

REC'D BY
RMB JUL 27 2000

RESOLUTION

BE IT RESOLVED by the Common Council of the City of Rochester that the City execute the Orderly Annexation Agreement with Rochester Township for Southport Subdivision.

The Mayor and the City Clerk are authorized and directed to execute this agreement on behalf of the City.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF ROCHESTER, MINNESOTA, THIS 1ST DAY OF MAY, 2000.

John Hunziker
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: Judy Kay Schen
CITY CLERK

APPROVED THIS 2ND DAY OF MAY, 2000.

Ed Canfield
MAYOR OF SAID CITY

REC'D. BY
MAMB JUL 27 2000

BEFORE THE
MINNESOTA STATE PLANNING DEPARTMENT

IN THE MATTER OF THE DESCRIPTION OF)	
AN UNINCORPORATED AREA IN ROCHESTER)	
TOWNSHIP AS IN NEED OF ORDERLY)	JOINT RESOLUTION FOR
ANNEXATION AND CONFERRING JURISDICTION)	ORDERLY ANNEXATION
OVER SAID AREA IN THE MINNESOTA)	(ROCHESTER AREA #4)
MUNICIPAL BOARD OR ITS SUCCESSOR)	
PURSUANT TO MINNESOTA)	
STATUTES §414.0325, Subd. 1)	

WHEREAS, the City of Rochester (hereinafter "City") and Rochester Township (hereinafter "Township") agree that given the potential health threat from individual sewage treatment systems within the area designated in Exhibit A, there is a need for municipal sanitary sewer and water services; and

WHEREAS, the City and Township agree that orderly annexation and extension of municipal sanitary sewer or water services to areas needing such service would benefit the public health, safety and welfare of the entire community, and the City currently has authority to collect local sales tax funds to pay a portion of the costs for the extension of sewer or water services to developed areas within the Township; and

WHEREAS, the City and Township agree that there is a public need for the coordinated, efficient and cost effective extension of City sewer and water in accordance with existing and future needs to promote the public health and safety by protecting the region's ground water supply and surface waters; and

WHEREAS, the property described in the attached Exhibit A lies within the Urban Service Area of Rochester, is presently urban or suburban in nature and predominantly small lots with pre-1970 septic systems and the City is capable of providing public sanitary sewer, water and storm water facilities within a reasonable time; and

WHEREAS, the extension of public sanitary sewer and water by the City can only be provided in prioritized phases if the process and timing of annexation is clearly identified and jointly agreed upon in advance of the capital planning, commitment and expenditure necessary on the part of the City; and

WHEREAS, the establishment of a process of orderly annexation of said lands will be of benefit to the residents and owners of said lands, and permit the City to extend necessary municipal services in a planned and efficient manner; and

WHEREAS, for the areas designated in Exhibit A, the City and the Township desire to accomplish the orderly annexation of said areas and the extension of municipal services in a mutually acceptable and beneficial manner without the need for a hearing before the State Planning Department (reference to the State Planning Department is intended to include this or any other agency succeeding the Minnesota Municipal Board) and, with the purpose of avoiding a dispute over the annexation of the property described in said Exhibit A, enter into this joint resolution for orderly annexation pursuant to Minnesota Statutes §414.0325, Subd. 1.

NOW, THEREFORE, BE IT RESOLVED by the City of Rochester and the Rochester Township as follows:

1. The City and Township hereby designate that property situated in Rochester Township, County of Olmsted, State of Minnesota, which is legally described on the attached Exhibit A, which is incorporated herein by reference, as in need of orderly annexation pursuant to Minnesota Statutes §414.0325. For ease of reference, the area legally described in Exhibit A is shown on the attached map, Exhibit B.

2. Rochester Township hereby withdraws any objections filed and agrees to not file any objections with the State Planning Department, concerning the City's desire or request to annex any of the property described on the attached Exhibit A. Rochester Township further agrees that if it has filed any objections with the State Planning Department, to the annexation to the City of any of the property described in attached Exhibit A, the filing of this Joint Resolution with the State Planning Department shall constitute sufficient notice of the withdrawal of the objections. This agreement shall terminate if the City does not provide sewer and water services to the area by January 1, 2007.

