

FINAL REPORT
OF THE
MUNICIPAL BOUNDARY ADJUSTMENT
ADVISORY TASK FORCE

Laws 2006 c 270 art. 2 s 1, as amended by
Laws 2007 Minnesota Laws c 90 s 4

February 2009

MEMBERS

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Assistant Chief Administrative Law Judge
Office of Administrative Hearings
Chair

Senate Members

Senator Rick Olseen (DFL)
District 17

Senator Steve Dille (Rep)
District 18

City Representatives

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City Administrator
City of Waconia

Patti Gartland
City Administrator
City of Sartell

Gary Neumann
Assistant City Administrator
City of Rochester

House Members

Representative Paul Marquart (DFL)
District 9B

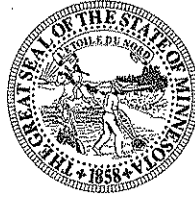
Representative Doug Magnus (Rep)
District 22A

Township Representatives

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Supervisor, Elmira Township
MAT District 1 Director/2nd Vice President

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February 2009

The Honorable Margaret Anderson Kelliher
Speaker
Minnesota House of Representatives

The Honorable Lawrence J. Pogemiller
Majority Leader
Minnesota Senate

The Honorable Gene Pelowski Jr., Chair
House State and Local Government
Operations, Reform, Technology and
Elections Committee

The Honorable Ann Rest, Chair
Senate State and Local Government
Operations and Oversight

The Honorable Michael V. Nelson, Chair
House Local Government Division Committee

Re: Municipal Boundary Adjustment Advisory Task Force

Dear Representatives Kelliher, Pelowski and Nelson and Senators Pogemiller and Rest:

This final report of the Municipal Boundary Adjustment Advisory Task Force includes: (1) a summary of the Task Force's activities from September 24, 2007 through January 2009; (2) a summary and description of issues on which the Task Force was unable to achieve consensus; (3) consensus recommendations for legislation; (4) aspects of municipal boundary adjustment law that could profit from further legislative policy decisions and direction; and (5) suggested areas for further research and investigation.

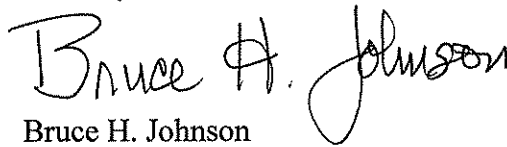
The Task Force determined at the outset that it would focus initially on less controversial aspects of Chapter 414 in an effort to craft a consensus bill in time to meet the legislative deadlines of the 2008 Legislative Session. The recommended statutory changes in House File No. 3357 and Senate File No. 3208, were approved and although mostly technical in nature, had substantive impacts on the boundary adjustment process.

When the Task Force resumed meeting after the legislative session, it addressed the more difficult municipal boundary adjustment issues relating to jurisdiction, tax base, policy

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and the respective roles of cities and townships in land use planning and service delivery, and infrastructure development. Except for some minor recommendations, the Task Force could not achieve further consensus on the substantive issues that continue to divide cities and townships in municipal boundary adjustment process.

Respectfully submitted on behalf of
Municipal Boundary Adjustment
Advisory Task Force

A handwritten signature in black ink that reads "Bruce H. Johnson". The signature is written in a cursive style with a large, prominent initial "B".

Bruce H. Johnson
Assistant Chief Administrative Law Judge
Chair, MBA Advisory Task Force

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I. EXECUTIVE SUMMARY

The authorizing legislation for the Municipal Boundary Adjustment Task Force (**Appendix A**) contemplated that the Task Force would be convened by August 1, 2007 and that a report to the chairs and members of the house and senate committees having jurisdiction over local government issues would be completed by January 15, 2008. However, the Task Force was unable to begin its work until a Chair was appointed on September 24, 2007, when the Speaker and the Senate Majority Leader appointed Assistant Chief Administrative Law Judge Bruce H. Johnson to that position. The first Task Force meeting was scheduled for November 5, 2007.

Early meetings were devoted to a general discussion of members' expectations, views on the issues, and proposed changes to Chapter 414. During those discussions, it became clear that it would be difficult for the Task Force to have anything meaningful to report to the Legislature by January 15, 2008, as the enabling legislation required. On the other hand, members believed that it would be possible to achieve consensus on a bill proposal containing a number of necessary technical changes, as well as some substantive changes in time for the Legislature to consider during its 2008 Session. Enactment of the Task Force's proposed technical bill during the 2008 Legislative Session achieved that interim goal. After the session, the Task Force began to discuss and consider the disputed substantive issues.

When the Task Force meetings resumed in June 2008, it began the difficult work of examining the policies underlying Chapter 414, which had previously been set aside. Township and city members each were given an entire meeting in which to present their positions on the policy issues. Discussion and debate of the issues raised by city and township members during their June presentations continued into the fall of 2008. Reluctantly, members then concluded that any further consensus on the policies underlying Chapter 414 was not possible until after the legislature made some important policy decisions and provided additional direction to local governments.

Task Force members did, however, achieve consensus on a part of the issue of reimbursement to townships following annexations by ordinance and for restoring property owner petitioning rights for concurrent/detachment annexation section of Chapter 414. In addition, members agreed to focus the Best Practices training guide on creating durable orderly annexation agreements between townships and cities. Some Task Force members expressed disappointment that more agreement on possible amendments to the statutory provisions for municipal boundary adjustment could not be achieved. However, Task Force meetings produced some of the most frank and illuminating discussions this topic has ever received and helped to define with more clarity, the poles of the debate between cities and townships. Task Force members committed themselves wholeheartedly to this process and their work, as reflected by this report.

