

No. A06-1594

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STATE OF MINNESOTA  
IN COURT OF APPEALS

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City of Wyoming and Wyoming Township,  
Appellants,

vs.

Office of Administrative Hearings,  
City of Chisago City, and City of Stacy,  
Respondents.

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**RESPONDENTS' BRIEF AND APPENDIX  
OFFICE OF ADMINISTRATIVE HEARINGS**

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**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
LEGAL ISSUES .....	1
STATEMENT OF THE CASE AND FACTS.....	2
STANDARD OF REVIEW .....	5
SUMMARY OF ARGUMENT .....	6
ARGUMENT .....	7
I.    MANDAMUS ACTION IN RAMSEY COUNTY IS NOT AN APPROPRIATE MECHANISM FOR JUDICIAL REVIEW OF OAH ORDERS CONCERNING PETITIONS TO ANNEX LAND IN CHISAGO COUNTY.....	7
II.   THE APPELLANTS DID NOT ESTABLISH ENTITLEMENT TO MANDAMUS RELIEF.....	10
A.   The OAH Did Not Fail To Perform A Clear Legal Duty. ....	12
B.   The City And Town Did Not Suffer A Public Wrong Specifically Injurious To Them. ....	18
C.   Other Legal Remedies Are Available. ....	19
CONCLUSION .....	20
APPENDIX	

## TABLE OF AUTHORITIES

	Page
<b>FEDERAL CASES</b>	
<i>Ashbacker Radio Corp. v. Federal Communications Comm'n</i> , 326 U.S. 327, 66 S. Ct. 148 (1945).....	1, 18
<b>MINNESOTA CASES</b>	
<i>Bellows v. Ericson</i> , 233 Minn. 320, 46 N.W.2d 654 (1951).....	11
<i>Benedictine Sisters Benevolent Ass'n v. Pettersen</i> , 299 N.W.2d 738 (Minn. 1980).....	17
<i>Board of Education of City of Duluth v. Borgen</i> , 256 N.W.2d 894 (Minn. 1934).....	14
<i>Carl Bolander &amp; Sons Co. v. City of Minneapolis</i> , 488 N.W.2d 804 (Minn. Ct. App. 1992).....	17
<i>Chanhassen Chiropractic Center, PA v. City of Chanhassen</i> , 663 N.W.2d 559 (Minn. Ct. App. 2003).....	5, 6
<i>City of Lake Elmo v. Minnesota Municipal Board</i> , 474 N.W.2d 450 (Minn. Ct. App. 1991).....	1, 8
<i>City of Mounds View v. Metropolitan Airport's Comm'n</i> , 590 N.W.2d 355 (Minn. Ct. App. 1999).....	11, 18
<i>Coyle v. City of Delano</i> , 526 N.W.2d 205 (Minn. Ct. App. 1995).....	11
<i>Dexner v. Haughton</i> , 190 N.W. 179 (Minn. 1922).....	11
<i>Ind. School Dist. No. 700 v. City of Duluth</i> , 284 Minn. 279, 170 N.W.2d 116 (1969).....	7
<i>LaCrescent Twp. v. City of LaCrescent</i> , 515 N.W.2d 608 (Minn. Ct. App. 1994).....	7
<i>Lefto v. Haggsbredth Enterprises, Inc.</i> , 581 N.W.2d 855 (Minn. 1998).....	5

