Road 75.⁵

6. Finding the proper notice had been provided and the other requirements of the statute had been met, in an Order issued on December 29, 2000 and amended on January 11, 2001, Administrative Law Judge Beverly Heydinger divided the 600 acres into two areas, one to the east and one to the west of County Road 75, and granted immediate annexation of the subject property to the east of County Road 75.⁶

7. Upon appeal, in an order issued on February 8, 2002, the Washington County District Court remanded the matter back to the Administrative Law Judge for amended findings.⁷

8. Prior to action on remand, the City and Township executed a Settlement Agreement whereby they agreed to jointly develop the subject property.⁸ Eventually, they allowed their executed agreement to expire due to an inability to reach and maintain agreement on the terms of the proposed development.⁹

9. Upon the request of the parties, on December 17, 2004, Administrative Law Judge Heydinger issued an order making her January 11, 2001 order the final decision in that proceeding.¹⁰

10. Following an unsuccessful challenge to the City's environmental review process,¹¹ on December 21, 2004, R. Gordon Nesvig and D.R. Horton, Inc., a developer, filed a petition seeking to annex to the City the 308 acres located on the Mississippi River

³ See Minn. Stat. § 414.0325, subd. 1b.

⁴ MBAU File No. A-6186.

⁵ Finding of Fact No. 16, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER issued by Administrative Law Judge George A. Beck in OAH Docket No. 1-2900-16529-2 (Nov. 2, 2005) (2005 Beck Order). All provisions of the 2005 Beck Order that are cited herein are hereby incorporated by reference.

⁶ 2005 Beck Order at Finding of Fact No. 17.

⁷ 2005 Beck Order at Finding of Fact No. 18.

⁸ 2005 Beck Order at Finding of Fact No. 20.

⁹ 2005 Beck Order at Finding of Fact No. 21.

¹⁰ 2005 Beck Order at Finding of Fact No. 22.

¹¹ See *Minnesota Ctr. for Env'tl. Advocacy v. City of St. Paul Park*, 711 N.W.2d 526 (Minn. Ct. App. 2006).

and within the Township to the City pursuant to Minn. Stat. § 414.031, subd. 1(3) (2002). In addition to a provided legal description,¹² the 308 acres were generally described as:

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. The mid-point of the Mississippi River as it flows by the subject property serves as the boundary line both between the cities of St. Paul Park and Inver Grove Heights as well as the boundary line between Washington and Dakota Counties.¹³

11. Following all required public notice and process, Administrative Law Judge Beck conducted a hearing from July 25 through 28, 2005.¹⁴

12. During the hearing, the petitioner proposed that the following areas of land be added into the annexation petition: (a) the property upon which his homestead was located (Homestead Property); and (b) two “island” lots located between the City and the originally described property subject to the annexation petition (Island Lots).¹⁵ The Island Lots were legally described as follows:

["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)

¹² 2005 Beck Order at Finding of Fact No. 2.

¹³ 2005 Beck Order at Finding of Fact No. 3.

¹⁴ 2005 Beck Order at Finding of Fact No. 13.

¹⁵ 2005 Beck Order at Finding of Fact Nos. 14, 15.

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.

County Road No. 75 shall remain a County Highway.¹⁶

13. Following the hearing, Administrative Law Judge Beck ordered that the Homestead Property and the Island Lots be included in the annexation proceeding so as to improve the symmetry of the resulting municipal boundary, and then ordered their annexation into the City.¹⁷

14. The Township appealed the order with regard to the addition of the Homestead Property and the Island Lots. The Washington County District Court affirmed the Administrative Law Judge in a July 19, 2006 Order.¹⁸ On July 21, 2007, the Minnesota Court of Appeals reversed, finding that the Administrative Law Judge had failed to recess the hearing in order to provide statutorily required notice about the addition of the Homestead Property and the Island Lots into the annexation proceeding.¹⁹

15. On remand and after proper notice was published and served as required by statute, Administrative Law Judge Beck again conducted a public hearing in the matter, on April 22, 2008.²⁰

16. After the hearing, on May 2, 2008 the City and Township entered into a Stipulation of Settlement whereby they agreed to: (a) immediate annexation of the Homestead Property; and (b) future annexation of the Island Lots in accordance with the following specified terms:

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 that annexation to be

¹⁶ 2005 Beck Order at Finding of Fact No. 15.

¹⁷ 2005 Beck Order at Conclusion of Law No. 10.

¹⁸ *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)*, C2-05-7924, slip op. (Minn. Dist. Ct. Jul. 19, 2006).

¹⁹ See *In re Annexation of Land to City of St. Paul Park Pursuant to Minnesota Statute 414 (A-7212)*, A06-1738, 2007 WL 2177910, at *1 (Minn. Ct. App. July 31, 2007).

²⁰ 2005 Beck Order at Finding of Fact No. 3.

