

Case No. A06-1594

STATE OF MINNESOTA

IN COURT OF APPEALS

City of Wyoming and Wyoming Township,

Appellants,

v.

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

Respondents.

APPELLANTS' BRIEF AND APPENDIX

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STATEMENT OF LEGAL ISSUE

This case involves a decision by the Minnesota Office of Administrative Hearings/Municipal Boundary Adjustments Unit (the “Agency”) as to how it will treat agreements between a city and a township to annex township property when the Agency is presented with a later-filed request by another city to annex the same township territory, and whether the Agency ignored its statutory mandates in reaching that decision.

The City of Wyoming and Wyoming Township have filed a joint resolution with the Agency agreeing to annex all of the Township into the City. As provided for by statute, the joint resolution included a statement that the agreement was final and could not be altered by the Agency. When that statement is included, the statute explicitly directs the Agency to issue its approval within 30 days, without modifying the agreement or the area to be annexed.

Just days before the Agency was scheduled to approve the Wyoming agreement, neighboring cities of Chisago and Stacy, seeking to frustrate the annexation agreement, petitioned the Agency to annex portions of Wyoming Township into those cities instead. In response, the Agency decided to override the legislative 30 day mandate and suspend action on the Wyoming annexation agreement until it first considers and acts on the Chisago and Stacy petitions to annex Wyoming Township.

Must the Agency abide by the legislative mandate and approve the Wyoming annexation by the terms of the agreement? The district court found in the negative.

STATEMENT OF THE CASE AND THE FACTS

Introduction – the Agency’s enabling statutes.

The methods and procedures for expanding municipal boundaries are set forth in Minnesota Statutes Chapter 414. There are three basic ways for a city to annex township property:¹

- by adopting a resolution petitioning the Agency to order some part of the township annexed into the city (Minn.Stat. § 414.031);
- by adopting (in certain limited circumstances) an ordinance declaring adjacent township property to be annexed into the city (Minn.Stat. § 414.033); and
- by adopting a joint resolution together with a township in which the city and the township agreeing that township property shall be annexed and the conditions for that annexation (Minn.Stat. § 414.0325).

Procedurally, all three methods require Agency approval before the annexations become official. But the way in which that approval is granted, and the discretion the Agency may exercise in granting the approval, differs with each annexation method.

The first two methods, which allow a city to annex township property without the township’s consent, confer discretion on the Agency to determine the result after hearings to adjudicate the annexation request. When a city brings an adversarial petition for large portions of a township, a hearing is always required.² When a city acts by ordinance to

¹ The statutes provide other methods for adjusting municipal boundaries not applicable in this case.

² Minn.Stat. §§ 414.031, subd. 3.

annex smaller portions of a township adjacent to the city (or portions surrounded by the city) a hearing is required if the township files an objection to the annexation.³ But when a city and a township agree to annex township property the statutes allow the local governments to remove the Agency from the decision making process by precluding the Agency from altering their agreement or the designated annexation. Section 414.0325 contains the following provisions:

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

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 [of the Agency] may review and comment, *but shall, within 30 days, order the annexation in accordance with the terms of the resolution*.

Minn.Stat. 414.0325, subd. 1(f), (g) (emphasis added).

This statutory language provides a key difference in how the legislature intends for the Agency to treat annexations when done with the agreement of a township, as opposed to the Agency ordering an annexation over the objection of a township.

Wyoming Township and its annexation history.

Wyoming Township is located in Chisago County and is bordered by four cities: Wyoming, Forest Lake, Chisago and Stacy. (A-9.) This is the second annexation volley fired at the Township by the City of Chisago in the last few years. In 2003, Chisago

³ Minn.Stat. §§ 414.033, subd. 5.

petitioned the Agency (pursuant to section 414.031) to annex approximately 11,000 acres of the Township. (A71 - A77.) Agency scheduled contested hearings to consider the petition and a lengthy and costly annexation battle ensued. Once the hearings were scheduled, however, Chisago reduced the size of its annexation request from 11,000 acres to 5,000 acres. (A78 - A82.) The reduced request resulted from an agreement between Chisago and the City of Wyoming (which had a different council make-up at the time). The Chisago Mayor testified at the hearings that his city had reached an agreement with the City of Wyoming as to where the future growth boundary should be between the two cities.⁴ (A-87.) Essentially, the agreement divided the Township between the two cities. The Agency granted Chisago's annexation request, as modified, and in January 2005 the 5,000 acres were immediately annexed into the City of Chisago.⁵ The boundary line drawn by the Agency was exactly the line agreed to by Chisago and relied on by the Township in considering its future with the City of Wyoming.