II. TASK FORCE ACTIVITIES

The Task Force has met for three hours on the following occasions from September 24, 2007 through December 10, 2008:

November 5, 2007	February 19, 2008
December 20, 2007	June 2, 2008
January 15, 2008	June 18, 2008
January 28, 2008	October 7, 2008
February 5, 2008	December 10, 2008

Minutes of Task Force meetings are available at www.mba.state.mn.us or upon request.

During the Task Force's first meeting in November, members agreed to a twofold process for developing recommendations to the Legislature. First, members agreed to discuss the policy issues and choices implicit in the legislative findings and goals set forth Minnesota Statute §414.01 and whether those findings and goals adequately reflected the realities of current urban growth trends, appropriate roles of municipal and township governance, and what the public policies underlying Chapter 414 are, or should be. As an entry point into those public policy discussions, city and township members drafted alternative versions of what Minnesota Statute §414.01 should contain based upon their respective beliefs about what the findings and goals Chapter 414 should be.

Secondly, members agreed to identify other, more specific and less 'value-laden' sections of Chapter 414 that required clarification or technical changes and that might form the basis for a bill proposal for the 2008 Legislative Session. Proposed technical changes were drafted and circulated. Task Force members agreed to first address the combined list of proposed technical changes to Chapter 414 and set aside for future discussion policy proposals about which there was apparent disagreement. As meetings took place during the fall of 2007, the Task Force discussed and debated the combined list of proposed technical changes to Chapter 414 and a list of areas, which required more substantive revisions. Technical changes reflecting transfers previously made by executive reorganization orders of municipal boundary adjustment responsibilities and functions from the former Office of Strategic and Long Range Planning to the Office of Administrative Hearings were also reviewed and discussed.

The Task Force also addressed its legislative charge to develop recommendations for best practices annexation training for city and township officials. Members agreed that those recommendations would be more easily identified and developed after the Task Force completed its other work. Members also agreed that development of best practices annexation training be delegated to a subcommittee of: Kent Sulem from the Minnesota Association of Townships, Craig Johnson from the League of Minnesota Cities, and Christine Scottillo from the Office of Administrative Hearings Municipal Boundary Adjustment Unit.

By January 2008, the Task Force began to discuss the formats for both its interim and final reports to Legislature. Members concluded that the interim report should revolve around a proposed bill for the 2008 session that incorporated consensus changes to Chapter 414. The final report should identify all the issues on which consensus could not be achieved and set forth the differing views and positions of township and city members. Members believed that this would

provide a context for understanding competing views of what municipal boundary adjustment policy should be. There was agreement on proposed changes to eleven sections of Chapter 414 including recommendations from the Revisor for necessary changes to reflect the transfer of municipal boundary adjustment functions from the former Office of Strategic and Long Range Planning to the Office of Administrative Hearings.

Later in January, members agreed that the Task Force interim report to the Legislature should focus on the draft bill of items agreed to up to this point but that the Task Force should continue to meet periodically thereafter, to address the more substantive and controversial issues of law and policy which they had not yet had an adequate opportunity to discuss. Members also agreed that the final report to the Legislature would: (1) identify all major issues of municipal boundary adjustment law or policy that the Task Force had been unable to resolve; (2) make recommendations regarding best practices annexation training for city and township officials; and (3) include other recommendations as agreed to. In February 2008, a Revisor's draft of the consensus bill was circulated to members for their review. The Task Force agreed that a list of topics previously submitted by town and city members would be circulated to members and would be discussed beginning with the next meeting.

There was general agreement that a full and complete discussion of members' views on disputed issues would likely require more than one meeting. Although members would have preferred to keep meeting during the 2008 session, they recognized that additional meeting would have been scheduled during the summer and fall. At the February 19, 2008 meeting Task Force members reviewed the bill draft from the Revisor's Office and made some minor corrections.

Members agreed to temporarily suspend meetings on substantive issues until after the legislature took action on the Task Force's proposed legislation. Members also agreed that when the Task Force resumed its activities, the next two meetings would be entirely devoted to township and city members presenting their views and positions on issues they had identified as priority topics. Following that, meetings would be devoted to determining whether, and to what extent, opposing views can be reconciled. If they could not, members would try to frame the areas of disagreement, underlying issues, and clarify the poles of debate in order to provide context for legislative consideration of the unresolved issues affecting municipal boundary adjustments and identify the policy choices, if any, that need to be made.

The entire June 2, 2008 meeting was devoted to presentation and discussion of township views on the more substantive and controversial issues of municipal boundary adjustment law and policy on which Task Force members were previously unable to reach consensus or even address. On June 18, 2008, city representatives were given the same opportunity. Transcripts of these meetings are available at www.mba.state.mn.us or upon request.

Before the Task Force could organize to meet again, Legislative member Senator Betsy Wergin resigned due to her appointment to the Public Utilities Commission. The Task Force did not meet again until October following the appointment of Senator Wergin's replacement, Senator Steve Dille. In the interim, members were asked to consider the concept of early joint cooperative land use planning and infrastructure planning and whether this could be another tool for local governments.

