

**CASE NO. A06-1594**

**STATE OF MINNESOTA**

**IN COURT OF APPEALS**

City of Wyoming, et al., petitioners,

*Appellants,*

vs.

Minnesota Office of Administrative Hearings;  
City of Chisago City; and City of Stacy, intervenors

*Respondents.*

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## STATEMENT OF THE LEGAL ISSUES

- I. Does Ramsey County District Court have jurisdiction to consider and deny Appellants' petition for a writ of mandamus, notwithstanding the jurisdiction of the Minnesota Office of Administrative Hearings pursuant to Minn. Stat. c. 414?**

**A. District Court Decision.**

The District Court held in the affirmative, finding that it had jurisdiction to consider the matter and deny Appellants' petition for a writ of mandamus. Respondent City of Chisago City asserts that the decision of the District Court was correct.

**B. Most Apposite Cases and Statutory Provisions.**

Village of Farmington v. Minnesota Municipal Commission, 284 Minn. 125, 170 N.W.2d 197 (1969); City of Waite Park v. Minnesota Office of Administrative Hearings, 2006 WL 1985457 (Minn. Ct. App. 2006); Minn. Stat. §§ 414.07; 542.09; 586.11-12.

- II. Do Minn. Stat. §§ 414.031 and 414.09 require Respondent Minnesota Office of Administrative Hearings to order a contested case hearing if a municipality adopts an orderly annexation agreement pursuant to Minn. Stat. § 414.0325 and municipalities not parties to such agreement adopt resolutions pursuant to Minn. Stat. § 414.031 for annexation of property also identified in the orderly annexation agreement and file the resolutions with Respondent Minnesota Office of Administrative Hearing within 30 days of said agency's receipt of the orderly annexation agreement?**

**A. District Court Decision.**

The District Court held in the affirmative, finding that Respondent is required to hold a contested case hearing in the event of competing annexation petitions. Respondent City of Chisago City asserts that the decision of the District Court was correct.

**B. Most Apposite Cases and Statutory Provisions.**

Ashbacker Radio Corp. v. Federal Communications Commission, 326 U.S. 327, 66 S. Ct. 140 (1945); Village of Farmington v. Minnesota Municipal Commission, 284 Minn. 125, 170 N.W.2d 197 (1969); Rockford Township v. City of Rockford, 608 N.W.2d 903 (Minn. Ct. App. 2000); La Crescent Township v. City of La Crescent, 515 N.W.2d 608 (Minn. Ct. App. 1994); Township of Winona v. Minnesota Municipal Board and the City of Winona, File No. C-3-95-4981 (Ramsey County Dist. Ct. July 12, 1995); Minn. Stat. §§ 414.031, subd. 3; 414.0325, subds. 1(f), (g), 6; 414.07; 414.09, subd. 1; 645.16-17.

**III. Does the record in this case reasonably tend to sustain the District Court's decision to deny Appellant's petition for alternative writ of mandamus?**

**A. District Court Decision.**

The District Court denied the writ of mandamus as a matter of law. Respondent City of Chisago City asserts that the decision of the District Court was correct.

**B. Most Apposite Cases and Statutory Provisions.**

Northern States Power Co. v. Minnesota Metropolitan Council, 684 N.W.2d 485 (Minn. 2004); State v. Pero, 590 N.W.2d 319, 323 (Minn. 1999); State ex rel. Hennepin County Welfare Bd. v. Fitzsimmons, 239 Minn. 407, 58 N.W.2d 882 (1953); State ex rel. Brenner v. Hodapp, 234 Minn. 365, 48 N.W.2d 519 (1951); State ex rel. Goar v. Hoffmann, 209 Minn. 308, 310, 296 N.W. 24, 25 (1941); Zaluckyi v. Rice Creek Watershed Dist., 639 N.W.2d 70, 74 (Minn. Ct. App. 2002); Kramer v. Otter Tail County Board of Commissioners, 647 N.W.2d 23 (Minn. Ct. App. 2002); Minn. Stat. §§ 414.031, subd. 3; 414.0325, subds. 1(f), (g), 6; 414.07; 414.09, subd. 1; 645.16-17.

## STATEMENT OF THE CASE

### **I. Introduction.**

This is an appeal from an Order and Memorandum of the Ramsey County District Court (the “District Court”), Judge Michael T. DeCourcy, dated August 1, 2006, denying the City of Wyoming’s and Wyoming Township’s (collectively the “Wyomings”) Petition for Writ of Mandamus (“Mandamus Petition”). *See* (Order and Memorandum of August 1, 2006); (R.A.1-6).

The Wyomings brought the Mandamus Petition pursuant to Minn. Stat. § 586.01, *et seq.*, requesting that the District Court issue the Mandamus Petition directing the Minnesota Office of Administrative Hearings (“OAH”) to order annexation of Wyoming Township (the “Township”) to the City of Wyoming pursuant to the Joint Resolution as to Orderly Annexation by and between the Wyomings, dated December 6, 2005 (the “Wyomings Agreement”). *See* (A.1-8).

### **II. Competing Annexation Petitions.**

On or about December 7, 2005, the Wyomings filed the Wyomings Agreement with OAH requesting that OAH order annexation of the Township to the City of Wyoming pursuant to the Wyomings Agreement and Minn. Stat. § 414.0325. *Id.*

Within 30 days following the filing of the Wyomings Agreement with OAH, i.e., January 4, 2006, the City of Chisago City (“Chisago City”) filed a resolution with OAH requesting annexation of portions of the Township to Chisago City (the “Chisago City Petition”). (A.92-98). In such filing, Chisago City also requested a contested case

hearing on the Chisago City Petition and consolidation of the Chisago City Petition and the Wyomings Agreement. (A.94). The Chisago City Petition and requests were made pursuant to Minn. Stat. §§ 414.031 and 414.09. *See* (A.92-98); (R.A.16-32).

On January 5, 2006, the City of Stacy (“Stacy”) also filed an annexation resolution with OAH also requesting annexation of portions of the Township to Stacy (the “Stacy Petition”). (A.99-106). In such filing, Stacy requested a contested case hearing on the Stacy Petition. (A.99-100). The Stacy Petition and requests were made pursuant to Minn. Stat. §§ 414.031 and 414.09. *See* (A.99-106); (R.A.33-51).