Wyoming orderly annexation agreement.

After the Chisago annexation was granted, the City of Wyoming and the Township approached each other and began discussing the idea of annexing the remainder of the Township into the City. The Township had spent a considerable amount of money litigating the Chisago annexation, and having had its boundary adjusted on the Chisago

⁴ See A-9. The Township is essentially sandwiched between the two cities.

⁵ Chisago had also petitioned to annex a strip of land along U.S. Highway 8 in the Township so that it could capture all future commercial growth along the highway. The Agency denied that portion of the petition.

side (and having lost its battle to remain a unified township), the Township entered into talks with the City of Wyoming to complete the annexation on the Wyoming side, under terms it could negotiate.

The annexation discussions began in the spring of 2005 and included considerable public involvement. The City and Township held a joint public meeting at the beginning of the process to discuss the proposal and get public feedback. There was also an informal straw vote at the end of the meeting, in which the residents overwhelmingly approved going forward with the annexation discussions. As the talks progressed, there were updates and discussions of the annexation talks at Town Board and City Council meetings, as well as substantial press coverage. (A88 - A91.)

On December 6, 2005, the Wyoming City Council and the Town Board each approved a joint resolution to annex the entire Township into the City. (A1 - A8.) The agreement was reached after careful analysis of future land use, government, municipal service and financial issues. (A10 - A70.) For example, the agreement included the following:

- an analysis of each government's current employees, facilities and equipment, their current and future needs, and the effect the annexation would have on the demand for public services;
- an analysis of the city's and township's growth projections, their land use plans and ordinances, and a plan for administering the current land use controls until a unified set of controls are adopted;
- an analysis of the current government structure and an agreement to provide representation on the council for residents of the former township areas

(something not afforded to former township residents under a forced annexation);

- a complete financial analysis of the affect on government service levels, the tax base, bonded indebtedness, losses and gains in governmental aid, current and anticipated budgets, and existing and projected tax rates;
- A tiered plan for tax rates for residents based on available public utilities;
- An analysis of the projected property tax impact for city and township residents.

The joint resolution and orderly annexation agreement, along with the analysis and studies, were filed with the Agency on December 7, 2005. The Agency was scheduled to review and approve the Wyoming agreement on January 11, 2006.⁶

Chisago and Stacy annexation petitions.

On January 4, 2006, almost one month after the Wyoming joint resolution was filed, the City of Chisago filed a resolution petitioning to annex 3,300 acres of the Township. (A92 - A98.) This is the same property that had been included in Chisago's original 11,000 acre annexation petition in 2003. The next day, the City of Stacy filed a resolution petitioning to annex 777.6 acres of the Township. (A99 - A106.)

⁶ The Agency conducts regular monthly meetings to review and approve annexation filings. The Wyoming agreement, filed on December 7, could not be placed on the agenda for the regular December 2005 meeting - held on December 8. After discussions with the Agency about holiday and vacation schedules and the resulting difficulty in scheduling a special meeting, the City and Township agreed that the Agency could go beyond the 30 day limit and consider the Wyoming agreement at its regular January 2006 meeting. (A132 - A133.)

The Agency proceeds with Chisago and Stacy, but not Wyoming.

