

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Annexation of Certain
Real Property to the City of Buffalo from
Buffalo Township (MBAU Docket A-7991)

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

On or about March 28, 2016, this matter came on before Chief Administrative Law Judge Tammy L. Pust upon the request of the City of Buffalo for an order approving an annexation ordinance.

Susan M. Kadlec, Jovanovich, Kadlec & Athmann, P.A., appears on behalf of the City of Buffalo (City). Howard A. Roston and Patrick D.J. Mahlberg, Fredrikson & Byron, P.A., appears on behalf of Johnsonville, L.L.C. (Johnsonville).

Based upon a review of the filings submitted by the parties, together with all proceedings herein, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

Factual Background

1. This matter involves the City's attempt to annex by ordinance three parcels of real property, two of which are owned by Johnsonville (Johnsonville Properties) and one of which is owned by the Lakeview Cemetery Association (Lakeview Property).

2. The subject properties (Combined Properties) are legally described as follows:

Johnsonville, LLC Property (PID: 202000322200):

Begin at a point on the Section line 8 chains East of the Northwest corner of Section 32, Township 120, Range 025, and running thence South parallel with the West Section line, 15 chains, thence in a Southeasterly direction along the Rockford Road, 8 chains; thence in a Southeasterly direction along the Rockford Road, 8 chains; thence North 21.34 chains to the North section line; thence West on said Section line, 5 ½ chains to the place of beginning, containing 10 acres, being the West 10 acres of Lot 2 of the Northwest Quarter of Section 32, Township 120, Range 025, according to the plat by E.B. McCord of record.

Excepting therefrom tract described as follows:

All that part of Lot 2 of NW ¼, Section 32, Township 120, Range 025, Plat of record, In Book 1 of Sectional Plats, Page 392, described as follows: Commencing at the Northwest corner of said Section Thirty-two; thence East on the Section Line 8 chains, thence South and parallel with the West line of said Section Thirty-two, 589 feet for point of beginning of herein described tract; thence continuing south on the last described course 459.2ft to the center of the County Road; thence S 48°51'E along said road 150 feet; thence North 3°15'E 563.2 feet, thence South 88°16' W, 145.0 feet more or less to the point of beginning, subject to road easement, containing 1.35 acres, more or less, Wright County, Minnesota.

Johnsonville, LLC Property (PID: 202000322201):

All that part of Lot 2 of NW ¼, Section 32, Township 120, Range 025, Plat of record, In Book 1 of Sectional Plats, Page 392, described as follows: Commencing at the Northwest corner of said Section Thirty-two; thence East on the Section Line 8 chains, thence South and parallel with the West line of said Section Thirty-two, 589 feet for point of beginning of herein described tract; thence continuing south on the last described course 459.2ft to the center of the County Road; thence S 48°51'E along said road 150 feet; thence North 3°15'E 563.2 feet, thence South 88°16' W, 145.0 feet more or less to the point of beginning, subject to road easement, containing 1.35 acres, more or less, Wright County, Minnesota.

Lakeview Cemetery Association, Inc. (PID: 202000322203):

Lakeview Cemetery except the West 265 feet of the South 320 feet of the most Westerly 16 acres of the North Half of the Northwest Quarter of Section 32, Township 120, Range 25, and the South 86 feet except for the West 265 feet of the most Westerly 16 acres of the North Half of the Northwest Quarter of Section 32, Township 120, Range 25, Wright County, Minnesota, which lies Easterly of the East right of way line of State Trunk Highway 25.

3. The Combined Properties consists of approximately 21.89 acres¹ of unincorporated land currently located within the Township of Buffalo (Township).

4. In tax year 2015, the Johnsonville Properties generated property tax revenue to the Township in the total amount of \$1,284.15.²

¹ Ordinance No. 19.17, p. 2.

² Carver County Tax Information, available at https://intranet2.co.wright.mn.us/taxstatements/output/2016_202-000-322200.pdf and https://intranet2.co.wright.mn.us/taxstatements/output/2016_202-000-322201.pdf, of which the Chief Administrative Law Judge takes judicial notice pursuant to Rule 1400.7300, subp. 4 (2015).