Because the Wyomings’ filed the Wyomings Agreement with OAH, initiated their present orderly annexation proceeding pursuant to Minn. Stat. § 414.0325, and precluded surrounding local units of government from meaningful participation in their annexation process, Chisago City and Stacy exercised the only remedy remaining to them – filing petitions for annexation of certain property in the Township in order to determine the boundary adjustment issues through a mandatory contested case hearing process. *See* (Respondent-Intervenor City of Chisago City’s Memorandum in Opposition to Petition for Alternative Writ of Mandamus of April 4, 2006); (Affidavit of John Pechman in Support of Memorandum in Opposition to Petition for Alternative Writ of Mandamus of April 4, 2006) (hereinafter “Pechman Aff.”) ¶¶ 5-7); (R.A.8-9).

Annexation to the City of Wyoming of the area sought by Chisago City, as proposed through the Wyomings Agreement, is not appropriate and will violate the statutory rights of Chisago City. Such annexation will directly and negatively impact

Chisago City and the residents of Chisago City's proposed annexation area from a fiscal, services, development, planning, growth, land use, transportation, and environmental standpoint. Annexation of Chisago City's annexation area to Chisago City is in the best interest of not only the property owners of such area, but also the surrounding communities, the county, and the region. *Id.* ¶ 9; (A.93); (R.A.9). The determination of these facts, consideration of the evidence, application thereto of the requisite statutory criteria, and an annexation order from OAH are the reasons a right to a hearing exists under Section 414.031 with such rights defeated if the Appellants' request for a writ of mandamus were granted.

In the negotiations that lead up to the Wyomings Agreement, all of the above issues and interests were intentionally ignored by the Wyomings. The Wyomings' concerted effort to preclude meaningful participation and disregard the interests of property owners and impacts upon surrounding jurisdictions lead directly to the adoption and filing of the Chisago Petition. Such action by Chisago City was the only way to guarantee an opportunity to be heard before a neutral decision-maker at OAH, through the contested case hearing process under Section 414.031. *Id.* ¶ ¶ 6-7; (R.A.8-9).

### **III. OAH Action.**

After considering the Wyomings Agreement and the competing Chisago City and Stacy Petitions, OAH determined not to order annexation under the Wyomings Agreement; consolidated the Chisago City and Stacy Petitions for a contested case hearing pursuant to Minn. Stat. §§ 414.01, 414.031 and 414.09; and stayed a decision on

the Wyomings Agreement pending the resolution of the Chisago City and Stacy Petitions. *See* (A.107-114, 121-122); (R.A.52-72, 91-92).

#### **IV. Mandamus Petition.**

The Wyomings filed the Mandamus Petition with the District Court on February 21, 2006 requesting that the District Court issue a writ of mandamus directing OAH to order annexation of the Township to the City of Wyoming pursuant to the Wyomings Agreement and Minn. Stat. § 414.0325. *See Id.*

Pursuant to a stipulation of all parties, Chisago City and Stacy (collectively the “Cities”) intervened in the proceedings on the Mandamus Petition. *See* (Stipulation and Consent to Intervention of City of Chisago City of March 7, 2006).

#### **V. District Court Proceedings.**

The first issue in this case before the District Court involved a resolution of the competing statutes providing for annexation pursuant to an orderly annexation agreement and Minn. Stat. § 414.0325, and additionally a competing contested case hearing pursuant to petitions for annexation of portions of the same property identified in the Wyomings Agreement filed by the Cities, respectively, pursuant to Minn. Stat. §§ 414.031 and 414.09.

The District Court issued an Order and Memorandum denying the Mandamus Petition (the “Order and Memorandum”) after briefing and a May 31, 2006 Show Cause hearing on the matter, on August 1, 2006, reasoning that OAH has the authority, under Minn. Stat. c. 414 to act upon conflicting annexation petitions by conducting public

hearings on the various petitions as the most appropriate way to resolve the conflict. *See* (Order and Memorandum); (R.A.1-6).

In denying the Mandamus Petition, the District Court held that the presence of the mandatory term “shall” in each statute renders the statutes ambiguous and therefore it was reasonable to interpret both statutes as directory thereby allowing OAH to hold a hearing on the competing petitions. *Id.* at 3-4; (R.A.3-4).

The second issue before the District Court involved the Wyomings assertion that the first petition filed in this case, the Wyomings Agreement, should prevail over all subsequent petitions under the “first-in-time-first-in-right” rule. Because such rule no longer exists under Minnesota law and OAH has jurisdiction over the Wyomings Agreement and the Chisago City and Stacy petitions, respectively, the District Court held and Chisago City asserted that OAH has the authority to carry out its administrative function and purpose of facilitating the orderly growth of Minnesota municipalities and the corresponding adjustment of the boundaries thereof through ordering a contested case hearing in this case thereby affording all parties their rights. *Id.* at 5-6; (R.A.5-6).

This case therefore involves the proper application of Minn. Stat. §§ 414.031, 414.0325 and 414.09. Specifically, this appeal involves competing rights under conflicting statutes in determining whether OAH should order annexation pursuant to an orderly annexation agreement adopted under Minn. Stat. § 414.0325, or instead, order a contested case hearing pursuant to the properly filed resolutions for annexation of Chisago City and Stacy, under Minn. Stat. §§ 414.031 and 414.09, seeking annexation of

the same property as sought in the Wyomings Agreement, when such municipalities were not parties to the Wyomings Agreement.

## **STATEMENT OF THE FACTS**

### **I. Chisago City requests to participate in negotiations on the orderly annexation agreement.**

In the Spring of 2005, the Wyomings began the discussions that lead to the Wyomings Agreement. Having no notice from the Wyomings and after hearing about ongoing annexation discussions and making informal inquiries regarding participation that were declined, Chisago City passed a resolution in July of 2005 officially requesting to participate in the ongoing annexation discussions between the Wyomings. (Pechman Aff. Exhibits (“Exh.”) 4, 5); (R.A.73-76).

### **II. The Wyomings reject Chisago City’s requests to participate.**

The Township’s action in rejecting the Chisago City request was swift. At its Town Board meeting on the same evening Chisago City passed said resolution, the Town Board’s minutes reflect its action:

After discussion the board agreed that only the Wyoming Township and Wyoming City representatives should attend the meetings. It was pointed out that the [merger/annexation] committee does not constitute a quorum by either municipality so even our own board members cannot attend and it should not be open to other municipalities.

(Pechman Aff. Exh. 6); (R.A.77-79).

Thus, the Town Board determined that none of the other surrounding municipalities would be allowed to participate in their annexation discussions.