When the Task Force next met on October 7, 2008, only one item for potential consensus emerged - reimbursement for lost property taxes to townships. After a lengthy discussion, members agreed to appoint a subcommittee charged with exchanging proposals and negotiating, if possible, consensus on the issue. In reacting to the presentations of the June meetings, city and township members reaffirmed their previous positions and concluded that further compromise on policy issues was unlikely. After lengthy discussions about planning authority and objectives, with city and township members disagreeing about the goals of planning, members acknowledged that discussions had gone full circle back to an impasse over values underlying Chapter 414. City members believed that the issues of pre-urban areas are addressed by Chapter 414, but that the statutes had not been implemented in the way they were meant to be. Town members disagreed and thought that the issue is not over township or city governance but over what level of services are necessary to support a certain level of development. Towns believe that in making that determination, Chapter 414 should not start with an assumption that any level of development is best served by a city.

Task Force members did agree, however, that the best practices recommendations should focus on developing good and durable orderly annexation agreements between cities and townships and that the December 10, 2008 meeting of the Task Force would be its last.

Prior to the December meeting, Craig Johnson from the League of Minnesota Cities, Kent Sulem from the Minnesota Association of Townships, and Bradley Peterson from the law firm of Flaherty and Hood had met as a subcommittee and reported agreement on re-establishing a proportionately reduced five year reimbursement schedule for payments by cities to townships following an annexation by ordinance under Minnesota Statutes §414.033. However, further agreement on reimbursement provisions for other types of annexation was not possible. The subcommittee also developed a list of issue topics on which cities and townships have fundamentally different viewpoints about what the appropriate policy response from the legislature should be. Members discussed the contents of the final report and agreed that the chair should summarize the unanswered questions that the legislature alone could answer.

Legislative members expressed disappointment that more consensus had not occurred and believed the final report should make concrete recommendations to the legislature on how to bring closure to unresolved policy disputes and on how to improve statutory procedures to avoid conflict and encourage more cost-effective development of infrastructure and services in urbanizing townships.

III. UNRESOLVED ISSUES.

The appointed subcommittee developed a list of nine different topic areas where cities and townships are separated by opposing agendas for state policy. These topic areas include: (1) annexation generally, (2) the findings and goals in Chapter 414; (3) residential development and planning; (4) reimbursements related to annexation; (5) the contested case process; (6) joint informational meetings; (7) incorporation; (8) competing annexation petitions; and (9) election requirements. The respective positions of cities and townships, as well as their supporting arguments, are specifically set out in the following side by side comparison.

A. Annexation Generally

Township Position

Townships recognize that the politics associated with the issue of annexation makes it a difficult one for the state legislature to address. However, the complexity of the issue should not be a barrier to open discussions of the many sub-issues involved with the annexation debate, nor should it prevent efforts to reform the law in a manner intended to: (1) reduce the hostilities that often accompany annexation disputes; (2) promote cooperation between local units of government; and (3) promote good land use planning.

Townships also recognize that some annexations are justified, and it is not the position of townships to eliminate all annexations. Townships believe, however, that current annexation laws too strongly favor cities, do not promote proper objectives, and are based on outdated philosophies that fail to recognize modern service delivery options as well as current practices followed by townships and cities alike.

The official annexation policy supported by the membership of the Minnesota Association of Townships, a voluntary membership association representing 1,785 of the 1,788 townships in the State, reads as follows:

“Annexation legislation should ensure fairness in all annexation proceedings by restoring a balance of power between townships and cities, reducing the costs of contested case proceedings, ensuring proper planning before an annexation is approved, and encouraging cooperative efforts between cities and townships.”

Finally, townships believe that it is important for members of the legislature to recognize that simply granting or denying in equal numbers the legislative requests of the competing parties seeking annexation reform is not a sign of “fairness”. Instead, it is important that all reform legislation be viewed in terms of whether the new law will promote equality between cities and towns, while creating the responsibilities each must follow.

City Position

If no other conclusion is gleaned from the experience of the Municipal Boundary Adjustment Task Force, one thing should be clear, and that is that the legislature must make an unambiguous determination regarding the role of townships in residential development. It was this question that lurked in the background of nearly every discussion of specific policy that the Task Force took up. Whether at the macro level of the findings and goals in Minnesota Statutes Chapter 414 or in the minutiae of how townships are reimbursed for lost property tax base, this question was there. Thus the legislature must address the question of the role and future of townships in order to make significant policy changes that are going to positively affect Minnesota’s future growth, economic health, and protection of natural resources.

Sound annexation and land use policy is critical to healthy communities and a healthy Minnesota.

Good annexation law promotes:

Efficient Government: Despite ranking 21st in population Minnesota ranked 7th in the number of local units of government with 3,482 in 2005. This situation often creates duplication of services and or regulation within a given region.

A 1999 study on the costs of public services commissioned by the legislature found that “the fiscal impact of new residential development on counties is usually enhanced when it occurs within cities.” The report also found that “New development within cities or adjacent areas often favorably affects the cost of water and wastewater services. When the number of connections per mile of pipe are maximized, costs are lowered for all system customers.”

Additionally retrofitting services into areas that are already developed can be prohibitively expensive, in fact a City of Sartell plan to retro fit sewer and water into LeSauk Township has been suspended due to the \$22 million price tag. Developing on city water and sewer in the first place would have been much more cost effective.

Environmental Protection: It is almost a given that septic systems fail. A 2004 report from the Minnesota Pollution Control Agency found that 27% of onsite sewage treatment systems were failing and that an additional 12% were “imminent threats to public health and safety.” In total these figures represent an estimated 208,000 individual sewage treatment systems. These failures threaten ground water and public health. Strong annexation law would limit this sort of development and would give cities the tools to protect groundwater after problems arise.