5. When considered together as one unit, the Combined Properties are completely surrounded by property located within the City, as illustrated below.

Location of Properties Within City



Johnsonville Properties Outlined in Blue



6. The Combined Properties are located within the City's electric utility services area.³

7. The Johnsonville Properties are zoned for industrial use.⁴

8. On or about February 1, 2016, the City authorized its staff to take action to either "reduce the intensity of use of the Johnsonville site for construction debris" or "close it down entirely," and to proceed to annex "all properties that are completely surrounded by the City,"⁵ specifically including the Johnsonville Properties.⁶

9. In the face of public opposition from the City,⁷ on March 17, 2016, the Wright County Planning Commission voted in favor of granting Johnsonville a conditional use permit allowing the use of the Johnsonville Properties for a crushing operation related to recycling asphalt and concrete, together with outside storage of construction equipment, trucks, trailers and shipping containers, subject to specified limitations.⁸

³ Affidavit (Aff.) of Merton Auger, ¶ 2.

⁴ Declaration of Howard A. Roston, ¶ 3.

⁵ February 2, 2016 email sent by City Administrator Merton Auger to Susan Kadlec, attached as Ex. B. to Johnsonville's Submissions (Johnsonville Submissions).

⁶ February 2, 2016 correspondence from Susan Kadlec to "Citizens of Buffalo," attached as Ex. E to Johnsonville Submissions.

⁷ *Id.*

⁸ Unofficial transcript of audio recording of March 17, 2016 public hearing, attached as Ex. F to Johnsonville Submissions.

Annexation Efforts

10. On March 21, 2016, the City held a public hearing on the proposed annexation of the Combined Properties, after having provided written notice, by certified mail, to the owners of the Combined Properties, the Township and all owners of property contiguous to the Combined Properties.⁹

11. At the public hearing, the City adopted Ordinance 19.17 (Ordinance) whereby the City annexed the Combined Properties pursuant to Minn. Stat. § 414.033, subd. 2(2) (2014).

12. Also at the public hearing, the City, by its City Attorney, advised Johnsonville that it would be advised when the City filed the Ordinance with the Office of Administrative Hearings for purposes of seeking an Annexation Order.¹⁰

13. The City determined that the Combined Properties would not experience any change with respect to their electric utility service provider or rates resulting from the annexation, and so provided no notice to the owners of the Combined Properties with regard to the cost impact of any change in electric utility service.¹¹

14. On March 28, 2016, the City filed the Ordinance with the Minnesota Office of Administrative Hearings, and requested the issuance of an Order of Annexation.

15. The City failed to provide Johnsonville contemporaneous notice of the filing.¹²

16. On April 1, 2016, Chief Administrative Law Judge Tammy L. Pust issued an Order Approving Annexation Ordinance (Annexation Order) whereby the annexation of the Property was approved pursuant to Minn. Stat. § 414.033 (2014).

17. On April 4, 2016, the City requested an amendment of the Annexation Order to accurately reflect the reimbursement required pursuant to Minn. Stat. § 414.036 (2014) as stated in the Ordinance.

18. On April 6, 2016, Johnsonville filed a Motion Requesting Relief from Annexation Order whereby it sought vacation of the April 1, 2016 Annexation Order and requested an opportunity to present evidence establishing its objection to the annexation of the two parcels of Property which it owns.

19. On April 7, 2016, the City filed a response to Johnsonville's motion in which the City acquiesced to Johnsonville's request to vacate the Annexation Order and to submit evidence of its objections to the annexation, but opposed the granting of an evidentiary hearing.

⁹ Ordinance No. 19.17.

¹⁰ April 4, 2016 correspondence from S. Kadlec to Minn. Office of Administrative Hearings.

¹¹ Ordinance, p. 1; Aff. of M. Auger, ¶ 2.

¹² April 4, 2016 correspondence from S. Kadlec to Minn. Office of Administrative Hearings.