<i>Northern States Power v. Metropolitan Council</i> , 684 N.W.2d 485 (Minn. 2004).....	10
<i>Olson v. Moorhead Country Club</i> , 568 N.W.2d 871 (Minn. Ct. App. 1997).....	8
<i>Rockford Twp. v. City of Rockford</i> , 608 N.W.2d 903 (Minn. Ct. App. 2000).....	1, 8
<i>Sheehan v. Hennepin Co. District Court</i> , 93 N.W.2d 1 (1958) .....	11, 18
<i>Southern Minn. Const. Co., Inc. v. Minnesota Dept. of Trans.</i> , 637 N.W.2d 339 (Minn. Ct. App. 2002).....	11
<i>State ex rel. Longman v. Kachelmacher</i> , 225 Minn. 255, 96 N.W.2d 542 (1959).....	10
<i>Thomas v. Ramberg</i> , 240 Minn. 1, 60 N.W.2d 18 (1953).....	11
<i>Tyo v. Ilse</i> , 380 N.W.2d 895 (Minn. Ct. App. 1986).....	10
<i>Village of Farmington v. Minnesota Municipal Comm'n</i> , 170 N.W.2d 197 (Minn. 1969).....	1, 16
<i>Ziols v. Rice Co. Board of Commr's</i> , 661 N.W.2d 283 (Minn. Ct. App. 2003).....	10
<b>MINNESOTA STATUTES</b>	
Minn. Const. Art. XII.....	7
Minn. Stat. § 15.99 (2004) .....	17
Minn. Stat. § 16B.37 (2004).....	3
Minn. Stat. § 414.01 (2004) .....	1, 12, 14
Minn. Stat. § 414.01, subd. 1(b) (2004) .....	12
Minn. Stat. § 414.01, subd. 5 (2004).....	12
Minn. Stat. § 414.01, subd. 16 (2004).....	13

Minn. Stat. § 414.031, subd. 1(a)(1) (2004).....	3
Minn. Stat. § 414.031, subd. 1(4) (2004) .....	16
Minn. Stat. § 414.031, subd. 3 (2004).....	<i>passim</i>
Minn. Stat. § 414.0325, subd. 1(f)(g) (2004).....	<i>passim</i>
Minn. Stat. § 414.07 (2004) .....	<i>passim</i>
Minn. Stat. § 414.09 (2004) .....	1, 13
Minn. Stat. § 414.12 (2004) .....	1, 12, 14
Minn. Stat. § 480A.08, subd. 3 (2004).....	9
Minn. Stat. § 586.01 (2004) .....	10
Minn. Stat. § 645.16 (2004) .....	14
Minn. Stat. ch. 414 (2004).....	3, 6, 8
Minn. Stat. ch. 645 (2004).....	13

## LEGAL ISSUES

1. Is a mandamus action in Ramsey County District Court an appropriate mechanism for judicial review of administrative proceedings relating to annexation of land in Chisago County?

The district court did not expressly rule on this question.

Apposite Authorities:

Minn. Stat. § 414.07 (2004)

*City of Lake Elmo v. Minnesota Municipal Board*, 474 N.W.2d 450 (Minn. Ct. App. 1991)

*Rockford Twp. v. City of Rockford*, 608 N.W.2d 903 (Minn. Ct. App. 2000)

2. Did Appellants establish that they were entitled, as a matter of law, to a Writ of Mandamus compelling the Office of Administrative Hearings to order annexation of all Wyoming Township property to the City of Wyoming before considering conflicting petitions for annexation of some Wyoming Township land by the cities of Stacy and Chisago City?

The district court held in the negative.

Apposite Authorities:

Minn. Stat. § 414.01 (2004)

Minn. Stat. § 414.031 (2004)

Minn. Stat. § 414.0325 (2004)

Minn. Stat. § 414.09 (2004)

Minn. Stat. § 414.12 (2004)

*Village of Farmington v. Minnesota Municipal Comm'n*, 170 N.W.2d 197 (Minn. 1969)

*Ashbacker Radio Corp. v. Federal Communications Comm'n*, 326 U.S. 329, 66 S. Ct. 140 (1945)

## STATEMENT OF THE CASE AND FACTS

This case was decided by the Ramsey County District Court as a matter of law and equity on the basis of facts stipulated by the parties. Stipulation of Facts, Appellants' Appendix (App.) A130-A137.

On December 7, 2005, the City of Wyoming and Town of Wyoming submitted to the Office of Administrative Hearings a Joint Resolution for Orderly Annexation of the entire unincorporated area of Wyoming Township to the City of Wyoming, pursuant to Minn. Stat. § 414.0325 (2004). (Joint Resolution), App. A1-A8. The Joint Resolution contained, *inter alia*, the following language:

3. *No Alterations of Boundaries.* The City and Town mutually state that no alteration by the Director of the boundaries of those areas designated by this Agreement for orderly annexation is appropriate. The Director may review and comment but may not alter the boundaries.
4. *Review and Comment by Director.* The City and the Town mutually state that this Joint Resolution and Agreement sets forth all the conditions for annexation of the area designated herein for orderly annexation and that no consideration by the Director is necessary. The terms and conditions set forth herein shall govern annexation under this Agreement. The Director may review and comment, but shall within thirty (30) days order annexation in accordance with the terms and conditions of this Joint Resolution and Agreement.