Constraint of Urban Sprawl: State policy as described in Minnesota Statutes Chapter 414 contemplates the role of townships as being appropriate to administer to a rural population, however many townships have developed residential areas that appear much like urban areas. In many areas of greater Minnesota township populations are larger than the populations of adjacent cities (Warroad and Lake Township for example).

Township residential development often occurs on lot sizes several times larger than what would occur within a city. These developments consume agricultural land and open spaces at an alarming rate.

These developments require a significant amount of infrastructure, and stretch already stressed local government public safety resources.

Fair Distribution of Tax Burdens: In many cases residential development in the townships occurs in close proximity to city boundaries, in some cases a mere matter of feet. These township residents often enjoy the amenities of cities and regional centers with one extra advantage...significantly lower property taxes. Throughout greater Minnesota township residents often pay 3/4 to 2/3 less in property taxes than their city neighbors. This means that the tax payers of a given city are not only paying property taxes to support services for themselves, they are also paying to support services for township residents as well.

B. Chapter 414 Findings and Goals

Township Position

This is probably the area of the most fundamental difference between the annexation philosophies of cities and towns. Townships strongly believe that many of the findings set forth in Minn. Stat. §414.01, most of which were adopted over 50 years ago, are no longer current and fail to recognize such things as: (1) new options available for dealing with septage and wastewater concerns; (2) the increase in the number of townships taking an active role in planning and zoning; (3) changes in economic needs as well as the changed base of the economy in general; (4) the fact that certain industrial and commercial uses are best suited for less populated and/or land intensive areas usually found in townships; (5) the fact that townships have repeatedly been found to be one of, if not the most, efficient forms of local government whose levy approval by the voters makes it the most directly accountable to the residents. In addition, many of the findings are based on assumptions that are not supported by facts and which provide no requirement for accountability by the annexing city.

Townships support amending §414.01 so that it favors neither cities nor towns, and instead promotes good service delivery regardless of the form of government. Specific changes supported by townships include:

- a. Delete current clauses 2-4 in subd. 1a.
- b. Insert a new clause that recognizes that State law should not be used to favor or discourage either the city or town form or local government but acknowledges that if adequate services cannot be provided by one jurisdiction, there needs to be a process to facilitate transferring property to another jurisdiction within the same community.
- c. Delete subd. 1b.

City Position

Minnesota Statutes Chapter 414 makes several findings and list several goals that have existed in statute in one form or another for almost 40 years. In part the findings state that:

“Municipal government most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial, and governmental purposes; and township government most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes;”

Cities believe that this is a sound policy and that municipal boundary adjustment laws should reflect and support these findings.

Townships argue that the findings and goals in Chapter 414 should be changed. The townships believe that state law should not “favor” one form of government over another. State law however should recognize that different forms of government serve different purposes.

Blurring the distinctions between cities and towns will not advance good land use or the efficiencies that could be realized from it. The state needs to be clear about how development in Minnesota should occur. This means that to effect state policy, the legislature will need to invest different levels of local government with different roles and responsibilities. Changing the findings and goals in Chapter 414 would make the situation less clear.

C. Residential Development and Planning

Township Position

Many, if not most, of the examples of “bad zoning decisions made in townships” cited by city representatives during Task Force meetings were of development approved either by a county (and not the township) or which occurred when no unit of government, including the abutting city, was enforcing any land use control (some such subdivisions date from the post WW-II era.) Most of the situations could not be repeated under today’s standards.

Townships would be willing to suggest and support further reasonable restrictions and standards on the approval of development projects, residential or other. Such requirements, however, should be imposed on whatever unit of government is exercising zoning powers.

It is also very important to recognize that while development in a township near a city border can have an impact on the city, the reverse is also true. Further, townships are currently required to be at least as restrictive as the county’s land use standards, while cities have complete autonomy. This means that a city is not required to look at any “big picture” or try to follow a regional plan (Metropolitan Council requirements notwithstanding.)

Specific concepts supported by, or willing to be discussed by townships, include:

- a. Establishing density levels at which point sewer connections would be required instead of septic.
- b. Encouraging local units to establish septic control programs such as mandated pumping and inspections.
- c. Requiring proper infrastructure to be installed at the time of construction to facilitate future sewer/water connection when such services are likely to be made available within a reasonable period of time.
- d. Revisit the “Community Based Planning Act” and pilot program in the St. Cloud area to identify what worked well, what could be improved upon, etc. and how the concept could be encouraged.
- e. Reestablish the State Planning department or find an existing state entity to provide good planning assistance, particularly to communities outside the 7-county metropolitan area.

Townships strongly oppose the proposal to grant cities unilateral control 2 miles outside of their boundaries. Such an effort would be a disincentive to cooperative efforts, would ignore land use policies deemed important by the county and township, and would subject landowners to control by people for whom they cannot vote.

City Position

Residential development in townships is detrimental to the development and economic health of cities. Township development often interferes with a city's pattern of development, constraining its ability to grow, create jobs, and direct the development of transportation, sewer, and water infrastructure.

Many residential developments in township areas are at densities that are so low so as not to be able to effectively support cost effective infrastructure. The more acreage a residential lot takes up means just that much more in the way of roads built and maintained.

Low density development also means more open space and agricultural land consumed.

On the other side of the density equation township lots are often too small to support adequate on site sewage treatment. Septic system failure, combined with a lack of lot size to replace it, is a grave threat to water quality. This type of development problem can often only be solved by the extension of city sewer and water. Petitions from township residents whose septic systems are failing is one of the most common types of annexation issues facing cities. Retrofitting services into residential developments that did not have them in the first place is an expensive proposition, especially in times of economic distress such as we currently face. This type of development should be prevented in the future.