20. On May 16, 2016, the Chief Administrative Law Judge issued an Order Vacating Annexation Order and set a briefing schedule for the parties to address any issues of statutory noncompliance.

21. The parties filed their submissions on May 25, 2016¹³ and on or about May 31, 2016,¹⁴ on which date the record was considered closed.

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

CONCLUSIONS OF LAW

1. Annexations-by-ordinance are governed by the provisions of Minn. Stat. § 414.033.

2. An annexation-by-ordinance is effective on the date an annexation ordinance is approved by the Chief Administrative Law Judge.¹⁵

3. The Johnsonville Properties are part of the “land” made subject to the City’s Ordinance and, as such, are properly the subject of an annexation-by-ordinance action under Minn. Stat. § 414.033, subd. 2(2) in that the Combined Properties, including but not limited to the Johnsonville Properties, are “completely surrounded by land within the municipal limits” of the City notwithstanding the fact that the Johnsonville Properties are contiguous to the Lakeview Property on one side.

4. Minn. Stat. § 414.033, subd. 13, which requires a municipality to provide notice of electric utility service cost impacts related to annexation, does not require notification in the present case given the fact that the cost of electric utility service to the Combined Properties has not and will not change as a result of the annexation. The statute does not require the City to notify Johnsonville and Lakeview that “the cost of electric utility service ... may change if the land is annexed to the municipality” when that statement is inaccurate, and therefor misleading.

5. In an annexation-by-ordinance proceeding, the statutory criteria set forth in Minn. Stat. §§ 414.01, subd. 1, and 414.031, subd. 4 (2014), are not applicable; rather, the specific and limited requirements of Minn. Stat. § 414.033 are controlling.

6. Minn. Stat. § 414.036 sets forth the following with regard to the legislatively-approved reimbursement of townships for the lost value of property annexed into an adjoining municipality:

Unless otherwise agreed to by the annexing municipality and the affected town, when an order or other approval under this chapter annexes part of a town to a municipality, the order or other approval must provide a

¹³ Johnsonville Submissions.

¹⁴ May 31, 2016 submissions received from S. Kadlec (City Submissions).

¹⁵ Minn. Stat. § 414.033, subd. 7.

reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order. The reimbursement shall be completed in substantially equal payments over not less than two nor more than eight years from the time of annexation. The municipality must reimburse the township for all special assessments assigned by the township to the annexed property, and any portion of debt incurred by the town prior to the annexation and attributable to the property to be annexed but for which no special assessments are outstanding, in substantially equal payments over a period of not less than two or no more than eight years.

7. As the record is silent as to whether the City and the Township have agreed that they prefer not to have the issue of reimbursement addressed in this Annexation Order, the order must reflect the requirements of Minn. Stat. § 414.036 with respect to the provision for reimbursement from the City to the Township.

8. The costs of these proceedings related to the provision of judicial services, and specifically excluding the value of time devoted to administrative services, must be apportioned to the parties in an equitable manner as required by Minn. Stat. § 414.12, subd. 3 (2014).

Based upon these Findings of Fact and Conclusions of Law, and for the reasons set forth in the Memorandum below, the Chief Administrative Law Judge issues the following:

ORDER

1. Pursuant to Minn. Stat. § 414.033, the Ordinance is deemed adequate in all legal respects and properly supports this Order.

2. Pursuant to the terms of the Ordinance and this Order, the Combined Properties are **ANNEXED** to the City.

3. As the Johnsonville Properties generated a total of \$1,284.15 in tax revenue to the Township, pursuant to Minn. Stat. § 414.036, the Township is authorized to collect from the City the agreed tax reimbursement charge, payable over two years, that being an amount that represents the approximated taxes lost by the Township upon annexation of the Property and therefore the amount that represents “all or part of the taxable property annexed as part of the order” as required by the statute.

4. The costs of this matter, billed as required by law at the approved hourly rates of the Office of Administrative Hearings, shall be borne by the parties as follows: to the City – 50%; and to Johnsonville, L.L.C. – 50%. An itemized invoice for costs will be sent under separate cover.