The Agency did not approve the Wyoming annexation on January 11, 2006. Instead, the Agency issued a memorandum to the Township and each of the Cities asserting that it must hold hearings on the Chisago and Stacy petitions (pursuant to Minn.Stat. §§ 414.031, subd. 3) before it could consider the Wyoming annexation. (A107 - A110.) In a curious appeal to its role as arbiter of disputed annexations, the Agency determined that the best course was for the Agency to adjudicate all of the annexation filings and exercise its judgment as to the proper distribution of Wyoming Township. The Agency then issued notice of a consolidated hearing on the Chisago and Stacy petitions. (A111 - A114.) The Agency did not include the Wyoming annexation in the consolidated proceeding, and in fact made no indication as to how it would deal with the Wyoming agreement.

The City and Township petition for writ of mandamus.

With their agreement apparently on the shelf until the Agency made its decision on the Chisago and Stacy petitions, the City of Wyoming and the Township petitioned the Ramsey County district court for an alternative writ of mandamus, directing the Agency to approve the Wyoming annexation without altering its boundaries. The district court issued the alternative writ and set show-cause hearing for the Agency to answer.⁷ (A115 - A120.)

⁷ Chisago and Stacy intervened in the mandamus proceeding with the stipulation of the parties.

On the same day that the alternative writ issued (and only one week after being served with the petition for alternative writ), the Agency issued an order officially consolidating the Chisago and Stacy petitions, and directing that any action on the Wyoming agreement was stayed pending a decision on those petitions. (A121 - A122.)

Once all parties had filed answers and supporting memoranda responding to the mandamus petition, the district court vacated the show-cause hearing with the intent of setting the matter for trial. The parties agreed that the issues raised in the petition and the answers present legal questions and stipulated that, for reasons of economy and efficiency, the matter should be considered by the district court based on the filings of the parties as though by way of a summary judgment motion. The parties then filed a Stipulation as to procedure (A123 - A129.) and a Stipulation of Facts (A130 - A137.) supporting their agreement. The court then set the matter back on for oral argument.

The district court denied the mandamus petition in an August 1, 2006 order, finding that the Agency did not have a duty to approve the Wyoming annexation before considering the Chisago and Stacy annexation petitions. This appeal followed.

STANDARD OF REVIEW

The petition for writ of mandamus was submitted to the district court based on a set of stipulated facts and a stipulation that the issues raised in the petition could be decided as a matter of law. The district court denied the petition for mandamus based on

its legal conclusions on the legislative mandates of the annexation statutes. Where a 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.App.2003). Whether an agency acts within that statutory authority is also a question of law to be reviewed de novo by this Court. *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989).

ARGUMENT

- I. **Minnesota law imposes a duty upon the Agency to approve annexations agreed to by a city and township, without altering the areas to be annexed.**
 - A. **The rules of statutory construction and the legislative history of the annexation statutes require the Agency to approve the Wyoming annexation agreement.**

At issue here is the construction of the Agency's duties under its enabling statutes. Statutory agencies, like cities and townships, are legislative creations and have only those powers and duties granted to them by the legislature. C.f. *In re Qwest's Wholesale Service Quality Standards*, 702 N.W.2d 246, 259 (Minn. 2005). Whether an agency acts within that statutory authority is a question of law to be reviewed de novo by this Court. *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989).

Here, sections 414.0325 and 414.031 both direct the Agency to process the annexations differently. Taken alone, the statutes present clear direction for the Agency. One statute requires the Agency to adjudicate an annexation request to determine whether

to issue approval over a township's objection; the other requires the Agency to approve an agreed upon annexation, without altering the agreement. The result is not different when the statutes are construed together.

If a city wishes to file an annexation petition during the 30 day period between when an annexation agreement is filed and the Agency issues its approval, the Agency is free to schedule hearings on the petition. But the annexation in the later-filed petition must be denied because by the time the hearings are held, the Agency should have approved the annexation contained in the agreement. The statutory requirement that the Agency set a hearing on receipt of a petition does not guarantee that the petition will be granted. The statutory requirement that the Agency approve annexation agreements within 30 days, however, does guarantee approval.