D. Reimbursements Related to Annexations

Township Position

In 2006, Minn. Stat. §414.36 was, by mutual agreement of the cities and townships, amended to provide reimbursement to townships whenever there is an annexation to a city. This amendment helped ensure that a township did not suffer an immediate financial hardship from an annexation because it essentially takes two years for the town budgeting and levy process to accommodate an annexation. Unfortunately, the new language resulted in ambiguity instead of clarity, but attempts to negotiate a clarification have resulted in an impasse brought about primarily due to a disagreement stemming from a per-acre fee approach used in a very limited number of orderly annexation agreements.

At the time this report was being compiled, a tentative agreement had been reached on a new reimbursement formula for annexations by ordinance.

With regard to contested case annexations, the townships have proposed having the newly agreed upon formula be the default award but each party would be allowed to submit evidence to the ALJ as to why the amount should be increased or decreased. The ALJ would then rule on the proper reimbursement as part of any order granting an annexation.

With regard to orderly annexations, townships believe that the current law works, because both sides have to agree to what is fair before the OA is finalized. The state should not unduly restrict the ability of the parties to find a workable solution to their local issue. However, townships are amenable to providing some reasonable guidelines so that a reimbursement reflects the permanent loss of a likely increasing tax base, payment of outstanding special assessments and other debt attributable to the annexed area, the impact on town infrastructure of city development in the annexed area, and other costs or reimbursement for mutually agreed to public purposes and benefits. Townships see the approach offered in SF 3131 from 2008 as a strong disincentive for towns to enter into OA, and an unnecessary restriction on open negotiations between parties.

City Position

“Unless otherwise agreed”, state law provides for reimbursement from cities to towns for lost property tax revenue “in substantially equal payments over not less than two nor more than eight years from the time of annexation.” In addition to what they are statutorily entitled to, towns will, in the course of negotiating an orderly annexation agreement often demand additional compensation. In some cases this compensation is in the form additional payment on a per acre basis. These demands often range from \$250 to \$500. In some extreme cases the request has been as high as \$1000 per acre.

In other cases this compensation is in the form of shared property tax revenue from the annexation area, sometimes for a limited number of years and in some cases into perpetuity (Big Lake and Big Lake Township for instance). These demands often bare no relationship to the property, preparing it for development or providing it with any kinds of public services.

These demands generally serve as a barrier to annexation and often kill projects. Where a city or developer is willing to pay, the cost of the development is driven artificially higher.

Once a city agrees to one of these forms of compensation it becomes the “floor” from which other townships across the state negotiate.

The legislature needs to prohibit outright per acre fees that bare no relation to the property or its development. Further the state should limit the length of time allowed for cities to share property tax revenue from the area with the township. Compensating the township fairly for lost property tax revenue is one thing. A city subsidizing township property tax payers is another.

E. Contested Case Process

Township Position

While contested cases represent the smallest percentage of annexations, they involve the greatest amount of land area and population taken from townships. They are very divisive in a community, and in the ideal world townships believe that the contested case process should be abolished. In recognition of political realities, however, there are a number of amendments to the annexation statutes that would improve the contested case process so that it is used only when a city can demonstrate a true need and a solution to that need.

Specific recommendations supported by townships include:

- a. Amend §414.031, subd.1 (b) to require a petition for annexation to identify the need services and how the annexation will address those needs:
- b. Establish a referendum process (see Election Requirement heading.)

Amend §414.031, subd. 4 to enhance the factors that must be found to exist before an annexation can be granted. Enhancements should include (1) consideration of the margin of defeat if a referendum has failed; (2) require a more detailed analysis of the needed services, how they will be provided, when they will be provided, and the cost of providing such services; (3) consideration of whether the development would occur but for the annexation.

City Position

Every year a handful of annexations are settled by what is known as a contested case. A contested case is an expensive trial like hearing that is often brought when attempts to negotiate an orderly annexation agreement fail.

Because of the expense (often more than \$100,000 on each side) and uncertainty related to contested case proceedings, cities are often very reluctant to initiate them even though the annexation may be completely justified under state law. More often than not when orderly annexation negotiations between a city and township fail, a city will walk away from the annexation rather than pursue a contested case, leaving the problems that required the annexation in the first place to continue.

Under current state law an administrative law judge (ALJ) weighs 17 factors to determine the outcome of a contested case. Upon weighing these factors an ALJ may make finding that the area “is or is about to become urban or suburban in character.” However state law does not define urban or suburban in character making ALJ decisions highly subjective. The state legislature should define “urban or suburban in character” using some objective measure such as density.

The need for contested case annexations could be lessened in the first place by giving cities more tools to pursue annexations by ordinance where the situation clearly calls for annexation and the city is willing to meet certain criteria related to planning and the extension of city services.

At the same time, the legislature should make the outcome more certain for all parties by providing for objective annexation factors in the statute and limiting ALJ discretion when those factors are met.

F. Joint Informational Meetings

Township Position

Townships thought this issue had been resolved in the consensus bill adopted during the 2008 legislative session; however, the cities raised a new concern at the last meeting of the Task Force. Because there was not time to discuss this issue in any detail at the last meeting, the

townships do not yet have a formal position regarding any specific further changes to Minn. Stat. §414.0333. However, townships are willing to discuss the issue if the Office of Administrative Hearings can identify procedural issues that need further clarification related to the role of the meeting.