Dated: June 14, 2016

TAMMY L. PUST
Chief Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.033, .07, .09, .12 (2014). Minn. Stat. § 414.033, subd. 7 requires that a copy of the annexation ordinance be filed with the Township, the appropriate county auditor(s), and the Secretary of State.

Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Wright County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of this Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2015). However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

The owner of the Johnsonville Properties raise three legal arguments in an effort to avoid the effect of the submitted annexation Ordinance. First, the owner asserts that the Johnsonville Properties are not “completely surrounded” by property located within the City, and so the requirements of Minn. Stat. § 414.033, subd. 2(2) are not met. Second, Johnsonville insists that the City’s failure to provide it with the statutorily-required notice of electric utility service cost impacts negates the legal efficacy of the City’s annexation efforts. Last, Johnsonville characterizes the City’s actions as an “arbitrary and capricious” attempt to close down its operations in a manner that does not comply with the intent of Chapter 414 overall, and seeks to require the City to “defend its decision before a neutral tribunal as the legislature intended.”¹⁶ The Chief Administrative Law Judge examines each of these positions in turn.

Completely Surrounded Land

In relevant part, the annexation-by-ordinance statute allows as follows:

A municipal council may by ordinance declare land annexed to the municipality and any such land is deemed to be urban or suburban in character or about to become so if:

(2) the land is completely surrounded by land within the municipal limits[.]¹⁷

Johnsonville notes that its property, outlined in blue above, is not independently “completely surrounded” by property within the City; it abuts the Lakeview Property. The Lakeview Property is not located within the City. Therefore, Johnsonville argues, its property cannot be annexed by ordinance under the statutory language set forth above.

Johnsonville would be correct if the statute allowed a municipality to annex by ordinance only “one owner’s real property” that is completely surrounded by City property, or if the statute allowed annexation of “a separately designated parcel” or “property with a unique property identification number.” But the statute is not that specific. It allows completely surrounded “land” to be annexed by ordinance. “Land” is defined, for purposes of Chapter 414, as follows: “The terms “property,” “area,” and “land” mean geographical units of land within or outside a municipality, depending upon the context in which the term is used.”¹⁸ Nothing in this definition restricts the City from combining parcels owned by various owners into a larger tract of “land” to serve as the target of an annexation ordinance.

The annexation-by-ordinance statute itself suggests that the term “land” is in fact intended to allow for annexation-by-ordinance of combinations of properties with different

¹⁶ Johnsonville Submissions, unnumbered p. 5.

¹⁷ Minn. Stat. § 414.033, subd. 2.

¹⁸ Minn. Stat. § 414.011, subd. 4 (2014).

owners. Subdivisions 3 and 5 of the statutory section allows for landowners to request annexation-by-ordinance, and does so by requiring a petition “from all the property owners of the land...” or allowing “a majority of the property owners in number [to] petition the municipal council to have such land [annexed].” If the statute intended the term “land” to be restricted to the real property owned by just one owner, these references would make no sense.

The statute has always been interpreted by the Minnesota Office of Administrative Hearings and its predecessor agencies to allow a municipality to annex by ordinance any combination of properties that, when considered as a whole, are completely surrounded by property already within the municipal boundaries. The judicial courts of the state have done the same.¹⁹ As such, the Combined Properties which form the subject of the City’s Annexation Ordinance in the present case are “completely surrounded” by other property within the municipality, and so are eligible for annexation-by-ordinance under Minn. Stat. § 414.033, subd. 2(2).