**A. The Wyomings' assertion that the prior annexation proceedings between Chisago City and the Township support the Mandamus Petition is baseless.**

The Wyomings Brief and Appendix reference a prior annexation proceeding between Chisago City and the Township and corresponding prior settlement discussions and testimony therein arguing that it somehow lends support for the Mandamus Petition. *See Id.*, at 3-4; (R.A.107-152). The Wyomings, without any legal support, infer that their Mandamus Petition should be granted and the Chisago Petition denied in its entirety based on a prior annexation order by OAH granting annexation of other portions of the Township to Chisago City in January 2005 and statements by one member of the City Council of Chisago City. *Id.*; (A.71-87). This argument is irrelevant, prejudicial, inaccurate, without legal support, and should be disregarded in its entirety.

As background, the area currently petitioned for annexation by Chisago City in the Chisago City Petition was partially included in a prior annexation proceeding initiated pursuant to Minn. Stat. § 414.031 in 2003. (Pechman Aff. ¶ 15, Exhs. 1, 15, 17); (A.71-77, 92-98); (R.A.10-11, 16-32, 95-101, 107-152). This 2003 petition originally sought annexation of approximately 11,000 acres, including annexation of portions of the area now sought for annexation in the Chisago City Petition. *Id.*

Prior to the contested case hearing on the original 2003 petition, Chisago City amended the annexation petition in March 2004 reducing the size of the area requested for annexation to approximately 5,000 acres. (Pechman Aff. ¶ 16-17, Exh. 16); (A.78-82); (R.A.10-11, 102-106).

Chisago City reduced the size of its original 2003 annexation petition based on legal strategy following a closed Chisago City Council meeting held on January 27, 2004 prior to ever meeting with select representatives of Wyoming City.<sup>1</sup> (Pechman Aff. ¶¶ 18-19, Exh. 18, at ¶ 5a(2)); (R.A.11, 153-159).

The decision to reduce the size of the 2005 annexation was a legal strategy and Chisago City knew that reducing the size of the area at that time would likely result in the future need for a subsequent annexation petition and discussions with other area communities including the cities of Wyoming and Forest Lake related to development of a written agreement establishing future boundaries between these cities adopted by the respective city councils. *Id.* at ¶ 20-22, Exh. 17; (R.A.11-12, R.A.107-152). No such agreement was ever formally discussed or adopted by either Chisago City or Wyoming City, and therefore, Chisago City was not bound by any agreement related to petitions for annexation. The amended annexation area, following a contested case hearing before Administrative Law Judge Kathleen D. Sheehy, was ultimately annexed in January 2005. *Id.*

### **III. The Wyomings adopt and file the Wyomings Agreement with OAH.**

Without any notice to or any input from any of the surrounding governments, i.e., Chisago City, Stacy, or the City of Forest Lake, or any meaningful input from the public, the Wyomings adopted the Wyomings Agreement and filed the same with OAH on December 7, 2005. *See* (A.1-8). The filing of the Wyomings Agreement followed

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<sup>1</sup> All of the representatives of Wyoming City including the mayor, a city councilmember, and the city administrator, who took part in the informal meeting in late February or early March 2004, no longer represent the city of Wyoming today.

perfunctory public meetings of the Wyomings' respective governing bodies the previous day. (Pechman Aff. Exhs. 10-11); (R.A.83-88).

**IV. The Township's request for relief in the Mandamus Petition contradicts a previous statement by its attorney.**

The Township special meeting minutes from December 6, 2005 indicate that the Wyomings' present Mandamus Petition is not valid and contradicts the arguments that are now being made to this Court. The minutes reflect that the Wyomings' attorney advised the Town Board of the following: "After filing [the Wyomings Agreement] by the [Wyoming] City and [the] Township, the State [OAH] will act within 30 days *provided the annexation is not contested.*" (Emphasis added). (Pechman Aff. Exh. 10, at ¶ 5(2)); (R.A.83-84). By this statement, the Wyomings concede that the Wyomings Agreement can be contested in the event of competing annexation petitions and that OAH has authority to order a contested case hearing, pursuant to the Chisago City and Stacy petitions, which were filed with OAH in January of 2006.

**V. OAH orders a contested case hearing.**

On January 11, 2006 and in a subsequent January 20, 2006 memorandum, following the receipt of the Wyomings Agreement and the Chisago and Stacy Petitions, OAH determined that the annexation petitions of the three cities were "competing" and an "apparent conflict of rights" and consolidated<sup>2</sup> the annexation petitions of Chisago

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<sup>2</sup> Minn. Stat. § 414.01, subd. 5 provides that "[OAH] may order the consolidation of separate proceedings in the interest of economy and expedience."

City and Stacy for a contested case hearing pursuant to Minn. Stat. § 414.031.<sup>3</sup>

(Pechman Aff. Exh. 3 at 1-2); (A.107-110); (R.A.52-55).

OAH responded correctly to the competing annexation petitions in the only manner provided by law that effectively preserved the statutory rights of all the parties involved – ordering a contested case hearing.<sup>4</sup> (Pechman Aff. Exh. 3); (A.107-114); (R.A.52-72).

The Wyomings now ask this Court to overturn the District Court's and OAH's reasoned and legally supported decision affording all parties their rights. Specifically, the Wyomings ask this Court to order annexation without a hearing, which under the specific circumstances of competing annexation petitions, is contrary to the law and the policy contained in Minn. Stat. c. 414. The Wyomings further ask this Court to accept the Wyomings' unsupported assertion that because they entered into a self-serving agreement, this Court should: (1) presume that such agreement is in the best interest of the public; (2) ignore and preclude the competing interests of Chisago City and Stacy; and (3) deny the mandatory statutory hearing rights of Chisago City and Stacy, who were not parties to and in fact were precluded from participating in the Wyomings Agreement.

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<sup>3</sup> OAH followed its January 11, 2006 action and January 20, 2006 memorandum with an Order for Consolidation, dated March 2, 2006, consolidating the Chisago City and Stacy Petitions pursuant to Minn. Stat. § 414.01, subd. 5, and staying further proceedings on the Wyoming Agreement pending the outcome of a contested case hearing on the matter. (Pechman Aff. Exh. 13).

<sup>4</sup> Minn. Stat. § 414.01, subd. 1. "A duty of planning director. Among the duties of the director of the Office of Strategic and Long-Range Planning is the duty to conduct proceedings, make determinations, and issue orders for the creation of a municipality, the combination of two or more governmental units, or the alteration of a municipal boundary."

Based on the foregoing statement of the legal issues, case and facts, and the following legal argument, this Court should affirm the lower court's denial of the Mandamus Petition and finding that OAH must order a contested case hearing in the event of competing annexation petitions under Chapter 414.

### STANDARD OF REVIEW

The Mandamus Petition was submitted to the District Court and treated as a dispositive motion based upon a Stipulation and Stipulation of Facts. (A.123-129, A.130-137). The District Court denied the Mandamus Petition as a matter of law. (Order and Memorandum, at 1-2); (R.A.1-2).