The informational meeting requirement was created as part of the 2006 compromise bill on annexation reform. It was established to ensure that landowners, who had already lost their right to vote on a hostile annexation, would have a chance to be heard in a meaningful way without having to be added as a formal party to the proceeding, which would then require them to pay a share of the proceeding costs and perhaps retain a personal attorney. Townships are adamant that some affordable process be retained so that affected property owners can be heard and that the decision maker must take into consideration what has been said by the residents.

City Position

When cities pursue contested case annexations state law requires that a “joint informational meeting” be held prior to an administrative hearing on the matter. At this meeting anyone is allowed to appear and “place” into the record “documents, expert opinions, or other material supporting their positions on issues raised by the proposed annexation proceedings.”

In addition the administrative law judge (ALJ) conducting the hearing will often set aside an evening during the hearing process for another public hearing where the ALJ will often take “evidence.”

Beside the inefficiency of holding two hearings, a greater concern is that the information gathered at these hearings is taken as “evidence.” The problem is that because of the nature of the meetings, opposing counsel has no opportunity to object to the evidence or cross-examine the individual offering the evidence and it comes into the process in an unfiltered way.

This is a significant problem because township attorneys have used this as a way to introduce evidence in such a way that city attorneys have no opportunity challenge. This recently happened in the Pine River contested case.

The legislature should do two things. First the legislature should allow only one public meeting of this sort.

More importantly, the legislature should make clear that information offered at these meetings is not “evidence” for purposes of the contested case hearing.

G. Municipal Incorporations

Township Position

Townships believe that a town which files for incorporation should be exempt from any competing attempt by a city to annex any or all of the area sought to be incorporated. This is particularly true because a review of the most recent examples of competing annexation petitions reveals that the city seeking to annex usually cherry picks the prime tax base and is not interested in servicing the rest of the township.

A city opposed to a proposed incorporation can raise its objections as part of the process, but they should not be able to intervene with their own petition to annex after the town has spent its time and resources preparing for the desired incorporation or the residents have petitioned to incorporate and protect their own destiny as a governmental unit.

City Position

In order to promote better land use, efficient use of local government resources and support existing municipalities the legislature should prohibit further municipal incorporation.

Recently there have been a couple of new municipal incorporations on the fringe of the metro area (Burns Township becoming the City of Nowthen). These township incorporations are a pre-emptive defense against annexation.

These incorporations end up thwarting the growth of legitimate cities. These new “cities” may or may not have any intention of providing services to their residents or developing as a city would. Rather these townships seem motivated by a desire to “retain” their township style of development.

H. Competing Annexations

Township Position

Townships agree that Chapter 414 should be amended to clarify how simultaneous petitions for contested case annexations are handled. However, no city should be allowed to trump an orderly annexation agreement between a township and another city. If two entities have been able to reach a mutually acceptable agreement, a third party should not be able to undo that agreement by trying to annex the same property. If there are competing annexations and the township reaches an orderly annexation agreement with one of the competing cities, that orderly agreement should end all competing petitions to annex the same area.

Minn. Stat. §414.01 correctly recognizes orderly annexations as the preferred approach, and thus is it imperative that such agreements be protected from outside interference.

City Position

From time to time two different cities may be exploring the annexation of the same area. This may happen because the area is attractive to both cities because of their growth patterns or may happen because a township will enter into an orderly annexation (OA) agreement with one city to fend off the potential annexation of another. This is potentially accomplished by a township taking advantage of a notice provision in law that says a city must notify the township 30 days in advance of filing a notice of annexation with the Office of Administrative Hearings. This period gives the township an opportunity to make a sweet-heart deal with another city as a means of blocking the annexation.

When this situation has occurred cities have had to take the issue to district court in order to have their annexation adjudicated in a contested case process:

Some argue that if a township and a city have an orderly annexation agreement that should trump any other city's claim on the area. Doing so however could be counterproductive to accomplishing good land use and government efficiency. Just because a city and a township have an OA agreement does not mean that that city is best positioned to serve the annexation area.

At the very least the legislature should clarify the statute so that when a city serves a notice of intent to annex on the township that should "freeze" the contemplated annexation area from being the subject of an OA agreement with another city.

Even more impactful however would be to require a contested case hearing as a matter of course when there are competing annexation claims rather than forcing one of the parties to go to district court in order to vindicate their claims.

I. Election Requirement

Township Position

The right to vote on contested case annexations was removed from township residents as the result of an amendment slipped into the very sizeable 1992 omnibus tax bill on the last day of the legislative session. The stand alone bill to remove the right to vote had been defeated in committees on three different occasions during that session, and thus the overwhelming majority of legislators had no idea they were approving a measure that had already been defeated.

Townships believe that reestablishing a modified right to vote would be the best way to end hostile annexations. As opposed to the pre-1992 process, the approach most recently advocated by townships would allow the residents in a proposed annexation area to vote, following an informational meeting, if the annexation petition was signed by less than a super-majority of the residents in the annexation area. Ideally, the election would be in place of the formal hearing process, and not a post-hearing secondary process as used pre-1992; however, over the years townships have also offered an option where a hearing could follow the vote, depending on the margin of victory or defeat. Townships would also be agreeable to allowing a vote of the city residents under certain conditions, provided that any annexation would have to be approved by a set supermajority of both entities voters.

City Position

Until 1992 township voters were allowed to vote on some annexation issues. Because an affirmative vote on annexation would generally mean higher property taxes for township residents these annexation questions would naturally fail more often than succeed. Essentially these elections allowed a small set of voters to determine the governmental structure and development pattern for the whole region.