*Id.* at A2.<sup>1</sup> Due to the intervention of holidays and other scheduling difficulties, the City and Town of Wyoming agreed that the Office of Administrative Hearings (OAH) would

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<sup>1</sup> This language is consistent with after Minn. Stat. § 414.0325, subd. 1(f) and (g) (2004) which provide:

(Footnote Continued on Next Page)

consider the Joint Resolution at a regularly scheduled meeting to be held on January 11, 2006. Stipulation of Facts, App. A132-A133.

In the mean time, Chisago City, on January 4, 2006, submitted to OAH a petition pursuant to Minn. Stat. § 414.031, subd. 1(a)(1)(2004)<sup>2</sup> for annexation of a portion of Wyoming Township which abuts Chisago City. App. A92-A95. On January 5, 2006, the City of Stacy also submitted to OAH, a petition to annex certain Wyoming Township property pursuant to Minn. Stat. § 414.031, subd. 1(a)(1). App. A99-A106.

In view of the competing annexation proposals for the same property, and the fact that summarily ordering annexation of all of Wyoming Township to the City of Wyoming pursuant to the Joint Resolution would foreclose any consideration of the merits of the Chisago City and Stacy petitions, the OAH determined to defer issuance of

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(Footnote Continued From Previous Page)

(f) 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.

(g) 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.

Minn. Stat. ch. 414 currently designates the Director of the Office of Strategic and Long-Range Planning as the Office responsible for administering municipal boundary adjustments. However, that function has subsequently been transferred by executive orders issued under Minn. Stat. § 16B.37 to the Office of Administrative Hearings. These provisions create a limited exception to the ordinary section 414.0325 procedure for OAH approval or denial, following a public hearing, of annexation of areas subject to joint orderly annexation resolutions.

<sup>2</sup> Subdivision 1. *Initiating the proceeding.* (a) A proceeding for the annexation of unincorporated property abutting a municipality may be initiated by submitting to the director and the affected township one of the following:

(1) a resolution of the annexing municipality;

a summary annexation order pursuant to the Joint Resolution pending public hearing and consideration of the merits of the Stacy and Chisago City Petitions and sent an explanatory memorandum to all parties. See OAH Memorandum, dated January 20, 2006. App. A107-A110; Notice of Hearing on Chisago City, Petition dated February 1, 2006; App. A111-A112. Notice of Hearing on Stacy Petition dated February 1, 2006. App. A113-A114. That determination was consistent with action taken by the predecessor state agency in previous instances of conflict between joint resolutions calling for summary annexation and petitions for annexation to be determined on their merits following public hearings. In such prior cases, the agency's action had been upheld by the Ramsey County District Court. *Id.* 110. See *Township of Winona v. Minnesota Municipal Board and the City of Winona*, File No. C3-95-4981 (July 12, 1995) Respondent's Appendix (R. App.) RA1-RA7 and *City of Lake Elmo v. Minnesota Municipal Board and City of Oak Park Heights, et al.*, File No. C9-97-8893 (November 22, 1997). R. App. RA8-RA12.

On February 21, 2006, the City and Town of Wyoming filed a Petition for Writ of Mandamus in Ramsey County District Court.

On March 2, 2006, OAH issued an Order consolidating proceedings on the Stacy and Chisago City Petitions, and formally staying consideration of the Wyoming City/Wyoming Township Joint Resolution. Order of Consolidation. App. A121 (second)<sup>3</sup>-A122.

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<sup>3</sup>The Appellants' Appendix contains two pages numbered A121.

On March 6, 2006, the Ramsey County Court issued an Alternative Writ of Mandamus returnable on April 12, 2006. App. A115-A121 (first). The Office of Administrative Hearings submitted its response on April 10, 2006. By Stipulation of the parties, the Cities of Stacy and Chisago City were permitted to intervene, and the parties agreed that the matter could be decided by the court on the basis of stipulated facts and written submissions. *See* Stipulation at App. A123-A129.