On appeal, this Court will reverse a district court's order for mandamus relief "only when there is no evidence reasonably tending to sustain the trial court's findings." Coyle v. City of Delano, 526 N.W.2d 205, 207 (Minn. Ct. App. 1995); *See also* State ex rel. Banner Grain Co. v. Houghton, 142 Minn. 28, 30, 170 N.W. 853, 852 (1919); Haen v. Renville County Bd. of Comm'rs, 495 N.W.2d 466, 469 (Minn. Ct. App. 1993), *review denied* (Minn. Mar. 30, 1993). This Court further holds that "[w]hen the district court's decision on a petition for a writ of mandamus is based solely on a legal determination, this court reviews that decision de novo." Nolan & Nolan v. City of Eagan, 673 N.W.2d 487, 493 Minn. Ct. App. 2003); *See also* Demolition Landfill Servs., LLC v. City of Duluth, 609 N.W.2d 278, 280 (Minn. Ct. App. 2000), *review denied* (Minn. July 25, 2000).

Applying the applicable standard of review, statutes and legal precedent in this case, as discussed below, all reasonably tend to sustain the District Court's decision to deny the Writ as a matter of law based on the competing annexation petitions.

## ARGUMENT

### **I. Ramsey County District Court has jurisdiction to consider and deny a petition for a writ of mandamus, notwithstanding the jurisdiction of OAH pursuant to Minn. Stat. c. 414.**

OAH challenged the jurisdiction and venue of the Ramsey County District Court over the Mandamus Petition in its memorandum to the District Court. *See* (Respondent OAH's Memorandum in Response to Order to Show Cause at 7, 11). This Court, however, resolved the jurisdictional and venue issues in an unpublished decision holding that the District Court had jurisdiction<sup>5</sup> and venue<sup>6</sup> was proper to consider a petition for a writ of mandamus challenging an action by OAH, notwithstanding the appeal procedure contained in Minn. Stat. § 414.07.<sup>7</sup> *See City of Waite Park v. Minnesota Office of Administrative Hearings*, 2006 WL 1985457, \*3 (Minn. Ct. App. 2006); (A.162-176).

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<sup>5</sup> The mandamus statutes (Minn. Stat. 586.01 et seq.) provide that "[t]he district court has exclusive original jurisdiction in all cases of mandamus." Minn. Stat. § 586.11.

<sup>6</sup> Under the mandamus statutes, issues of fact must be tried in "the county in which the defendant resides, or in which the material facts stated in the writ are alleged to have taken place." Minn. Stat. § 586.12. *See also* Minn. Stat. §§ 586.08 (providing that in actions for mandamus, all issues shall be tried and proceedings had in the same manner as in a civil action); 542.09 (providing that "[a]ll [civil] actions . . . shall be tried in a county in which one or more of the defendants reside when the action is begun or in which the cause of action or some part thereof arose").

<sup>7</sup> The Minnesota Supreme Court holds that judicial review pursuant to Minn. Stat. § 414.07 is "virtually impossible" without any "findings or reasons" accompanying an order from OAH. *Village of Farmington v. Minnesota Municipal Commission*, 284 Minn. 125, 135, 170 N.W.2d 197, 204 (1969). Because the Wyomings commenced an action pursuant to Minn. Stat. c. 586 requesting an extraordinary remedy, nothing contained in Chapter 414 precludes the jurisdiction of the District Court over the Mandamus Petition.

While this Court has previously determined that the Ramsey County District Court has jurisdiction to consider the present Mandamus Petition and venue is proper, Appellants' have nonetheless failed to establish the requisite elements for issuance of a writ of mandamus and the District Court's decision to deny Appellants' Mandamus Petition should be affirmed.

**II. The express language of Minn. Stat. § 414.031 and applicable legal precedent requires that OAH consolidate and order a contested case annexation hearing in the event that competing annexation petitions are timely filed with OAH seeking annexation of the same area pursuant to Minn. Stat. §§ 414.031 and 414.0325.**

**A. The plain and literal meaning of both statutes makes action by OAH mandatory under the appropriate circumstances.**

**1. If competing petitions for annexation were not submitted, OAH would be required to order annexation pursuant to the Wyomings Agreement.**

The Wyomings argue that their orderly annexation agreement and Minn. Stat. § 414.0325 compels OAH to order annexation in accordance with the terms of the Wyomings Agreement because they filed such agreement first.

The Wyomings take a “blindly on” approach for their analysis relying primarily on two paragraphs within Section 414.0325 as the basis for their Writ petition.

First, Minn. Stat. § 414.0325, subd. 1(f) provides that:

If a joint resolution designates an area as in need of orderly annexation and states that no alteration of its stated boundaries is appropriate, the director may review and comment, but may not alter the boundaries.

This language provides that OAH may review and comment on the boundaries of a proposed annexation pursuant to the Wyomings Agreement, but it may not alter the boundaries of the subject area as contained in the underlying agreement.

Second, Minn. Stat. § 414.0325, subd. 1(g) further provides that:

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

This language provides that OAH may review and comment on the Wyomings Agreement, but shall, within 30 days of receipt of said agreement, order the annexation in accordance with its terms.

**2. Chisago City and Stacy also have a statutory right to a mandatory contested case annexation hearing on their respective annexation petitions notwithstanding the Wyomings Agreement.**

The applicable statutes, Minn. Stat. §§ 414.031 and 414.09, also guarantee Chisago City and Stacy the right to a contested case hearing on the substance of their respective annexation petitions, which is not diminished or limited by the operation of Minn. Stat. § 414.0325 or the Wyomings Agreement.

First, Minn. Stat. § 414.031, subd. 3 provides expressly that:

Upon receipt of a petition or resolution initiating an annexation, the director shall designate a time and place for a hearing in accordance with Section 414.09.

Pursuant to this statute, OAH “shall” designate a time and place for a hearing pursuant to the Chisago City and Stacy petitions for annexation in accordance with Section 414.09

and consider the relevant factors and decision standards contained in Section 414.031, subdivision 4.

In this case, Chisago City and Stacy properly and timely initiated an annexation proceeding pursuant to Section 414.031, subd. 1 (a). As a result, Chisago City and Stacy have a mandatory right to a hearing on their annexation petitions notwithstanding the joint resolution filed by the Wyomings in the form of the Wyomings Agreement or through the operation of Minn. Stat. § 414.0325.

Further, Minn. Stat. § 414.09, subd. 1 provides that:

Proceedings initiated by the submission of an initiating document or by the director shall come on for hearing within 30 to 60 days from receipt of the document by the director or from the date of the director's action and the person conducting the hearing must submit an order no later than one year from the date of the day of the first hearing.