By choosing here to proceed with the Chisago and Stacy petitions and suspending action on the Wyoming agreement, the Agency has concluded, as a matter of policy, that adversarial petitions (and the exercise of the Agency's discretion) are to be favored over cooperative agreements. In doing so, the Agency effectively nullifies the specific statutory provisions protecting such cooperative agreements for expanding communities. A review of the annexation statutes as a whole, guided by the rules of statutory construction, shows that the Agency's interpretation of the statute is impermissible.

- 1. The rules of statutory construction must be applied to construe the Agency's duties under the statutes.**

The primary objective in all statutory interpretation is to ascertain and give effect

to the intent of the Legislature. Minn.Stat. § 645.16. A court first looks to see whether the statute's language, on its face, is clear or ambiguous. *Baker v. Ploetz*, 616 N.W.2d 263, 268 (Minn. 2000). When the words are clear, the letter of the law may not be disregarded under the pretext of pursuing the law's spirit. Minn.Stat. § 645.16. Where two provisions seem to conflict, a statute may be ambiguous. *Minn. Ins. Guar. Ass'n v. Integra Telecom*, 697 N.W.2d 223, 228 (Minn.App. 2005). The rules of construction then apply to direct a reviewer to the statute's meaning. *ILHC of Eagan, Inc. v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005).

In general, the rules of construction require a reviewer to reconcile two seemingly conflicting statutes by doing the following:

- Consider that where the legislature included a provision in one section, but not in the other, that the omission or inclusion was done intentionally.⁸
- Construe the statutes in light of surrounding sections so as to avoid conflicting interpretations.⁹
- Presume the legislature understood the effect of its words so that all sections are valid and certain.¹⁰
- Consider that changes in statutes are generally intended to modify the law.¹¹

⁸ *Graham v. Crow Wing County Bd. of Com'rs*, 515 N.W.2d 81, 86 (Minn.App. 1994).

⁹ *American Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

¹⁰ C.f. *ILHC of Egan, Inc.*, 693 N.W.2d at 419.

¹¹ *Northern States Power Co. v. Comm'r of Revenue*, 571 N.W.2d 573, 575-76 (Minn. 1997) ("When the legislature changes a statute, the courts are to presume that the legislature intends a change in the law unless it appears that the legislature only intended to clarify the earlier statute.")

If statutes are truly conflicting and cannot be reconciled, even after applying the above standards, the reviewer must follow these rules:

- Special provisions must prevail over general provisions in the law.¹²
- When provisions of laws enacted in different legislative sessions are irreconcilable, the later-enacted law prevails.¹³

Under these rules of construction, the later-adopted, specific exceptions to Agency review in section 414.0325 must prevail over the general hearing requirement in section 414.031.

2. Application of these rules demonstrates that the specific mandates of section 414.0325 govern the Agency's duties in this case.

As noted above, Chapter 414 provides three methods for a city to annex township property, each with its own procedural safeguards. While sections 414.031 (petition) and 414.033 (ordinance) have additional requirements for Agency oversight, section 414.0325 (agreement) contains exceptions to remove that oversight.

Sections 414.031 and 414.033 both require notice to adjacent cities;¹⁴ 414.0325 does not. Sections 414.031 and 414.033 both directly require the Agency to deny the annexation request if the agency determines the area would be better served by an adjoining city;¹⁵ 414.0325 does not. Section 414.031 automatically requires a hearing;¹⁶

¹² Minn.Stat. § 645.26, subd. 1.

¹³ Minn.Stat. § 645.26, subd. 4.

¹⁴ Minn.Stat. §§ 414.031, subd. 1(b); 414.033, subs. 2b, 3, 5.

¹⁵ Minn.Stat. §§ 414.031, subd. 4(e)(1); 414.033, subs. 3, 5.

¹⁶ Minn.Stat. § 414.031, subd. 3.

414.0325 does not. Section 414.033 states that annexation can happen automatically (without Agency authority to deny) but first requires notice and an opportunity to object;¹⁷ 414.0325 does not.