On March 29, 2006, the City and Town of Wyoming filed a Joint Application for Judicial Review of the March 2, 2006 Consolidation Order in Chisago County District Court. R. App. RA13. Further proceedings on that case have been stayed by agreement of the parties pending conclusion of the mandamus case.

A hearing was held in Ramsey County District Court on May 31, 2006, and on August 1, 2006 the court issued its Order and Memorandum denying the Petition and acknowledging the authority and discretion of the OAH to determine how best to resolve the issues raised by the conflicting proposals. The Court also noted the discretionary nature of equitable remedies such as Mandamus. R. App. RA26-RA31.

### **STANDARD OF REVIEW**

To the extent a decision of the district court is based exclusively upon issues of law, the court on appeal will review that decision *de novo*. *See, e.g., Lefto v. Haggbredth Enterprises, Inc.*, 581 N.W.2d 855, 856 (Minn. 1998); However, the granting or denial of a writ of mandamus, also calls for the exercise of judicial discretion and application of equitable principles. *See, e.g., Chanhassen Chiropractic Center, PA v. City of Chanhassen*, 663 N.W.2d 559, 562 (Minn. Ct. App. 2003). Where, as here, such

discretion has been exercised, a reviewing court will reverse the lower court only when there is no evidence upon which the decision could have been based. *Id.*

### SUMMARY OF ARGUMENT

In Minn. Stat. ch. 414 (2004), the Minnesota Legislature has established a comprehensive structure for addressing municipal incorporations and boundary adjustments. That legislation vests state-level jurisdiction to administer that mechanism in an administrative agency, currently OAH, subject to judicial review in the district court for the county in which the subject land is located. Under chapter 414, the OAH is granted substantial discretion in determining how best to deal with many aspects of boundary adjustment proceedings. Over the years, the courts have specifically recognized the wide latitude accorded to the responsible agency in determining how best to address separate, mutually exclusive boundary adjustment proposals.

In this case, Appellants sought inappropriately to circumvent the OAH's lawful jurisdiction and the statutory process for judicial review. The district court, however, properly recognized the legitimate scope of the Agency's authority over such cases, and declined to interfere with the on-going administrative procedures. That decision should be affirmed.

## ARGUMENT

### I. MANDAMUS ACTION IN RAMSEY COUNTY IS NOT AN APPROPRIATE MECHANISM FOR JUDICIAL REVIEW OF OAH ORDERS CONCERNING PETITIONS TO ANNEX LAND IN CHISAGO COUNTY.

Pursuant to Minn. Const. Art. XII, § 3, the legislature has plenary authority to provide for the creation of local units of government, and the changing of their boundaries. Municipalities have no authority to affect or regulate changes in their boundaries except to the extent that such power is specifically granted by statute. *See, e.g., Ind. School Dist. No. 700 v. City of Duluth*, 284 Minn. 279, 170 N.W.2d 116 (1969); *LaCrescent Twp. v. City of LaCrescent*, 515 N.W.2d 608 (Minn. Ct. App. 1994).

In Minn. Stat. ch. 414 (2004), the legislature has provided a comprehensive set of procedures for the incorporation of cities, and alteration of their boundaries, including specific provisions for limited judicial review. In that regard, Minn. Stat. § 414.07, subd. 2 (2004) provides in part:

Subd. 2. *Grounds for appeal.*

- (a) Any person aggrieved by any order issued under this chapter may appeal to the district court upon the following grounds:
  - (1) that the order was issued without jurisdiction to act;
  - (2) that the order exceeded the orderer's jurisdiction;
  - (3) that the order is arbitrary, fraudulent, capricious or oppressive or in unreasonable disregard of the best interests of the territory affected; or
  - (4) that the order is based upon an erroneous theory of law.
- (b) *The appeal shall be taken in the district court in the county in which the majority of the area affected is located.* The appeal shall not stay

the effect of the order. All notices and other documents shall be served on both the director and the attorney general's assistant assigned to the director for purposes of this chapter.

*Id.* (Emphasis added.) As this Court acknowledged in *Olson v. Moorhead Country Club*, 568 N.W.2d 871 (Minn. Ct. App. 1997), *review denied*, October 31, 1997:

When a statute creates a right which did not exist at common law, and provides administrative remedies, those remedies are exclusive.

*Id.* at 873.