3. The lands designated in Exhibit A attached hereto shall be subject to future annexation to the City pursuant to the terms and conditions of this joint resolution and shall constitute the "orderly annexation area" otherwise described in this joint resolution. The City and Township agree that the area legally described in Exhibit A is designated as in need of orderly annexation and contains approximately 92.8 acres.

4. Any part or all of the lands described in Exhibit A may, except as otherwise provided, be annexed to the City no earlier than January 1 of the year five years after the substantial completion of a water or sewer project providing water or sewer service to the area. Substantial completion shall be when City issues its initial certificate of acceptance to the sewer and water contractor, a copy of said certificate to be provided to the Rochester Town Board. The contractor's two-year maintenance obligation commences with the issuance of this initial certificate of acceptance.

5. Annexation under this joint resolution shall be initiated by the adoption of a resolution by the City. No review by or recommendation from the City of Rochester Planning and Zoning Commission regarding the adoption of a specific annexation resolution is necessary, except as is hereinafter provided.

6. Upon the occurrence of any event triggering annexation as provided in sections 4 and 7 of this Joint Resolution for the area designated in Exhibit A or any portion thereof, the City may initiate annexation of any area designated in Exhibit A by submitting a resolution so providing, along with a copy of this Joint Resolution, to the State Planning Department, Rochester Township, and the Olmsted County Auditor/Treasurer. The resolution for annexation shall contain the boundary description of the area to be annexed and, pursuant to Minnesota Statutes Section 414.01, subd. 14 and Section 414.0325, subd. 1a, shall contain the City's estimates of the population and number of households contained in the area to be annexed and the estimate of electrical service cost differences at the time of annexation.

The City and Township agree that no alteration of the stated boundaries is appropriate, that no consideration by the State Planning Department is necessary, and that all terms and conditions for annexation of the area legally described in Exhibit A, or any portion thereof, are provided for in this Joint Resolution. Pursuant to Minnesota Statutes Section 414.0325, upon receipt of a resolution of any signatory to the Joint Resolution for annexation of the area described in Exhibit A, or any portion thereof, the State Planning Department may review and comment, but shall, within thirty (30) days of receipt of said resolution, order the annexation of the area described in the resolution in accordance with the terms and conditions of this Joint Resolution.

7. Notwithstanding the annexation time line set forth in paragraph 4, any lands contained in the orderly annexation area may be annexed to the City prior thereto upon adoption by the City of a resolution following the procedures as prescribed in paragraph 6 and whenever:

- (a) a landowner abuts the City limits and said landowner files a petition for annexation with the City. In such instance, review by the Rochester Planning and Zoning Commission shall not be required prior to the City acting upon said petition;
- (b) a landowner seeks to develop a residential, commercial, industrial, or governmental use on land which is platted or subdivided or which is proposed to be platted or subdivided for development at a density of more than one unit per 40 acres. In such instances, the City may immediately annex the area proposed to be developed and the adjacent necessary land which, in the City's discretion, is needed to extend municipal sewer or water service to the area to be annexed; or

Provided further, that the parties hereto may revise the annexation schedule otherwise set forth in paragraph (4) upon the recommendation of the Olmsted County Health and Planning Departments that the continued use of private sewer systems in the orderly annexation area present an immediate threat to public or private water supplies.

8. Pursuant to the provisions of Minnesota Statutes §414.0325, Subd. 5, the Township agrees to exclude the area identified in Exhibit A from its zoning and subdivision controls prior to annexation upon the City's extension of its municipal planning and land use controls to the property, and agrees not to object when the City seeks County exclusion of its planning and land use controls in this area. To establish its municipal planning and land use controls, the City shall adopt a resolution identifying the boundaries of the real property subject to municipal controls and the specific zoning district(s) classification(s) of the subject lands as defined under the Rochester Zoning Ordinance and Land Development Manual. A copy of the resolution shall be filed with the Township, the Olmsted County Administrator, and the Olmsted County Recorder's Office.

9. Lands ordered annexed pursuant to this joint resolution shall not be subject to any differential taxation as referenced in Minnesota Statutes §414.035. Property taxes payable on annexed land shall continue to be paid to the Township for the entire year in which the annexation becomes effective. If an annexation becomes effective on or before August 1 of a levy year, based on the date specified in the order from the State Planning Department, the City may levy on the annexed area beginning with that same levy year. If the annexation becomes effective after August 1 of a levy year, the Township may continue to levy on the annexed area for that levy year. Thereafter property taxes on the annexed land shall be paid to the City.