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.²¹

17. On June 4, 2008, Administrative Law Judge Beck issued his Findings of Fact, Conclusions of Law and Order in which immediate annexation of the Homestead Property was ordered. The 2008 Beck Order incorporated by reference Findings 1-207 of the 2005 Beck Order,²² and thereby contained the following findings relevant to the Island Lots

- a. The Island Lots met all the statutory factors for annexation and are becoming urban or suburban in character such that annexation is appropriate.²³
- b. Proper notice was given in compliance with the statute.²⁴
- c. As authorized by Minn. Stat. § 414.063, terms of the parties 2008 Stipulation of Settlement is incorporated into the Order by reference;²⁵ and
- d. Ordering that the Island Lots “may be annexed to the City of St. Paul Park under the terms of the Stipulation of Settlement” at a future date upon sufficient proof that the terms of the Stipulation of Settlement have been satisfied.²⁶

²¹ Finding of Fact No. 9, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER issued by Administrative Law Judge George A. Beck in OAH Docket No. 1-2900-16529-2 (June 4, 2008) (2008 Beck Order). All provisions of the 2008 Beck Order that are cited herein are hereby incorporated by reference.

²² 2008 Beck Order at Finding of Fact No. 5.

²³ 2005 Beck Order at Conclusion of Law No. 3; 2008 Beck Order at Finding of Fact Nos. 3-8.

²⁴ 2008 Beck Order at Finding of Fact No. 2.

²⁵ 2008 Beck Order at Finding of Fact Nos. 11, 12.

²⁶ 2008 Beck Order at page 5.

Current Proceeding

18. On January 22, 2019, the City adopted Resolution No. 1560 ordering the commencement of a feasibility report for the Forest Edge Development Project, which includes improvements that will impact the Island Lots.²⁷

19. On April 15, 2019, the City adopted Resolution No. 1576 seeking to annex the Island Lots pursuant to the terms of the 2008 Stipulation of Settlement, incorporated by reference into the 2008 Beck Order.²⁸

20. On May 6, 2019, the City filed with the Office of Administrative Hearings its request for an Order of Annexation related to the Island Lots.²⁹

21. At the June 20, 2019 Prehearing Conference, both the City and the Township, through counsel, represented to the Chief Administrative Law Judge that all terms of the Stipulation of Settlement remain in full force and effect and have been met, such that an Order of Annexation should issue.

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

CONCLUSIONS OF LAW

1. The Chief Administrative Law Judge of the Office of Administrative Hearings has jurisdiction over this matter pursuant to Minn. Stat. ch. 414.

2. The 2008 annexation proceeding, docketed as MBAU 1-2900-16529-2, is hereby consolidated into the present matter for all purposes.

3. In practical and legal effect, the 2008 Stipulation of Settlement constitutes an enforceable joint resolution for orderly annexation pursuant to Minn. Stat. § 414.0325 in that it contains the parties' contractual agreement related to the future annexation of designated property consistent with specified terms.

3. The parties' 2008 submission to the Office of Administrative Hearings of the 2008 Stipulation of Settlement provides the Chief Administrative Law Judge with continuing jurisdiction over annexations involving the designated Island Lots.³⁰

3. Since 2008, the Chief Administrative Law Judge has had the statutory authority to initiate annexation of the Island Lots upon receipt of a joint request for same and establishment that the terms of the Stipulation for Settlement have been met.³¹

²⁷ Resolution 1560 (Jan. 22, 2019), attached as Exhibit (Ex.) C. to City's filings.

²⁸ Resolution 1576 (Apr. 15, 2019), attached as Ex. B. to City's filings.

²⁹ Filings received via correspondence from Andrew Biggerstaff, counsel for the City (May 6, 2019).

³⁰ Minn. Stat. § 414.0325, subd. 1(c).

³¹ Minn. Stat. § 414.0325, subd. 1(e).

4. As concluded in the 2008 Beck Order, the City has met the notice and other procedural requirements of the Act.

5. The City has initiated the feasibility study required in the Stipulation of Settlement, which sufficiently establishes that the parties' agreed-upon requirements for orderly annexation of the Island Lots have been met.

Based upon these Conclusions of Law, the Chief Administrative Law Judge issues the following:

ORDER

1. Pursuant to Minn. Stat. § 414.0325, subd. 6, City Resolution No. 1576 is deemed adequate in all legal respects and properly supports this Order.

2. Pursuant to the authority of Minn. Stat. § 414.0325, subd. 1(e), the Chief Administrative Law Judge exercises her lawful authority to commence annexation of the subject Property pursuant to and in accord with the terms of the 2008 Stipulation of Settlement and subject to the terms of this Order.

3. Pursuant to the terms of the 2008 Stipulation for Settlement and this Order, the Island Lots are **ANNEXED** to the City.

4. Pursuant to the agreement of the parties and as allowed by Minn. Stat. § 414.036 (2018), no tax reimbursement shall be made by the City to the Township.

Dated: June 30, 2019



TAMMY L. PUST
Chief Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.0325, .07, .09, .12 (2018). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Washington County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of this Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2017). However, no request for amendment shall extend the time of appeal from this Order.