That principle has been specifically applied to the availability of judicial review of state agency decisions in boundary adjustment cases. In *City of Lake Elmo v. Minnesota Municipal Bd.*, 474 N.W.2d 450 (Minn. Ct. App. 1991), this Court dismissed an untimely appeal from an annexation decision affirming that “legislatively created rights and procedures governing disputes are jurisdictional and are not subject to judicially created exceptions.” *Id.* at 452. More recently, in *Rockford Twp. v. City of Rockford*, 608 N.W.2d 903 (Minn. Ct. App. 2000), this Court again held that Minn. Stat. § 414.07 provides the exclusive mechanism for obtaining judicial review of all boundary adjustment “orders” of the state agency, including those not requiring a hearing or substantive approval by the agency. The Court further stated that the agency “can only act through its capacity to issue orders.” *Id.* at 907.

Appellants nonetheless point to the unpublished case of *City of Waite Park v. Minnesota Office of Administrative Hearings*, WL 1985457 (Minn. 2006) App. A162-A167, in support of their assertion that mandamus is an appropriate remedy when OAH is alleged to have declined to promptly order an annexation in accordance with a joint

resolution between a city and town. Aside from the fact that, as an unpublished decision, the *Waite Park* opinion lacks precedential effect,<sup>4</sup> that case is clearly distinguishable from this one. In *Waite Park*, the Court was of the opinion that Minn. Stat. § 414.07 was not an appropriate remedy because:

There is no order here from which an appeal was taken. OAH appeals the district court's order granting the City's writ of mandamus. *Because OAH appeals from the district court's order and not an order under chapter 414, judicial review under § 414.07 is not appropriate.*

(Emphasis added.)

First, for some reason, the Court in that case apparently believed that section 414.07 provides only for appeals by the OAH from its own orders. Plainly that is not the case. The point here is that the statutory remedy for the City and Town of Wyoming is for *them* to seek judicial review of OAH action to which they object in the district court in Chisago County according to the procedure prescribed by section 414.07, rather than seeking equitable relief in Ramsey County District Court.

Second, in this case, there is no dispute that there is an OAH order from which the City and Town might appeal. *I.e.*, the March 2, 2006 Order consolidating the Chisago City and Stacy cases for hearing, and staying action on the Wyoming Joint Resolution. App. A121 (second) - A122. Indeed, they have actually taken such an appeal. R. App. RA13.

For these reasons, it is submitted that mandamus is not an available remedy in these circumstances for judicial review of the OAH action in these matters.

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<sup>4</sup> See Minn. Stat. § 480A.08, subd. 3 (2004).

## II. THE APPELLANTS DID NOT ESTABLISH ENTITLEMENT TO MANDAMUS RELIEF.

A writ of mandamus is an extraordinary equitable remedy whereby the court may compel an inferior tribunal, board or official to perform a mandatory, non-discretionary act. The writ is not appropriate to address issues which lie to any degree within the discretion of respondent public officers. *See, e.g., Tyo v. Ilse*, 380 N.W.2d 895 (Minn. Ct. App. 1986). In circumstances where public officials have jurisdiction to exercise any discretion or decision-making authority, mandamus may issue to set the exercise of that authority into motion, but may not direct the manner in which it may be exercised. *See, e.g., Minn. Stat. § 586.01 (2004); Ziols v. Rice Co. Board of Commr's*, 661 N.W.2d 283 (Minn. Ct. App. 2003). The writ should issue only in circumstances where the legal right to action demanded is clear and complete beyond any reasonable controversy. *See, e.g., State ex rel. Longman v. Kachelmacher*, 225 Minn. 255, 96 N.W.2d 542 (1959).

Before a writ of mandamus may be issued, the petitioner must show (1) that the defendant failed to perform an official duty plainly imposed by law, (2) that as a result the petitioners suffered a public wrong specifically injurious to the petitioner, and (3) there is no other adequate remedy at law. *See, e.g., Northern States Power v. Metropolitan Council*, 684 N.W.2d 485 (Minn. 2004).

The fact that a party may have to expend time and resources in participating in certain administrative proceedings it claims to be inappropriate, does not constitute harm that will justify granting equitable relief to prevent those proceedings from going

forward. *See, e.g., Sheehan v. Hennepin Co. District Court*, 93 N.W.2d 1, 5 (1958)

where the court stated:

The mere fact that a party might be saved the time and expense of defending himself at an administrative proceeding would not be sufficient to justify equitable relief by means of injunction.