10. The City shall, in appropriate circumstances, provide notification that the cost of electric utility service to the customers on the property subject to this joint resolution may change when the land is annexed to the City if and when the provider of electrical service is transferred from People's Cooperative Power Association to Rochester Public Utilities. As of the date of this joint resolution, the estimate of the difference in overall electrical service costs between the two providers is minimal. A resolution of the City to annex certain property subject to this joint resolution, as referenced in paragraph 7, shall contain a cost estimate of any change in electric utility services, including rate changes and assessments resulting from the annexation.

11. It is the City's intention to provide only sanitary sewer and/or water service to developed lands in the annexation area prior to annexation pursuant to this joint resolution. Thereafter, any other or additional local improvements may be installed by the City in an annexed area:

- (a) upon a petition brought pursuant to Minnesota Statutes, Chapter 429, by the benefited property owner or owners; or,

- (b) when three-fourths (3/4) of the City Council determine that it is in the public interest of the residents of the City and of any lands to be assessed to construct such local improvement; or,
- (c) when the City and Township enter into an Intergovernment Agreement providing for the sharing of costs for the local improvement where the sharing of costs is based on the number of years the improvement shall be in the Township as compared to the improvement's life expectancy.

12. The City shall have exclusive control over the nature and extent of the installation of municipal sewer or water. This includes the design and construction of any sewer or water system serving an area of the Township prior to annexation. The Township, by this agreement, does hereby authorize the City to enter upon the Township roads for the purpose of constructing, installing, and maintaining any and all sewer and water facilities, without the need for any further permit or easement. The City agrees to reconstruct any township roads disturbed by the sewer and watermain construction to the same width and elevation applying City construction specifications. Manhole castings shall be set at an elevation at or below the final street grade. The City shall reimburse itself for the cost of installing municipal services by entering into connection agreements with individual property owners. The City and Township recognize that the connection agreements will require payments by the property owners prior to annexation of the property into the city, and that the payments are appropriately levied as unpaid charges pursuant to Minn. Stat. Chapters 429 and. 444. The City shall furnish to Township by November 15th of each appropriate year a list of properties subject to connection agreements and the amount of special assessments to be collected from each property. The City shall also provide a list of those properties for which delinquent water and sewer bills are outstanding. The Township shall certify, on behalf of the City, these amounts to the Olmsted County Auditor/Treasurer for inclusion in the Real Property Tax Statement due and payable in the following calendar year. The certification shall direct the Olmsted County Auditor/Treasurer, to collect and disburse the assessment amounts directly to the City of Rochester. In the event the County Auditor/Treasurer is unwilling to disburse the funds to the City, the Township shall remit these funds to the City within 30 days of its receipt of the funds from the County. The City shall assume the responsibility for certification of the special assessments and service charges upon annexation of the properties into the City.

13. Nothing in this joint resolution shall relieve the Township of its responsibilities for the regular and normal maintenance of the existing infrastructure of roads, drainage facilities, and street signs until the property described in the attached Exhibit A has been annexed into the City.

14. Disputes and Remedies. The City and Township agree as follows:

- a. **Negotiation.** When a disagreement over interpretation of any provision of this Joint Resolution shall arise, the respective City and Township will direct staff members as they deem appropriate to meet at least one time at a mutually convenient time and place to attempt to resolve the dispute through negotiation.
- b. **Mediation.** When the parties to this Joint Resolution are unable to resolve disputes, claims or counterclaims, or are unable to negotiate an interpretation of any provision of this Joint Resolution, the parties may mutually agree in writing to seek relief by submitting their respective grievances to non-binding mediation.
- c. **Adjudication.** When the parties to this Joint Resolution are unable to resolve disputes, claims or counterclaims, are unable to negotiate an interpretation of any provision of this Joint Resolution or are unable to agree to submit their respective grievances to non-binding mediation, either party may seek relief through initiation of an action in a court of competent jurisdiction. In

addition to the remedies provided for in this Joint Resolution and any other available remedies at law or equity, in the case of a violation, default or breach of any provision of this Joint Resolution, the non-violating, non-defaulting, or non-breaching party may bring an action for specific performance to compel the performance of this Joint Resolution in accordance with its terms.