Reinstating any form of an election requirement is a step away from ensuring that annexation laws accomplish the state's objectives of sound development practices and cost effective delivery of governmental services.

IV. RECOMMENDATIONS

A. Recommended Legislation

After the 2008 Legislative session, the Task Force could only agree on two additional recommended changes to Chapter 414. The first proposal addresses part of the ambiguities surrounding the current statute on reimbursement by cities to townships for lost property tax revenue following annexation. The proposal is to reinstate a proportionately reduced payback over five years for annexations by ordinance under Minnesota Statute §414.033, so that in the first year following the year when the annexing city could first levy on the annexed area, the city must make a cash payment to the township of 90% of the taxes previously received by the township from the annexed area; in the second year the payment would equal to 80% ; and 60% in the third year; 40% percent in year four and in the fifth and final year an amount equal to 20%. The proposal *does not* represent agreement for any other outstanding reimbursement issues relating to annexations accomplished through either orderly annexation (Minn. Stat. §414.0325) or by order following an administrative hearing (Minn. Stat. §414.031). Proposed language in bill form drafted by the Office of the Revisor of Statutes is included in **Appendix B**.

The second recommendation is to repeal a legislative change made in 2006 Laws c 270 s 12, which removed the ability of individual property owners, who live at a city boundary, from initiating a proceeding to detach from that city and be concurrently annexed to the abutting city when the home city objects. Prior to 2006, Minnesota Statute §414.061 Subd. 5 required that a property owner petition for concurrent detachment and annexation to include a resolution from only *one* of the affected cities. The change made in 2006 requires both the home city and the abutting city to adopt resolutions before the property owner could petition. The concurrent detachment and annexation statute already provides for the situation where the two affected cities agree. The net effect of the 2006 amendment was to prevent a property owner from petitioning in the situation where the two affected cities are at odds over the proposal. The Task Force recommends the reinstatement of the right for individual property owners to have access to the process when the home city opposes their proposed action.

B. Further Legislative Expressions of Policy and Direction

In Section III of this report the cities and towns set forth their respective positions on the primary remaining issues. While some of these issues are more technical in nature and would appear to lend themselves to easier legislative fixes, the others reflect the fundamental policies and objectives that form the core of the legislative debate on annexation, and because the Task Force was not able to find consensus resolutions to these substantive issues, it was also impossible to find consensus on resolving the more technical matters. On the other hand, the Task Force members were able to agree that ultimately legislative discussion and action on these matters will be needed.

The one fundamental issue that repeatedly became the core of debate for Task Force members is the role of cities and towns in land use planning and service delivery (including water and wastewater issues), particularly in areas where development is occurring. While there are significant differences of opinion between cities and towns as adequately address these issues and that it is used to react to situations after-the-fact rather than to address the issues in a proactive manner.

Several members of the Task Force believe that municipal boundary disputes could be minimized by state programs and incentives for cities and townships to engage in cooperative planning and service-delivery efforts. However, other members expressed concerns over whether such efforts were always the most effective or efficient means of dealing with development pressures.

Ultimately, the legislature will need to make policy decisions on these fundamental issues before there is likely to be consensus on other meaningful annexation reform.

C. Further Research and Investigation

To assist the legislature in reaching decisions regarding the fundamental issues outlined above, along with the other annexation issues raised by the members of the Task Force and outlined in Section III, some Task Force members believe that legislative attention to the following matters may be of assistance:

1. **Retrospective Review of Earlier Programs.** Legislative understanding of the following could be beneficial: the activities of the former Board of Government Innovation and Cooperation; the type of assistance offered by the Local Planning Assistance unit of the former Office of Strategic and Long Range Planning; and the perceived successes and shortcomings of the Community Based Planning efforts for which a pilot program was established in the St. Cloud area. Any study should examine how these programs were structured, what if any impact they had on reducing disputes between cities and townships, the impact on development patterns, and any environmental consequences from land use activities resulting from the efforts of such programs.
2. **Review of Other Formal and Informal Early Cooperative Planning Activities and Service Delivery between Cities and Towns.** There is no good source of data of existing efforts of cooperation between cities and towns regarding land use planning, service delivery, or other efforts, nor on the results of such cooperative efforts. One possible example is the orderly annexation agreement between the City of Bemidji, Bemidji Township and Northern Township. A study of such agreements, and their effectiveness as determined by each participating entity, could prove helpful in finding alternative solutions and promoting best practices between cities and towns.
3. **Understand boundary adjustment procedures in other states.** While the effectiveness of efforts in other states is a matter of perspective, understanding what procedures are used and being able to then follow up with participants to such procedures would help Minnesota evaluate its procedures.

It is strongly felt that these suggestions for further study do not need to be done in the context of a new Task Force, working group, or committee, nor is this a recommendation for the continuation of the current Municipal Boundary Adjustment Advisory Task Force.

V. BEST PRACTICES ANNEXATION TRAINING

The legislative directive to the Task Force also included making recommendations regarding best practices annexation training for city and township officials to better communicate and jointly plan potential annexations. Members agreed to focus the best practices training on creating durable orderly annexation agreements between townships and cities.

The development of such a training guide was delegated to a subcommittee of: Kent Sulem from the Minnesota Association of Townships, Craig Johnson from the League of Minnesota Cities, and Christine Scottillo from the Office of Administrative Hearings-Municipal Boundary Adjustment Unit. The subcommittee met several times and produced a draft training guide which is being circulated to local constituents for input regarding their experiences with orderly annexation agreements. The draft guide includes an explanation of the orderly annexation process; communication steps; negotiation techniques and model agreements, as well as an informational factsheet which is attached as **Appendix C** to this report. The factsheet summarizes the characteristics and benefits of orderly annexation agreements.