Again, this statute provides that following the receipt of the Chisago City and Stacy petitions for annexation by OAH, the matter "shall come on for hearing within 30 to 60 days." *Id.* Here, Chisago City and Stacy submitted initiating documents, and as a result, it is mandatory for OAH to set the Chisago City and Stacy petitions for annexation on for a contested case, evidentiary hearing.

Chisago City and Stacy therefore have a specific statutory and mandatory right to a hearing on their petitions for annexation notwithstanding the Wyomings Agreement. Denying Chisago City and Stacy a hearing on their petitions for annexation would deny Chisago City and Stacy their statutory rights under Sections 414.031 and 414.09 and therefore would clearly be contrary to law.

The word “shall,” which appears in both Minn. Stat. §§ 414.031 and 414.0325, makes it mandatory for OAH to order a hearing on the Chisago City and Stacy annexation petitions and to order annexation in accordance with the terms of the Wyomings Agreement within 30 days of receipt by OAH of a joint resolution.

In order to interpret the meaning of the word “shall” in Minn. Stat. §§ 414.031 and 414.0325, it is necessary to ascertain and effectuate the Legislature’s intent. Rockford Township v. City of Rockford, 608 N.W.2d 903, 906 (Minn. Ct. App. 2000) (*citing* Minn. Stat. § 645.16). In the Rockford case, which involved interpretation of a word in Chapter 414, the Court held that when the words of a statute, in their application to an existing situation, are clear and unambiguous, their plain meaning must be given effect. *Id.* The Rockford Court went on to further reason that sections of a statute should be considered together to give the words their plain meaning. *Id.* (*citing* Chanhassen Estates Residents Ass’n v. Chanhassen, 342 N.W.2d 335, 339 (Minn. 1984)). *See also* Minn. Stat. § 645.17.

In addition, the Minnesota Supreme Court held in Agassiz and Odessa Mutual Fire Insurance Co. v. Magnusson, 1136 N.W.2d 861, 868 (1965) that:

It is also well established that the words ‘may’ and ‘shall’, when used in statutes, ordinarily are not to be construed as interchangeable but are to be given their literal meanings *unless a contrary legislative intent appears*.

(emphasis added).

The plain and literal meaning of the word “shall,” as contained in Black's Law Dictionary 1407 (8th ed. 2004), is as follows: “[h]as a duty to; more broadly, is required to.”

Black's Law Dictionary goes on to further state that “[t]his [the above definition] is the mandatory sense that drafters typically intend and that courts typically uphold.”

In addition to containing the word “shall,” Minn. Stat. §§ 414.031 and 414.0325 also contain the word “may.” Because the Legislature used the word “shall” instead of “may,” it clearly did not intend that OAH have discretion regarding these functions, but neither statute contemplated the case of competing annexation petitions nor does either statute expressly limit the rights guaranteed by the other.<sup>8</sup>

**B. The Wyomings’ statutory right to orderly annexation under Section 414.0325 does not supersede Chisago City’s and Stacy’s right to a hearing on their competing annexation petitions under Section 414.031.**

The District Court and OAH determined that all parties should be afforded their rights through the contested case hearing process. Granting the Wyomings Writ would be an unjust and harsh result, contrary to statutory requirements, and as the following analysis establishes, would also be contrary to applicable legal precedent.

**1. Section 414.031 requires OAH to order a hearing on all petitions for annexation while Section 414.0325 requires annexation to be ordered only if the parties to an orderly annexation agreement are the ones seeking annexation.**

What the Wyomings argument and Mandamus Petition fail to recognize is that there is a direct conflict in the statutes related to the mandatory statutory rights established in Sections 414.031 and 414.0325. In this case, the Wyomings assert that their right to annexation following a 30 day review and comment period by OAH should

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<sup>8</sup> The Wyomings mislead this Court by arguing that Section 414.0325 requires approval of annexation while Section 414.031 does not require that a petition for annexation be granted and therefore annexation should be ordered under Section 414.0325. (Appellants’ Brief and Appendix, at 10). The issue here, however, is that Section 414.031 does require that a hearing be ordered and therefore Section 414.0325 can not supersede this requirement.

supersede all other rights, including those of Chisago City and Stacy, to a contested case hearing pursuant to Section 414.031, based on the simple fact that they filed their annexation petition first.

The fundamental flaw in the Wyomings argument is that it fails to recognize that township property may be annexed under Section 414.0325 without holding a contested case hearing conducted by OAH only where certain circumstances have been met. The statute never contemplated the case where there are competing petitions or annexation resolutions that have been filed by another municipality, not a party to the orderly annexation agreement, requesting annexation pursuant to another provision of Minn. Stat. c. 414 of all or any portion of the same designated area. Minn. Stat. § 414.0325 therefore does not supersede a municipality's rights to a hearing on a petition for annexation under Section 414.031.

**2. Chisago City and Stacy must be afforded their right to a hearing on their petitions for annexation without any limitation.**

From a statutory interpretation standpoint, the issue of competing annexation petitions is easily resolved by affording all parties their rights, unless the statute clearly and unambiguously limits a local government unit's right to seek annexation. Certainly, Section 414.0325 allows the signatory parties to an orderly annexation agreement to limit the jurisdiction of OAH regarding application to the parties to the agreement. However, nowhere in Chapter 414 do the statutes allow or permit, either expressly or impliedly, that the parties to an orderly annexation agreement may also limit the rights of other local

government units not parties to the agreement who have asserted their statutory rights to annexation as well. *See* Minn. Stat. § 414.0325.

In this case, the Wyomings actively excluded the interests of other surrounding cities from participating in their annexation discussions, which lead to the Wyomings Agreement. The Wyomings' position assumes, without legal support, that a joint resolution between a city and township somehow supersedes all other statutory rights under Chapter 414, and therefore, it is the only matter for OAH to consider. Clearly, such a proposition is not supported by any interpretation of the operative provisions in Chapter 414, the legislative policy governing Chapter 414, or as discussed below, the case law governing such matters in which the Minnesota Supreme Court has previously determined this issue.