That principle was reaffirmed by the Court of Appeals in *City of Mounds View v. Metropolitan Airport's Comm'n*, 590 N.W.2d 355 (Minn. Ct. App. 1999) where the court said:

Both *Thomas [v. Ramberg]*, 240 Minn. 1, 60 N.W.2d 18 (1953) and *Sheehan* solidly hold that an entity may not enjoin commissions from their legitimate activities because the expense the entity incurs as a result of those activities could prove unnecessary if the activities are subsequently disallowed by a court.

*Id.* at 357. *See also, Southern Minn. Const. Co., Inc. v. Minnesota Dept. of Trans.*, 637 N.W.2d 339 (Minn. Ct. App. 2002). (District court lacked jurisdiction to enjoin ongoing administrative proceeding). Furthermore, availability of appeal from the decisions of an administrative tribunal is another legal remedy which will preclude the granting of equitable relief. *See, e.g., Bellows v. Ericson*, 233 Minn. 320, 46 N.W.2d 654 (1951).

Finally, as with all extraordinary remedies, mandamus is not available as a matter of right, but rests upon equitable principles, and calls for the exercise of judicial discretion. *See, e.g., Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. Ct. App. 1995); *Dexner v. Haughton*, 190 N.W. 179, 180 (Minn. 1922). In the instant case, the Appellants showing falls far short of justifying intervention by the court through mandamus.

**A. The OAH Did Not Fail To Perform A Clear Legal Duty.**

As noted above, the legislature has delegated authority over municipal boundary adjustment matters to the OAH. Furthermore, that delegation includes authority to exercise substantial discretion over the manner in which such cases are handled in order to facilitate sound municipal development in orderly fashion.

For example Minn. Stat. § 414.01 (2004) includes the following provisions:

*Goals in promoting, regulating municipal development.* The director may promote and regulate development of municipalities:

(1) to provide for the extension of municipal government to areas which are developed or are in the process of being developed for intensive use of residential, commercial, industrial, institutional, and governmental purposes or are needed for such purposes; and

(2) to protect the stability of unincorporated areas which are used or developed for agricultural, open space, and rural residential purposes and are not presently needed for more intensive uses; and

(3) to protect the integrity of land use planning in municipalities and unincorporated areas so that the public interest in efficient local government will be properly recognized and served.

*Id.* subd. 1b.

*Consolidation of proceedings.* The director may order the consolidation of separate proceedings in the interest of economy and expedience.

*Id.* subd. 5.

*Compelled meetings; report.* In any proceeding under this chapter, the director or conductor of the proceeding may at any time in the process require representatives from the involved city, town, county, political subdivision, or other governmental entity to meet together to discuss resolution of issues raised by the petition or order that confers jurisdiction on the director and other issues of mutual concern. The director or conductor of the proceeding may require that the parties meet at least three times during a 60-day period. The parties shall designate a person to report

to the director or conductor of the proceeding on the results of the meetings immediately after the last meeting.

*Id.* subd. 16. *See also* Minn. Stat. § 414.12 which authorizes the director to employ alternative dispute resolution processes where appropriate in lieu of hearing procedures otherwise specified in chapter 414..

As the district court recognized, the use of that discretion is particularly appropriate when the agency is required to deal with two or more mutually exclusive requests, each of which is supported by statute.

Here the City and Town of Wyoming rely upon the strict wording of Minn. Stat. § 414.0325, subd. 1(g) which provides:

(g) 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.

Stacy and Chisago City on the other hand rely on the equally direct terms of Minn. Stat. §§ 414.031, subd. 3 and 414.09 which require that hearings be held on the merits of their annexation proposals.

Appellants insist that the rules of statutory construction as contained in Minn. Stat. ch. 645 (2004) require a determination that the “review and comment” language of Minn. Stat. § 414.0325, subd. 1(g) (2004) must be construed to supersede all statutory rights other political subdivisions or property owners may have under other sections of chapter 414 because it is based upon cooperation among the parties, is “more specific,”

and recently enacted than provisions of section 414.031. However those arguments are unpersuasive.