The legislature's decision to omit the additional notice and hearing requirements from section 414.0325, and its inclusion of the exception language in 414.0325 (and not elsewhere), must be deemed intentional. *Graham v. Crow Wing County Bd. of Com'rs*, 515 N.W.2d 81, 86 (Minn.App. 1994). It demonstrates the legislature's intent to favor annexations based on local government agreements. This intent is also found in the statement of legislative findings for Chapter 414. The findings express a clear preference for municipal government in more developed areas, and township government in rural areas. But the findings also conclude that "long-range joint powers planning or other cooperative efforts among counties, cities, and towns should be encouraged." Minn.Stat. § 414.01.¹⁸

Surely, the most foreseeable objections to annexation agreements would be from other cities bordering a township. Yet the legislature made no provision in section 414.0235 for this eventuality. The Agency prefers to believe that the filing of a competing petition during the 30 day approval window acts as an objection by another city to the annexation agreement, similar to the opportunity for objections and hearings

¹⁷ Minn.Stat. § 414.033, subds 2b, 3, 5.

¹⁸ This provision was added as part of the legislature's modifications to the annexation statutes in 2006. Laws 2006, c. 270, art. 2, § 2 (A-156). The 2006 legislative changes are discussed more fully below.

provided for in section 414.033. But those provisions were explicitly provided for in section 414.033, and are noticeably absent from section 414.0325.

Had the legislature wanted the Agency to oversee potential competing annexation claims - where, as here, a city petitions to annex township property only after the township and another city have approved and filed an annexation agreement - it would have drafted 414.0325 differently. For example:

- It would have included a provision allowing the Agency to postpone action on the agreement in the event a conflicting petition is received within the 30 day approval period;
- it would have mandated that the city and township provide notice of the agreement to other cities;
- it would have included a provision allowing other cities the opportunity to object within the 30 day approval period;
- it would have provided other cities an opportunity to object;
- it would have allowed the Agency to deny the agreement if it felt portions of the township included in the agreement would be better served by another city.

The legislature did none of these things. As a result, once an annexation agreement is filed, the Agency's authority to adjudicate and exercise its discretion over the territory covered in the agreement is removed and the Agency must order the annexation within 30 days. This is what the plain language of the statute requires and what applying the rules of statutory construction demonstrates.

3. The legislative history of chapter 414 further supports this interpretation.

The legislature adopted Chapter 414 in 1959, creating the Minnesota Municipal Commission (the Agency's predecessor) as an independent agency with authority to oversee the orderly growth of municipalities. *Village of Farmington v. Minnesota Municipal Commission*, 170 N.W.2d 197, 202 (Minn 1969). Section 414.031 was added in 1969. (Laws 1969, c. 1146, § 10.) (A138 - A142.)¹⁹ The requirement that the agency set a time and place for a hearing upon receiving a resolution from an annexing municipality (or other initiating document) was part of the initial statute and has remained largely unchanged since. *Id.*

Section 414.032 (relating to orderly annexation agreements) was also adopted in 1969. It too required the agency to set a time and place for a hearing upon receiving a joint resolution and annexation agreement and that provision has also remained largely unchanged.²⁰

The exception language at issue in this case was added to section 414.0325 in 1983. (Laws 1983, c. 18, § 1.) (A147 - 149.) The original version read as follows:

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 board may review and comment, but may not alter the boundaries.

If a joint resolution designates an area as in need of orderly annexation,

¹⁹ Copies of session laws cited in this brief are included in Appellants' Appendix.

²⁰ The law was later revised and recodified as Section 414.0325 in 1978. (Laws 1978, c. 705, § 14.) (A143 - A146.)

provides for the conditions for its annexation, and states that no consideration by the board is necessary, the board may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the resolution.

With the exception of a 2002 revision changing the Agency reference in the statute from the “board” to the “director,” the language of those provisions has remained unchanged.

The next major change to section 414.0325 came in 2002, when the legislature added the following provision (as subdivision 6):

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.

(Laws 2002, c. 236, § 1. (emphasis added).) (A150.)

The legislature modified Chapter 414 again in the 2006 legislative session with the following changes:

- The legislature created a joint task force on municipal boundary adjustments and required the task force to “develop recommendations regarding best practices annexation training for city and township officials to better communicate and jointly plan potential annexations.”²¹
- It added the legislative finding that joint planning powers and cooperative efforts among local governments should be encouraged.²²

²¹ Laws 2006, c. 270, art. 2, § 1 (A155).