15. Modification/Amendment. This Joint Resolution shall not be modified, amended, or altered except upon the written joint resolution of the City and the Township duly executed and adopted by the City Council and Township Board of Supervisors and filed with the State Planning Department.

16. Governing Law; Severability. This Joint Resolution for Orderly Annexation is made pursuant to, and shall be construed in accordance with the laws of the State of Minnesota. In the event any provision of this Joint Resolution is determined and adjudged to be unconstitutional, invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Joint Resolution shall remain in full force and effect, and the parties hereto shall negotiate in good faith and agree to such amendments or modifications of or to this Joint Resolution or other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties hereto.

17. Entire Agreement. The terms, covenant, conditions, and provisions of this Joint Resolution, including the present and all future attachments, shall constitute the entire agreement between the parties, superseding all prior agreement and negotiations, regarding the annexation area. This Joint Resolution shall be binding upon and inure to the benefit of the respective successors and assigns of the City and Township.

18. Effective Date; Termination. This resolution shall be effective immediately upon its adoption by the parties and its filing, by the City and Township, with the State Planning Department. The obligations of the parties to one another according to the terms of this resolution shall terminate at such time that the entire area designated in Exhibit A has been annexed to the City, or at such time that the City and Township mutually agree in writing that this joint resolution shall be terminated.

19. Notices. Any notices required to be sent under the terms of this agreement shall be considered sufficient notice if mailed by first class U.S. mail to the City of Rochester, City Administrator's Office, 201 4th Street SE, Rochester, MN 55904, and to Rochester Township, Rochester Township Clerk, _____, Rochester, MN 5590__.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF ROCHESTER,
MINNESOTA THIS 1st DAY OF MAY, 2000.

John Tunzhuo
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: Judy Kay Snew
CITY CLERK

APPROVED THIS 2nd DAY OF MAY, 2000.

C. W. Bonfield
MAYOR OF SAID CITY

(Seal of the City of
Rochester, Minnesota)

PASSED AND ADOPTED BY THE ROCHESTER TOWNSHIP, OLMSTED COUNTY,
MINNESOTA, THIS 11 DAY OF May, 2000.

Brenda Dickson
CHAIRMAN OF TOWN BOARD

ATTEST: Stephanna
TOWN CLERK

McGhie & Betts, Inc.
Consulting Engineers Land Surveyors
Planners

1648 Third Avenue S.E., Rochester, MN 55904 507-289-3919 Fax 507-289-7333
1604 Riverview Lane, Northfield, MN 55057 507-645-0964 Fax 507-645-2842

Proposed Orderly Annexation Description

For: City of Rochester

Date: February 17, 2000

All of SOUTHPORT SUBDIVISION, SOUTHPORT SUBDIVISION NUMBER TWO, SOUTHPORT SUBDIVISION NO. 3, SOUTHPORT SUBDIVISION NUMBER FOUR, SOUTHPORT SUBDIVISION NUMBER FIVE and SOUTHPORT SUBDIVISION NUMBER SIX, all in the Southeast Quarter of Section 13, Township 106 North, Range 14 West, Olmsted County, Minnesota.

Also:

That part of the Northeast Quarter of the Northeast Quarter of Section 24, Township 106 North, Range 14 West of the 5th Principal Meridian, described as follows:

Commencing at the northeast corner of said Northeast Quarter of the Northeast Quarter; thence West, assumed bearing, along the north line of said Northeast Quarter of the Northeast Quarter a distance of 363.40 feet to the center line of the public road and the point of beginning of the land to be described; thence continuing West along said north line of 435.90 feet; thence South 200.00 feet; thence East 466.92 feet to the center line of said public road; thence North 08 degrees 57 minutes 30 seconds West along said center line 94.94 feet; thence northerly along said center line on a tangential curve, concave to east, radius 11459.16 feet, central angle 00 degrees 32 minutes 14 seconds, 107.45 feet to the point of beginning.

Containing in all, 92.8 acres, more or less.

This proposed annexation area is to include all public right-of-ways and easements within the above described areas.