The object of statutory construction is to discern the intent of the legislature, and mechanical rules of construction as set forth in Minn. Stat. ch. 645 (2004) are merely aids to making that determination and should not be applied inflexibly. *See, e.g., Board of Education of City of Duluth v. Borgen*, 256 N.W.2d 894, 897 (Minn. 1934). Thus, determination of how best to accommodate the conflicting statutory rights of those seeking to annex the same property pursuant to different statutory procedures should not necessarily be a “winner-take-all” decision based solely upon the reading of an isolated paragraph, or derived mechanically from determination of which statute is more “general” or which was amended more recently. Instead, the decision should be based upon consideration of the legislative scheme as a whole, and an effort to reconcile, and give effect to, the principles of both apparently conflicting statutory provisions to the extent possible. *See* Minn. Stat. §§ 645.16, 645.17, 645.26, subd. 1 (2004).

In the case of municipal boundary adjustments, the tenor of the legislative scheme is to empower the state agency to superintend the creation and development of municipalities so as to promote sound urban planning and serve the public interest in efficient local government. Minn. Stat. § 414.01, subd. 1(b). To that end, the presumptive processes for municipal boundary changes, generally involve public hearings and decisions by a neutral decision-maker on the basis of uniform statutory criteria. *See, e.g.,* Minn. Stat. §§ 414.031, subd. 3, 4, 414.0325, subd. 2, 3 (2004).

The legislature, however, also seeks to foster cooperative resolution of boundary adjustment matters, when feasible, to minimize controversy and friction among landowners and separate local government units. Therefore, Minn. Stat. § 414.01, subd. 16 authorizes the director, *in any proceeding*, to require that affected governmental units to meet at least three times over a 60-day period to seek to resolve their differences. Likewise, Minn. Stat. § 414.12 authorizes the director to employ alternative dispute resolution procedures where appropriate. Such motivation also supports Minn. Stat. § 414.0325 which generally authorizes “one or more townships and one or more municipalities” to designate unincorporated areas for so-called orderly annexation and to provide for agreements concerning the conditions for such annexations which can be taken into account by the State in determining whether to approve specific annexation proposals.

Section 414.0325, subd. 1(g) provides for special circumstances in which, due to complete agreement concerning the conditions of annexation, by cities and towns, the state agency’s hearing and deliberation process might be dispensed with, and annexation ordered summarily. It does not follow, however that section 414.0325, subd. 1(g) must be construed to mandate an immediate summary annexing in every case in which one town and one city have negotiated an agreement.

First, it is not clear from the statutory language that the legislature necessarily intended for a single city and town to compel a summary annexation by an agreement that transgresses the statutory rights of other cities or towns under chapter 414. Since section 414.0325, subd. 1 envisions joint resolutions involving more than one city and

more than one town, it might have been contemplated that, where an area designated for summary annexation abuts more than one city, for example, the rights of each should be addressed in the agreement. Cf. Minn. Stat. 414.031, subd. 1(4), 4a, which provides for annexation of an entire township to a city based upon supporting resolutions from both entities, and state agency approval following public hearings.

At the very least it is reasonable to presume that, in providing for summary annexation the legislature did not intend to elevate the benefits of cooperation among two communities above all other policy considerations even when potential legal claims by other municipalities are wholly ignored. To completely disregard the statutory rights of other abutting municipalities to make their cases for annexation solely on the basis of an agreement between the town and one city would serve neither the legislative purpose of promoting sound urban planning nor the interest in cooperative resolution of boundary adjustment disputes by all interested parties.

The Supreme Court in *Village of Farmington v. Minnesota Municipal Comm'n*, 170 N.W.2d 197 (Minn. 1969) in analogous circumstances determined that, in creating a centralized boundary adjustment system under a state administrative agency, the legislature

contemplate[d] that the [agency] will be confronted with conflicting petitions. It is clear therefore that the legislature necessarily intended to authorize simultaneous consideration of such petitions. Such authority not only is consistent with the legislative purpose and design of c. 414 when considered as a whole, but also appears necessary if the commission is to fulfill its intended role and function.