²² Laws 2006, c. 270, art. 2, § 2 (A156).

- It modified section 414.031 to require cities to give townships at least 30 days notice of their intent to annex township property before filing a petition with the Agency.²³
- It modified section 414.0325 to require a city and township entering into an annexation agreement to publish notice to the public of their intent in their official newspapers and give notice of a joint public informational meeting (similar to what the City of Wyoming and the Township did here). In making this change, the legislature did not require the city and township to give notice to other municipalities.²⁴

As the annexation statutes have evolved, the legislative preference for annexation agreements between cooperating local governments could not be more definitively stated. To the extent the seemingly conflicting provisions of 414.031 and 414.0325 cannot be reconciled, the specific exception provision of 414.0325 must prevail over the more general hearing requirement found in 414.031 and elsewhere throughout the annexation statutes. Minn.Stat. § 645.26, subd. 1; *Minn. Ins. Guar. Ass'n v. Integra Telecom*, 697 N.W.2d at 229. In addition, the later-adopted exception provision in 414.0325 must prevail over the earlier-adopted hearing requirements in chapter 414. Minn.Stat. § 645.26, subd. 4.

B. The Agency's reliance on *Village of Farmington* and *Ashbacker* is misplaced; neither case is applicable under Minnesota's current annexation statutes.

The Agency has not applied these well settled principles of statutory construction in reaching its decision. In the proceedings below, the Agency instead argued that two

²³ Laws 2006, c. 270, art. 2, § 4 (A156).

²⁴ Laws 2006, ch. 270, art. 2, § 7 (A158 - A159).

judicial decisions compel it to set aside the Wyoming agreement and first hold hearings on the Chisago and Stacy petitions. The Agency's reliance on these cases is misplaced; neither case is applicable under Chapter 414, and the Agency stretches dicta in both cases to cover areas not intended in those decisions.

1. ***Village of Farmington* was decided under a prior version of Chapter 414 and its dicta have no application in interpreting the current annexation statutes.**

The Agency first relied on *Village of Farmington*, for the proposition that the agency should simultaneously consider conflicting annexation petitions so that the agency can "fulfill its intended role and function of aiding, advancing, and authoritatively controlling the orderly expansion of existing municipalities and the incorporation of new municipalities." 170 N.W.2d at 202. The Agency takes this to mean that it cannot order the Wyoming annexation, because doing so would foreclose the Agency - which was, after all, created for the purpose of administering and overseeing municipal expansion - from hearing the merits of the Chisago and Stacy petitions. Under the laws in existence at the time of the *Farmington* decision, including the findings the Agency was required to make in all annexation cases, this conclusion was a logical extension of the statutory text. But under the current statutes, reliance on noble statements of purpose eviscerates the textual limitations placed on the Agency's authority.

Farmington involved competing annexation and consolidation petitions for Lakeville Township. In that case, several Township residents first petitioned to have a

195 acre tract annexed into the Village of Farmington. The Village of Lakeville and the Township then jointly filed a resolution and petition to consolidate the entire Township, including the 195 acre tract, and Lakeville into a single new city. The landowner-initiated annexation petition and city-township consolidation petition were filed under separate statutes. Unlike the current version of Chapter 414, however, each of those statutes, as they were written at the time, required the Commission to hold a hearing and required the Commission to grant the request so long as the township area was about to become urban or suburban in character. Each statute also provided that the Commission could deny the request if it found that an area would be better served by another city. *Id.* at 203.

The Commission did not consolidate the two requests. It started to hold hearings on both requests separately, but let its time to review the annexation petition expire, and (after the annexation petitioner's appealed) approved the consolidation petition instead. On appeal, the court said the Commission should have consolidated the hearings (since it was holding two) so that it could have made all the required statutory findings - including findings as to which city could better serve the contested area. *Id.* at 205.