**3. The 2002 amendments to Section 414.0325 are inapplicable when competing annexation petitions are submitted for the same property at issue in an orderly annexation agreement.**

The Wyomings, as part of their rules of construction and legislative history argument, make a circular and unsupported argument relying on a 2002 amendment to Minn. Stat. § 414.0325 in support of their Mandamus Petition. The Wyomings assert that a 2002 amendment evidences a preference for orderly annexation agreements over contested annexations and since this amendment was later adopted it should prevail superseding the statutory rights of Chisago City and Stacy even where such cities were not parties to and in fact were precluded from being party to the Wyomings Agreement. *See* (Appellants' Brief and Appendix, at 9-16). Chisago City's right to a hearing under

Section 414.031 could only be limited or precluded by Section 414.0325 and the Wyoming Agreement if Section 414.0325 expressly provided for such preemption, which a simple reading of the statute clearly demonstrates it does not.

Further, the statutes individually are clear and unambiguous on their face and as demonstrated below the Wyomings seek to read authority and broader applicability into Section 414.0325, which do not otherwise exist. Where a statute is unambiguous and its provisions are couched in plain and simple language, the Court cannot insert a requirement or broader applicability into the statute. Minn. Stat. § 645.16 (when a statute speaks for itself, there is no room for judicial construction); Commissioner of Revenue v. Richardson, 302 N.W.2d 23, 26 (Minn. 1981). In effect, the Wyomings' rules of construction argument is nothing more than a re-packaging of "the first to reach the courthouse wins" argument, which the Supreme Court in the Farmington case has already unequivocally rejected.

The amendment referenced in the Appellants' Brief is codified in Minn. Stat. § 414.0325, subd. 6, which provides that:

An orderly annexation agreement is a binding contract upon all parties to the agreement and is enforceable in the district court in the county in which the unincorporated property in question is located. The provisions of an orderly annexation agreement are not preempted by any provision of this chapter unless the agreement specifically provides so. If an orderly annexation agreement provides the exclusive procedures by which the unincorporated property identified in the agreement may be annexed to the municipality, the municipality shall not annex that property by any other procedure.

The Wyomings argument, based on the above statute (2002 amendment), is without merit and fatally flawed for the following reasons:

**i. The Wyomings Agreement is not binding on local governments not a party to the agreement.**

Minn. Stat. § 414.0325, subd. 6, first provides that: “An orderly annexation agreement is a *binding contract upon all parties to the agreement* and is enforceable in the district court in the county in which the unincorporated property in question is located.” (emphasis added). The statute expressly and unambiguously provides that the terms of such orderly annexation agreements are only binding upon the *parties* to the agreement.

In this case, the Wyomings Agreement is binding upon the signatories to the agreement, the city of Wyoming and the Township. Chisago City and Stacy were not parties to it and were in fact precluded by the Wyomings from being signatories to the Wyomings Agreement, and as a result, under this statute, Chisago City and Stacy are not bound by the terms of the Wyomings Agreement or by Section 414.0325. Chisago City’s statutory rights under Section 414.031 are neither limited nor defeated by the Wyomings Agreement or Section 414.0325.

**ii. The Wyomings Agreement cannot preempt or limit the rights of municipalities not parties to the agreement.**

Minn. Stat. § 414.0325, subd. 6, goes on to further provide that: “The provisions of an orderly annexation agreement are not preempted by any provision of this chapter unless the agreement specifically provides so.” The Wyomings seek to manipulate this

express language in an attempt to have this Court read this portion of the statute to preempt or limit the rights of other local governments not parties to the orderly annexation agreement.

When read as a whole, in the context of the first sentence of the subdivision discussed above, the meaning of the second sentence is clear. The first sentence of subdivision 6 as mentioned above states that it only applies to parties to an orderly annexation agreement. The first sentence as quoted above qualifies the second. Thus, the provisions of an orderly annexation agreement are not preempted by any provision of Chapter 414 only in as far as such other provisions apply to the signatories to the orderly annexation agreement exclusively. The provisions of an orderly annexation agreement do not preempt the rights under Chapter 414 of a municipality that is not a party to the agreement, as is the case here with Chisago City and Stacy. The statute is clear and unambiguous in that it applies to those who are parties to an orderly annexation agreement exclusively and cannot be read to preempt or limit the rights of those local units of government that are not a party thereto.

**iii. Legislative history and case law show the 2002 amendment only applies to the parties to an orderly annexation agreement.**

Finally, the last sentence of Minn. Stat. § 414.0325, subd. 6, provides that:

If an orderly annexation agreement provides the exclusive procedures by which the unincorporated property identified in the agreement may be annexed to the municipality, the municipality shall not annex that property by any other procedure.

The 2002 amendment that resulted in subdivision 6 was the outgrowth of a long-standing claim by proponents of the law change that certain cities were going outside the confines of their orderly annexation agreements and instead using other procedures under Chapter 414 to effect annexations not otherwise provided in their agreements. Specifically, the proponents argued that cities were using the annexation by ordinance procedures under Section 414.033, which under certain circumstances allow annexations to be accomplished through an ordinance procedure without the need for further contested case hearings before OAH and without any authority for the township to object, and not abiding by the terms of existing orderly annexation agreements. (Respondent-Intervenor Chisago City's Memorandum in Opposition to Petition for Alternative Writ of Mandamus, at 26).

Again, a plain reading of this sentence establishes that the issue addressed in the statutory change clearly applies only to the signatory parties to an orderly annexation agreement.

The 2002 law change was based in large part on this Court's decision in La Crescent Township v. City of La Crescent, 515 N.W.2d 608 (Minn. Ct. App. 1994), which upheld the practice of parties to an orderly annexation agreement annexing property of another party to the agreement by a means not specified in the agreement. In the La Crescent case "[t]he township argue[d] an annexation agreement is a binding contract that cannot be modified by the city, township, or state." *Id.* at 609. This Court disagreed holding that annexation under Minn. Stat. § 414.033, subd. 2a, was valid even

though it did not comply with the terms of an existing orderly annexation agreement created pursuant to Minn. Stat. § 414.0325.

The Legislature responded with the repeal of the objectionable statute, Section 414.033, subd. 2a, in 1997. The Legislature thereafter responded in the 2002 law changes to make orderly annexation agreements binding specifically upon the parties to said agreements and make the terms of such agreements enforceable in district court. *See* Minn. Stat. § 414.0325, subd. 6.

The Wyomings argument that the rights of other parties not party to the Wyomings Agreement are thereby preempted by subdivision 6 is unsupported by law or precedent and clearly attempts to read requirements into the law that do not exist. Thus, any conflict in the law in this case is not addressed by the more recent enactment of subdivision 6. The Wyomings assertions are therefore inapplicable and irrelevant to the consideration by this Court of their Writ. In fact, subdivision 6 supports the contrary conclusion for denial of the Wyomings Writ.