Notice of Electric Service Cost Impacts

Next, Johnsonville attempts to avoid the annexation by noting that the City failed to comply with Minn. Stat. § 414.033, subd. 13. This portion of the statute provides:

At least 30 days before a municipality may adopt an ordinance under subdivision 2, clause (2), (3), or (4), the petitioner must be notified by the municipality that the cost of electric utility service to the petitioner may change if the land is annexed to the municipality. The notice must include an estimate of the cost impact of any change in electric utility services, including rate changes and assessments, resulting from the annexation.²⁰

The City did not provide Johnsonville with any estimate of electric utility cost impacts related to the annexation because no such impacts existed. The Johnsonville Properties received electric utility services from the same provider at the same rates both before and after the annexation.²¹ As such, the City included the following provision in the written Ordinance: “WHEREAS, provisions of Minnesota Statutes § 414.033 Subd. 13 are not applicable in that there will be no change in the electric utility service provider resulting from the annexation of the territory to the municipality.”²²

While better practice may have been to inform the property owner that its electric utility service provider and rates would **not** change so as to foreclose even the argument of statutory noncompliance, a strict reading of the statute does not require such. By its terms, the statute directs a municipality to provide notice that the costs “may change” upon annexation. In this case, the costs could not and did not change, so there was no

¹⁹ See *Thomastown Twp. v. City of Staples*, 323 N.W.2d 742, 743 (Minn. 1982); *Town of Stillwater v. Minnesota Mun. Comm'n*, 300 Minn. 211, 213, 219 N.W.2d 82, 84 (1974); *Gilbert v. Minnesota State Office of Strategic & Long-Range Planning*, CX-01-1221, 2002 WL 109313, at *1 (Minn. Ct. App. Jan. 29, 2002).

²⁰ Minn. Stat. § 414.033, subd. 13.

²¹ Aff. of M. Auger, ¶ 2.

²² Ordinance, p. 1.

potential change of which the landowner required notice. In addition, the statute requires that the municipality must provide the cost impact notice to “the petitioner.” In the present case, Johnsonville did not petition for the annexation; the action was commenced by the City itself. Accordingly, Johnsonville was not “the petitioner” and so the directive of the statute arguably does not strictly apply to Johnsonville in this case.

Throughout the proceedings before the City, Johnsonville had actual notice of both the fact that its utility service rates would be unaffected by the annexation and that the City’s Ordinance specifically noted this fact as a basis for not having provided prior notice under the statute. Johnsonville was at the hearing where the Ordinance was discussed, passed and signed. Given these facts, considered in light of the legal analysis set forth above, the City’s failure to provide 30-days prior notice to Johnsonville of that fact that its electric utility service costs would not change does not constitute noncompliance with a mandated statutory term nor provide any legal basis for avoidance of the annexation.

Hearing on Statutory Considerations

Last, Johnsonville argues that the City has acted in an arbitrary and capricious manner by annexing the property for the purpose of causing Johnsonville to cease its crushing operations, a land use which the City leaders oppose. The property owner requests that the Chief Administrative Law Judge hold the City to compliance with the considerations set forth in Minn. Stat. § 414.031 (2014), by allowing Johnsonville to challenge the fairness of the City’s actions at a hearing.

The statute does not provide for this result: “[n]o statutory provision gives the [Chief Administrative Law Judge] authority to consider the criteria set forth in sections 414.01, subd. 1, and 414.031, subd. 4, in annexations by ordinance under Minn. Stat. § 414.033, subd. 2.”²³ Instead, the annexation-by-ordinance statute very clearly sets forth criteria that are different than those imposed in an annexation-by-order proceeding governed by Minn. Stat. §414.03, where the Chief Administrative Law Judge is allowed to consider various factors including the interests of the owners or residents of the property.²⁴ Superimposing the section 414.031 analysis onto a section 414.033 proceeding would “obviate the distinction”²⁵ between the two types of proceedings. As such action would frustrate the legislature’s intent in crafting the differentiation between the two types of proceedings, the Chief Administrative Law Judge declines Johnsonville’s invitation to do so.

T. L. P.

²³ *Gilbert v. Minnesota State Office of Strategic & Long-Range Planning*, CX-01-1221, 2002 WL 109313, at *2-3 (Minn. Ct. App. Jan. 29, 2002) (unpublished).

²⁴ Minn. Stat. § 414.031, subd. 4(e)(1).

²⁵ *Gilbert*, at *3.