Since *Farmington*, the legislature has substantially revised Chapter 414. It created (in 1969) a process for local governments to enter into annexation agreements (now section 414.0325), it then revised that statute (in 1982) to allow local governments to require the Agency to approve their agreement without a hearing and without making the findings required at the time of *Farmington*. The legislature then revised the statute again

(in 2002) to provide that annexation agreements are contracts and are not limited by the provisions of Chapter 414. *Farmington's* dicta simply have no application here.

2. The dicta in *Ashbacker*, a case construing licensing rights under a federal statute, has no application to the Minnesota annexation statutes.

The Agency also relied on *Ashbacker Radio Corp. v. Federal Communications Comm.*, 326 U.S. 327 (1945) for the position that it may not grant one annexation request if doing so precludes a hearing on a competing petition. Again, however, the Agency's reliance on *Ashbacker* is misplaced; the particular statutory analysis of that case is not applicable here.

Ashbacker involved two competing applications for the same federal broadcasting license, applied for under the same statutory provision. The statute required the FCC to hold a hearing before it denied any license application. The FCC had granted the license to one applicant and denied the other a licence, without holding a hearing. Based on analysis of that particular federal statute, the Court found that the FCC should have conducted hearings on both licenses before denying one. *Id.* at 333.

The statutory framework here is different, however. Here, the legislature provided for different annexation methods: one procedure allows cities and townships to work together and require the Agency to approve their joint agreement; the other requires a hearing when a city wants to forcibly annex part of a township. The first procedure does not require a hearing, but does require Agency approval. The second does not require

Agency approval, but does require a hearing. The Agency's attempt to apply *Ashbacker's* licensing analysis to Minnesota's annexation statutes subsumes the plain language of the statutes and their legislative history. They are no more compatible than the proverbial square peg and round hole.

C. The Agency's appeal to public policy is not well founded and does not provide support for the Agency's failure to perform its statutory duties.

In the proceedings below, the Agency supported its decision, not by engaging in an analysis of statutory text and history, and not even by proclaiming that its actions fell within the broader purpose of the annexation statutes. Instead, the Agency appealed directly to its own role in the process. In the Agency's view, annexations create important matters of public interest that should only be resolved through an exercise of the Agency's independent expertise. As it argued below, it cannot be wrong (as a practical matter) for the Agency to conduct hearings on inconsistent annexation proposals and apply the Agency's reasoned consideration to the merits of each proposal.

But statutory analysis is not driven by the reviewer's perception of public policy or the search for a desired result. *Norris Grain Co. v. Nordaas*, 46 N.W.2d 94, 110-111 (Minn. 1950). Surely, if it is imperative for the Agency to apply its expertise to annexations proposed under an agreement, it is imperative for the Agency to do so whether another city files a competing annexation petition or not. Annexation agreements are the product of long range planning by local governments. Some exist for many years as township property is annexed into a city over time. But the legislature does not permit

the Agency to invade these agreements in the name of the public's interest or otherwise. Whether or not the Agency agrees with the legislature's conclusions is immaterial to its duty to comply with statutory mandates.

Furthermore, the Agency's argument would be more palatable (though not sufficient to overcome the application of statutory analysis) if the Agency's actions here matched its claims. The claim that the Agency should be free to hold hearings on competing annexation proposals is specious at best, considering that the Agency has chosen to conduct a combined hearing on only the Chisago and Stacy annexation petitions, and has "postponed" any action on the Wyoming annexation agreement until after those proceedings are complete. There is simply no authority to support the Agency's tactics.

The legislature has already determined that the Agency's oversight is not necessary (indeed, prohibited) when a city and township agree on an annexation. Neither statutory text nor logic dictate that this deference to local cooperative agreements goes out the window when another city decides that it would like part of a township covered by an annexation agreement already filed with the Agency. Agency powers "must be construed in light of the purposes for which they were created." *State By Waste Management Bd. v. Bruesehoff*, 343 N.W.2d 292, 295 (Minn.App.,1984). The Agency was not created to undermine local efforts and force unnecessary litigation.