Finally, the Wyomings Agreement is not an existing orderly annexation agreement. It is a new agreement, which the Wyomings now assert should supersede the rights of those that have a clear interest in the area but were not allowed to be parties to their agreement. This makes the Wyomings argument even weaker than already demonstrated. There is no provision in Section 414.0325 that prohibits or limits cities not a party to an orderly annexation agreement from exercising their statutory rights under another provision of Chapter 414.

**C. The Minnesota Supreme Court has determined the process for resolving competing annexation petitions by requiring a hearing and has rejected the first-in-time-first-in-right rule.**

It is irrelevant as to which governing body initiated a competing annexation proceeding first in resolving the present conflict in statutes and corresponding rights. The law does not require Chisago City or Stacy to have initiated annexation petitions prior to the Wyomings filing an orderly annexation agreement or vice versa. Under Minnesota law, the original rule was that the first of competing annexation petitions was the exclusive winner. *See* State ex rel. Harrier v. Spring Lake Park, 71 N.W.2d 812 (Minn. 1955).

However, that is not the law today as the first petition may not be in the best interest of the property owners or the community, whereas the second petition may very well be. Yet this determination could not be made in this case if the OAH had not acted as they did here to consolidate the matter and order a contested case hearing.

Following the Harrier decision, the Minnesota Supreme Court considered the policy issue related to whether filing one petition could supersede another petition based merely on the order in which they were filed. The Supreme Court held that first-in-time is not necessarily first-in-right, as follows:

The entire complexion of the problem of municipal incorporations and annexations has ... been changed by the enactment of c. 414 creating the Minnesota Municipal Commission as an independent administrative agency vested with broad powers to facilitate the orderly growth of Minnesota municipalities. The commission has jurisdiction over both consolidation and annexation proceedings of the type involved in this case. Thus, unlike the situation which prevailed at the time of the Spring Lake Park case, the ultimate

decision on both petitions can now be made by a single administrative agency. Since the factual and statutory basis necessary for the application of the “first-in-time-first-in-right” rule does not exist, it cannot be accepted as controlling in this case.

Village of Farmington v. Minnesota Municipal Commission, 170 N.W.2d 197, 202 (Minn. 1969).

The Supreme Court went on to further hold that the Municipal Board (the predecessor to OAH) “had jurisdiction to consider and act upon the petitions in any sequence it deemed appropriate to carry out its administrative function and the underlying purpose of c. 414.” *Id.* at 202. The Supreme Court has clearly articulated a strong preference affording all parties their rights to be heard in the event of competing annexation petitions.

Based on this clear legal precedent, OAH consolidated the competing petitions for annexation and ordered the matter to a contested case hearing to carry out its administrative function and the purpose of Chapter 414, and the District Court accordingly denied the Wyomings’ Mandamus Petition.

**D. In upholding the right of a municipality to a hearing under Minn. Stat. § 414.031, the District Court previously determined the proper method to address competing annexation petitions.**

The prior decisions of the District Court on the subject of competing annexation petitions lend support for denial of the Mandamus Petition in this case. The same issue now before this Court was previously heard and decided by then Ramsey County District Court Judge, Gordon W. Schumacher, in the 1995 case of Township of Winona v.

Minnesota Municipal Board and the City of Winona, Ramsey County District Court File No. C-3-95-4981 (July 12, 1995). (Pechman Aff. Exh. 20); (R.A.161-167).

In the Winona case, the township of Winona and the city of Goodview sought a writ of mandamus commanding the Minnesota Municipal Board (predecessor agency to the OAH) to issue an order annexing portions of the township to Goodview pursuant to an orderly annexation agreement entered into between Goodview and the township pursuant to Section 414.0325. The city of Winona opposed such annexation and alternately requested a contested case hearing through filing competing petitions for annexation pursuant to Section 414.031. The District Court at that time again denied the township's request for a writ of mandamus and required the Minnesota Municipal Board to proceed with a contested case hearing reasoning as follows:

In order to determine whether the writ should be granted, the Court must construe these two competing statutes. Where two provisions in a statute appear to be inconsistent the Court must interpret the statutes in light of one another. Beaver Creek Mutual Insurance Company v. Commissioner of Jobs and Training, 463 N.W.2d 535, 538 (Minn. App. 1990). The Board cannot order the annexation to Goodview as the Township demands without denying the City its right to a hearing on the matter. On the other hand, the Board could hold a hearing on the City's petition and still consider the Township's and Goodview's joint resolution. Viewing the statutes in light of one another, the better choice would be to allow the Board to proceed with a hearing on the City's petition and deny the writ.

(Pechman Aff. Exh. 20, at 4); (R.A.164).

The District Court went on to further hold that:

The City acknowledges that the language in §414.0325 is mandatory, but points out that the language in §414.031 is also mandatory. If the court issues the writ the City would be denied the

statutory right to a hearing on its petitions. In view of these two apparently conflicting mandatory statutory provisions, the City argues that the statute must be reconciled to accommodate both parties' interests. The City cites the Ashbacker doctrine to support this argument. The Ashbacker doctrine stands for the principal that where there are two bona fide applications which are mutually exclusive, the grant of one application, without a hearing to both, deprives the loser of the opportunity to a hearing which the legislature intended to provide.

*Id.* at 5-6 (*citing* Ashbacker Radio Corp. v. Federal Communications Commission, 326 U.S. 327, 66 S. Ct. 140 (1945)); (R.A.165-166).

In applying the Ashbacker doctrine, the District Court further held that:

In this case, as in Ashbacker, there are two bona fide applications for the same thing. If the court orders the writ and grants the Township the order it seeks, the City is deprived of its statutory right. The statutes cannot be construed together to give full effect to both provisions. The resolution in Ashbacker favors a hearing. The court in this case should deny the writ and allow the Board to proceed with a hearing on the competing petitions.

*Id.* at 6; (R.A.166).

Finally, the District Court held that:

Chapter 414 was designed to eliminate difficulties and resolve conflicting claims of municipalities seeking to enlarge their boundaries. The Board has the jurisdiction to act upon conflicting annexation and consolidation proceedings in any sequence it deems appropriate. Village of Farmington v. Minnesota Municipal Commission, 170 N.W.2d 197, 198 (Minn. 1969). In view of the competing interests and apparent conflict of rights a hearing on this matter appears to be the most appropriate means to address this annexation conflict.

*Id.* at 7; (R.A.167).

The foregoing analysis and holding of the District Court in the Winona case, the Minnesota Supreme Court's decision in the Farmington case, and the U.S. Supreme Court's decision in the Ashbacker case, all equally support the District Court's denial of the Mandamus Petition and order for OAH to hold a contested case hearing in this case, as there are competing interests seeking annexation of the same area by multiple units of government each asserting conflicting statutory rights.