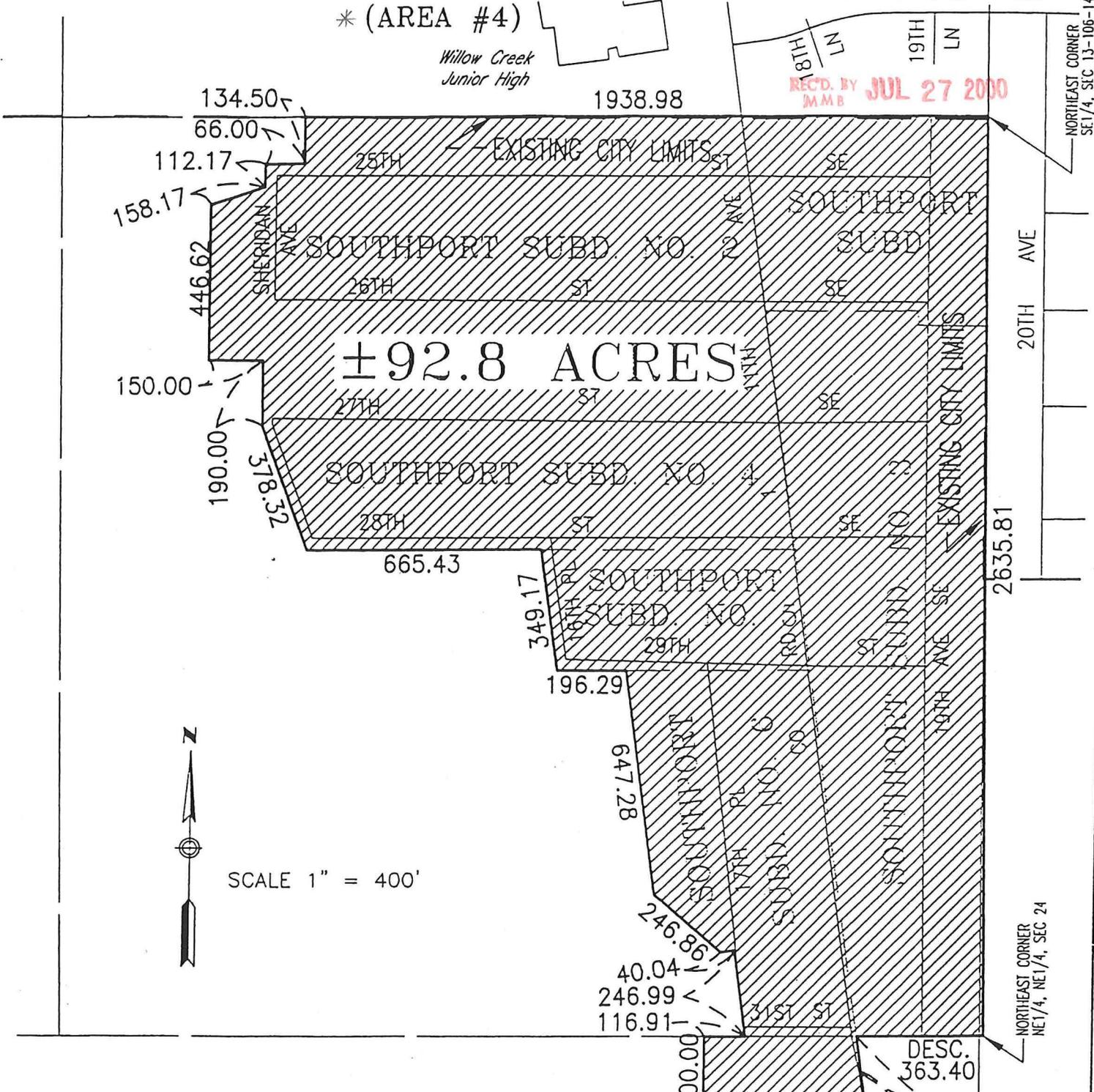
ORDERLY ANNEXATION EXHIBIT B

*(AREA #4)

Willow Creek Junior High

REC'D. BY JMMB JUL 27 2000

NORTHEAST CORNER SE 1/4, SEC 13-106-14



DESCRIPTION:
SEE ATTACHED:

FOR :