*Id.* at 202. Therefore, the court rejected the previous first-in-time rule of prioritizing competing boundary adjustment proposals in favor recognizing the discretion of the agency to consider conflicting proposals in any sequence it deemed appropriate. *Id.*

In the instant case, OAH has not denied the Wyoming annexation petition but has appropriately determined to defer action on it until the merits of the Chisago and Stacy petitions can be considered. Thus, the requests of all parties may be given due consideration.

While Minn. Stat. § 414.0325 does provide for the OAH to order annexation within 30 days if certain conditions are satisfied, the statute specifies no particular consequences if that time limit is not met. *Cf.* Minn. Stat. §§ 15.99, (failure to deny zoning application within 60 days is deemed approved), 414.07, subd. 1 (failure to issue annexation order within one year is deemed denial). In such cases, the specified time period may be seen as merely directory. *See, e.g., Benedictine Sisters Benevolent Ass'n v. Petterson*, 299 N.W.2d 738, 740 (Minn. 1980); *Carl Bolander & Sons Co. v. City of Minneapolis*, 488 N.W.2d 804, 809-10 (Minn. Ct. App. 1992).

The Appellants have not demonstrated any particular urgency concerning annexation of the entire township. Therefore, there is no reason to conclude that the adverse consequences of a relatively short delay in acting on their request would outweigh those that may result in foreclosing competing petitions altogether. The converse however is not true. As the Appellants acknowledge, immediate annexation of the entire township in accordance with their joint resolution, would effectively prevent any consideration of the Stacy and Chisago City proposals. Thus furtherance of the

overall legislative purposes of chapter 414, and the balance of equities support the action taken by OAH and the district court over the absolutist position of the Appellants. That result is also consistent with the one articulated in the case of *Ashbacker Radio Corp. v. Federal Communications Comm'n*, 326 U.S. 327, 333, 66 S. Ct. 148, 151 (1945).

Therefore, the district court clearly acted within the proper scope of its discretion in determining that OAH did not have an unqualified legal duty to order annexation of the entire township as requested by the Town and City. That decision was also consistent with the decisions of other Ramsey County District Court judges who had considered analogous cases. *Township of Winona*, RA1; *City of Lake Elmo*, RA8.

**B. The City And Town Of Wyoming Have Not Suffered A Public Wrong Specifically Injurious To Them.**

Appellants assert that they suffered injury due to the fact that they were not promptly granted an annexation order, but are “subjected” to costly and time-consuming hearings. As noted above, however, the need to expend time and resources participating in administrative proceedings to which a party objects, is not in itself the type of harm that will support the granting of extraordinary equitable relief from those proceedings. *See, e.g., Sheehan v. Hennepin County District Court; City of Mounds View v. Metropolitan Airports Comm'n.*

Nor have Appellants established that a “public wrong” has been committed. Their claim appears to be based upon the presumption that the public interest favors the annexing of the entire township to Wyoming on the basis of their agreement alone. However, Stacy and Chisago City claim that their annexation of portions of the township

would be in the public interest as well. The scheduled consolidated hearings on the Stacy and Chisago City petitions are intended in part to address that issue. Absent such a determination it cannot be said that a delay in annexing all of Wyoming Township to the City of Wyoming is a public wrong.

**C. Other Legal Remedies Are Available.**

As noted above, the designated course of judicial review of OAH orders under Chapter 414 is timely application for judicial review pursuant to Minn. Stat. § 414.07. Appellants can hardly claim that remedy is not available since they have actually filed such an appeal. Nor do they present any evidence for the proposition that pursuit of such an appeal is any more costly or inconvenient than their effort to obtain a writ of mandamus in Ramsey County.

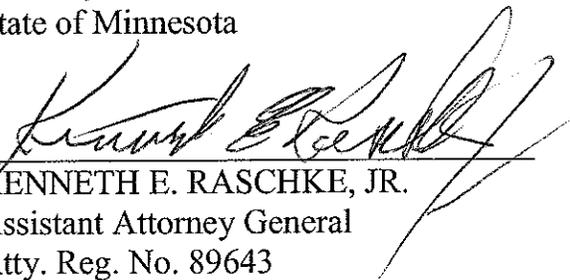
**CONCLUSION**

For all of the foregoing reasons, it is clear that the district properly denied a preemptory writ of mandamus in the circumstances of this case and that decision should be affirmed.

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Respectfully submitted,

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).