II. The District Court erred as a matter of law in denying the mandamus petition.

Mandamus is appropriate when a government body fails to perform an official duty clearly required of it. *Kramer v. Otter Tail County Bd. of Comm'rs*, 647 N.W.2d 23, 26 (Minn.App.2002). The issue here centers squarely on a question of law relating to the Agency's statutory duties. Where a 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.App.2003).

To obtain mandamus relief, a petitioner must show that: (1) a defendant failed to perform an official duty clearly imposed by law; (2) as a result, the petitioner suffered a public wrong specifically injuring the petitioner; and (3) there is no other adequate legal remedy. Minn.Stat. § 586.02; *Northern States Power v. Metropolitan Council*, 684 N.W.2d 485, 491 (Minn. 2004). The primary issue here is whether the Agency has failed to exercise a duty imposed by law.

1. Duty imposed by law.

The Agency's duty to order the Wyoming annexation is set forth above. The City and Township submitted the annexation agreement on December 7, 2005. The Agency had a statutory duty to order the annexation by January 11, 2006. By failing to approve the Wyoming annexation, and proceeding to contested hearings on the Chisago and Stacy petitions instead, the Agency has failed to perform its official duty.

2. Public wrong.

Because the Agency has failed to act, the City of Wyoming and the Township have suffered a public wrong specifically injurious to them. When the Agency failed to order the annexation, the City and the Township were denied their contractual and statutory rights to the orderly annexation of the Township. They are instead subjected to costly and time-consuming hearings. The Township spent a substantial amount of time, money and resources litigating the 2003 Chisago annexation request. To avoid a repeat of this, the Township worked with the City of Wyoming to develop an orderly plan for future growth and development in the Township. Together, the City and the Township created a comprehensive plan for the annexation and its affect on the new city's finances, public resources, government services and government structure. They agreed to begin taking steps to integrate the new city immediately after the annexation. The City and the Township continue to suffer injury as the Agency refuses to act on their agreement.

3. Legal remedies.

Mandamus is appropriate where there is no other adequate legal remedy. To preclude mandamus, an alternative remedy "must be equally as convenient, complete, beneficial, and effective as would be mandamus, and be sufficiently speedy to prevent material injury." *Kramer v. Otter Tail Cty. Bd. of Com'rs.*, 647 N.W.2d 23, 26-27 (Minn.App. 2002) (quoting *Dozler v. Conrad*, 532 N.W.2d 42, 48 (Neb.App. 1995). A potential remedy that "is more expensive, more time-consuming, and more complicated

than a petition to the district court for a writ of mandamus" is not an adequate remedy and will not preclude mandamus. *Id.* at 26.

In a recent unpublished decision, this Court has determined that mandamus is appropriate to remedy the Agency's failure to approve annexations in accordance with annexation agreements.²⁵ Here, because the Agency has failed to take any action on the Wyoming annexation, proceeding on the adversarial petitions instead, mandamus is the only adequate remedy available to both the City of Wyoming and the Township to address the Agency's failure to perform its official duty.

CONCLUSION

The City and Township of Wyoming respectfully request that this Court remand this matter to the district court with instructions to issue the writ of mandamus compelling the Agency to approve the Wyoming annexation.

The provisions of section 414.0325 were adopted to allow cooperating local governments to create their own annexation agreements without Agency interference. The Agency has ignored the plain language of the statute and the well settled rules of statutory construction. The Agency's view of this case renders the specific language of section 414.0325 a mistake, an oversight, a failure by the legislature to account for the

²⁵ See *City of Waite Park v. Minnesota Office of Administrative Hearings*, WL 1985457 (Minn.App. 2006). A copy of the decision is included in the Appellant's Appendix (A162 - A167.)

potential conflict between sections 414.0325 and 414.031. This defense - "the legislature cannot have meant what it seems to have said" - is not well supported in law.

The Agency's failure to fulfill its statutory duty is specifically injurious to the City and Township. There is no legal remedy other than mandamus that addresses the Agency's failure to act on the Wyoming agreement. Mandamus should issue.

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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).