CITY OF ROCHESTER
ROCHESTER, MINNESOTA
55901

McGhie
Consulting Engineers



Betts, Inc.
Land Surveyors

1648 3rd AVE. S.E. Rochester, MN. 55904 507-289-3919

SCALE:	1" = 400'
DRAWN BY:	BWC
DATE :	02/25/00
ACCT. NO. :	0007/0059
CADD NO. :	0059

OA-699

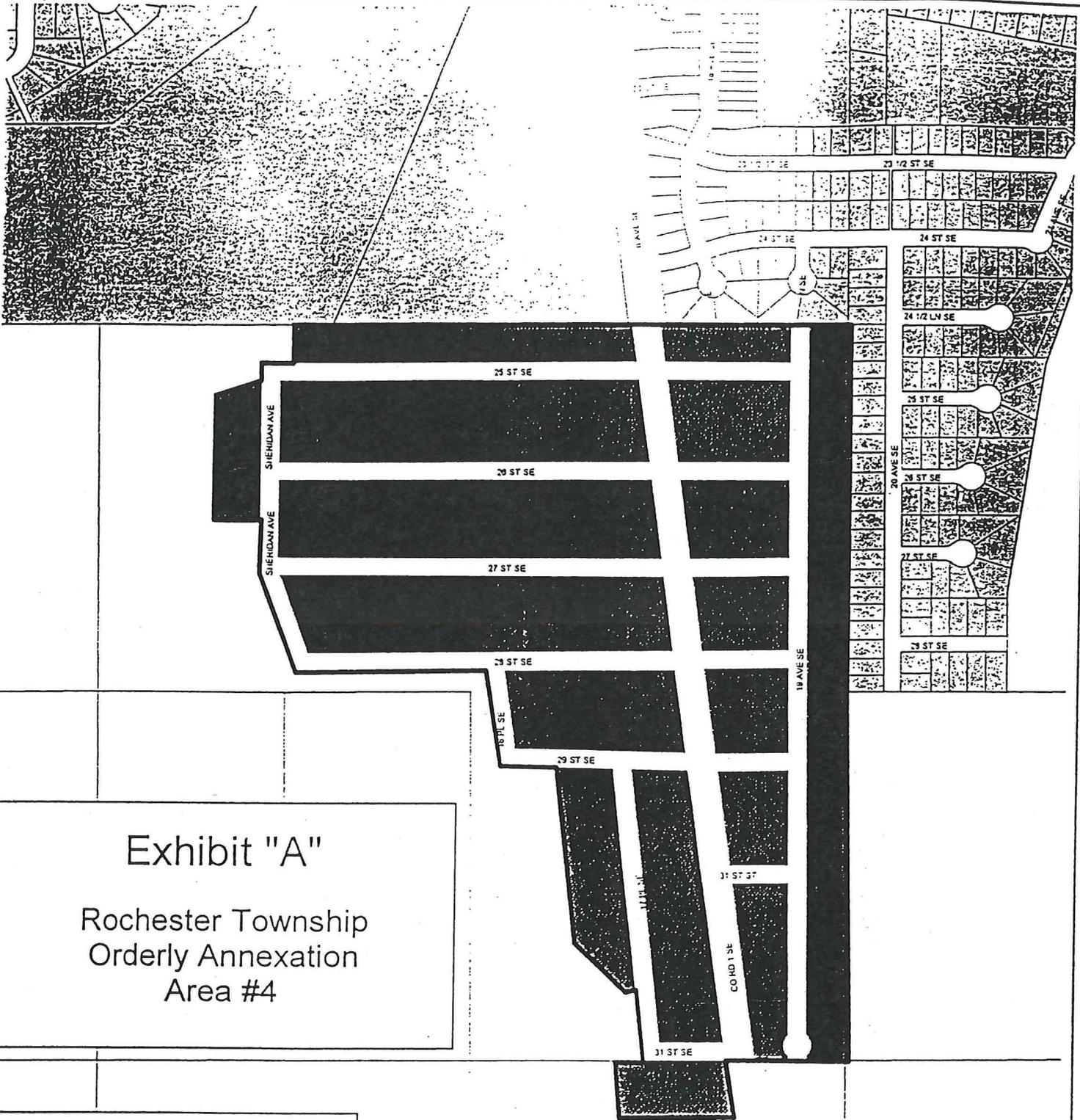


Exhibit "A"
 Rochester Township
 Orderly Annexation
 Area #4




-  Annexation Area
-  Currently in City
-  Rochester Township

REC'D. BY JUL 27 2000
 MMB