**E. The Ashbacker Doctrine supports denial of the Mandamus Petition.**

The Appellants' Brief asserts that the Ashbacker doctrine referenced above is not applicable to this case. (Appellants' Brief at 20-21). This assertion is clearly incorrect as the District Court decision in the Winona case and the present decision contradict that assertion. Further, it is worth noting that the Minnesota Practice Series seems to also have a contrary view of the precedential value of the Ashbacker doctrine in Minnesota, as well:

*Where two mutually-exclusive applications for a government benefit are filed, a consolidated hearing or comparative hearings must be held. This principle is best illustrated by the leading case, Ashbacker Radio Corp. v. Federal Communications Commission, where two radio stations applied for licenses to broadcast on essentially the same frequency. The Commission granted one station a license and ordered a hearing for the other since the statute did not permit the denial of an application without a hearing. The United States Supreme Court noted that 'where two bona fide applications are mutually exclusive, the grant of one without a hearing to both deprives the loser of the opportunity [for a hearing] which Congress chose to give him.' Thus, the agency must consider both applications in a consolidated hearing or hold separate hearings to consider the relative merits of each application before a final decision is made as to either.*

21 Minn. Prac., Administrative Prac. & Proc. § 9.17. (emphasis added).

Based on the foregoing, in the event there are competing annexation proceedings, which seek annexation of the same territory and call for mandatory action by OAH, as is the case here, the Ashbacker Doctrine would dictate that there is but one practical and reasonable outcome - to afford all parties their rights. The only way for OAH to meet that obligation is as they did in this case as follows: (1) proceed through a hearing process granting all parties concerned the opportunity to participate; and (2) consolidate the matters into a single proceeding.

**III. The record in this case reasonably tends to sustain the District Court's decision to deny the Mandamus Petition, and Chisago City is entitled to judgment as a matter of law.**

Mandamus is an extraordinary remedy that is available only to compel a duty clearly required by law. State v. Pero, 590 N.W.2d 319, 323 (Minn. 1999); Minn. Stat. § 586.01. Based upon the mandamus statutes, c. 586, and case law, the Minnesota Supreme Court has established that a petitioner seeking mandamus relief must show that the respondent: (1) failed to perform an official duty clearly imposed by law; (2) that, as a result, the petitioner suffered a public wrong specifically injurious to the petitioner; and (3) that there is no other adequate legal remedy. Northern States Power Co. v. Minnesota Metropolitan Council, 684 N.W.2d 485, 491 (Minn. 2004).

The Wyomings failed to meet their burden.

**A. The Wyomings failed to demonstrate that OAH failed to perform an official duty clearly imposed by law.**

The Minnesota Supreme Court holds that, “Mandamus is an extraordinary legal remedy awarded, not as a matter of right, but in the exercise of sound judicial discretion and upon equitable principles.” State ex rel. Hennepin County Welfare Bd. v. Fitzsimmons, 239 Minn. 407, 422, 58 N.W.2d 882, 891 (1953). Mandamus lies only to enforce a clear, present duty. State ex rel. Brenner v. Hodapp, 234 Minn. 365, 48 N.W.2d 519 (1951). “A writ of mandamus against an official or an administrative officer will not issue unless there is a clear and complete right shown by the petitioner to receive that which the court is asked to command the official or officer to give him.” State ex rel. Goar v. Hoffmann, 209 Minn. 308, 310, 296 N.W. 24, 25 (1941). Finally, a writ of mandamus will not issue when the writ is sought to compel performance of an illegal act. Fitzsimmons, 239 Minn. at 422, 58 N.W.2d at 891.

In this case, there is a clear conflict between the rights of Chisago City and Stacy under Section 414.031 and the competing rights of the Wyomings under Section 414.0325. Where action to grant the Mandamus Petition would deny the rights of one party in favor of another and violate the law, there can be no official duty clearly imposed by law. As a result, OAH acted in the only manner provided by law, which was to order a contested case hearing affording all parties their right to be heard.

**B. OAH’s contested case hearing order did not result in a public wrong specifically injurious to the Wyomings.**

It is well settled that in order for a writ of mandamus to be issued, the petitioner must have a “public wrong specially injurious to him.” State ex rel. Coduti v. Hauser, 291 Minn. 297, 302, 17 N.W.2d 504, 507 (1945). Based on the foregoing analysis, there

is no specific injury to the Wyomings in that they will be afforded their right to participate in the contested case hearing process on the Chisago City and Stacy petitions. Had OAH acted to order the annexation pursuant to the Wyomings Agreement, it would have resulted in an injury specific to Chisago City and Stacy by denying the Cities their respective statutory rights in their entirety. On the other hand, the Wyomings have been wholly unable to make a similar demonstration and therefore their Mandamus Petition is legally deficient.

**C. The Wyomings did not show that a writ of mandamus is their only plain, speedy, and adequate remedy of law in this case.**

Mandamus will lie only where there is no other adequate remedy at law. Victor Co. v. State, 290 Minn. 40, 186 N.W.2d 168 (1971). A party must exhaust all available administrative and legal remedies before seeking relief in the form of a mandamus action, unless the remedies are not adequate or do not exist. Zaluckyi v. Rice Creek Watershed Dist., 639 N.W.2d 70, 74 (Minn. Ct. App. 2002); Minn. Stat. §§ 586.02-.04.

In this case, the Wyomings have failed to meet this standard. There is an alternative remedy, and given the competing annexation petitions of the parties and the resulting conflicting statutes, the contested case hearing process as was ordered by OAH is the only plain, speedy and adequate remedy of law. Mandamus will preclude the statutory rights of Chisago City and Stacy. A contested case hearing process is the only remedy that will afford all parties their rights. Given the limited circumstances presented in this case with respect to having competing annexation petitions and conflicting statutory rights, a contested case is equally as convenient, complete, beneficial, and

effective as would be mandamus. Kramer v. Otter Tail County Board of Commissioners, 647 N.W.2d 23, 27 (Minn. Ct. App. 2002) *citing* 52 Am.Jur.2d Mandamus § 49 at 374 (1970).

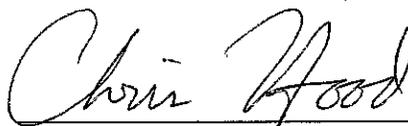
The Wyomings failed to show the elements necessary for a writ of mandamus to issue and therefore the District Court's denial of the Mandamus Petition must be affirmed.

### CONCLUSION

Based upon the foregoing, the City of Chisago City respectfully requests that this Court affirm the District Court's decision denying the Wyomings Mandamus Petition and upholding OAH's decision to order this matter to a contested case hearing.

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