The subcommittee will continue meeting to finalize a training guide which will be presented to communities through joint educational efforts of the various professional associations involved.

VI. CONCLUSION

Task Force members believe that House File No. 3357, subsequently enacted as Act of April 17, 2008, c 196 2008 Minn. Laws, together with the proposed legislation contained in Appendix B, resolve most of the technical issues that had arisen with respect to Chapter 414. That legislation and proposed legislation also resolve some procedural issues and will have a constructive substantive impact on the municipal boundary adjustment process. Section III of this report identifies some additional process issues on which consensus could not be obtained. Nevertheless, Task Force members believe that it would be helpful for the legislature to put those issues to rest.

The most fundamental disagreements between cities and townships concerning the current municipal boundary adjustment process are based on different visions of their respective roles in land use planning, service delivery, and infrastructure development in those areas of the state where urbanization is occurring. Task Force members believe that this Final Report brings those issues into sharp focus, and the members encourage the legislature to make the policy determinations and provide the direction necessary to resolve those issues.

APPENDIX A

MUNICIPAL BOUNDARY ADJUSTMENT ADVISORY TASK FORCE ESTABLISHED.

Subdivision 1. Membership. An advisory task force on municipal boundary adjustments is established to study and make recommendations on what, if any, changes should be made to the law governing municipal boundary adjustments. The task force shall develop recommendations regarding best practices annexation training for city and township officials to better communicate and jointly plan potential annexations. The task force is comprised of the following members:

(1) two members of the senate, one appointed by the majority leader and one appointed by the minority leader;

(2) two members of the house of representatives, one appointed by the speaker of the house and one appointed by the minority leader;

(3) three representatives of city interests, appointed by the League of Minnesota Cities in consultation with the Association of Metropolitan Municipalities, the Coalition of Greater Minnesota Cities, and the Minnesota Association of Small Cities;

(4) three representatives of township interests, appointed by the Minnesota Association of Townships; and

(5) one person appointed jointly by the senate majority leader and the speaker of the house of representatives to serve as chair of the task force, selected based on knowledge and experience in municipal boundary adjustment issues and who could serve without bias towards either side of the issue of annexation. The chair must convene the first meeting of the task force no later than August 1, 2007.

All appointing authorities must make the appointments to the task force within 30 days of the effective date of this section and shall provide for balance of geographic areas of the state and city and town interests.

Subd. 2. Report by January 16, 2009. The task force shall report its interim recommendations to the chairs and members of the house of representatives and senate committees with jurisdiction over municipal boundary adjustments by March 1, 2008, and its final recommendations by January 16, 2009. The task force shall also provide a copy of its recommendations to the Legislative Reference Library.

Subd. 3. Expenses. The cost of preparing the report must be divided among the League of Minnesota Cities, the Coalition of Greater Minnesota Cities, and the Minnesota Association of Townships.

EFFECTIVE DATE. This section is effective the day following final enactment. The Municipal Boundary Adjustment Advisory Task Force expires on January 16, 2009, or the day after the report required by subdivision 2 is submitted, whichever is later.

1.1 A bill for an act
1.2 relating to municipal boundary adjustments; providing for reimbursement to
1.3 towns for reduced revenues by municipalities annexing by ordinance; amending
1.4 Minnesota Statutes 2008, sections 414.033, subdivision 12; 414.036.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2008, section 414.033, subdivision 12, is amended to
1.7 read:

1.8 Subd. 12. **Property taxes.** (a) When a municipality annexes land under subdivision
1.9 2, clause (2), (3), or (4), property taxes payable on the annexed land shall continue to be
1.10 paid to the affected town or towns for the year in which the annexation becomes effective.
1.11 If the annexation becomes effective on or before August 1 of a levy year, the municipality
1.12 may levy on the annexed area beginning with that same levy year. If the annexation
1.13 becomes effective after August 1 of a levy year, the town may continue to levy on the
1.14 annexed area for that levy year, and the municipality may not levy on the annexed area
1.15 until the following levy year.

1.16 (b) When a municipality adopts an ordinance under this section annexing part
1.17 of a town to a municipality, the ordinance must provide a reimbursement from the
1.18 municipality to the town for the loss of taxes from the property annexed for the period and
1.19 in accordance with the following schedule:

1.20 (1) in the first levy year following the year when the annexing municipality could
1.21 first levy on the annexed area, the municipality shall make a cash payment to the affected
1.22 town in an amount equal to 90 percent of the property taxes distributed to the town
1.23 in regard to the annexed area in the last year the property taxes from the annexed area
1.24 were payable to the town;

- 2.1 (2) in the second year, an amount equal to 80 percent;
2.2 (3) in the third year, an amount equal to 60 percent;
2.3 (4) in the fourth year, an amount equal to 40 percent; and
2.4 (5) in the fifth and final year, an amount equal to 20 percent.

2.5 Sec. 2. Minnesota Statutes 2008, section 414.036, is amended to read:

2.6 **414.036 CITY REIMBURSEMENT TO TOWN TO ANNEX TAXABLE**
2.7 **PROPERTY.**

2.8 (a) Unless otherwise agreed to by the annexing municipality and the affected town,
2.9 when an order or other approval under ~~this chapter~~ section 414.031 or 414.0325 annexes
2.10 part of a town to a municipality, the order or other approval must provide a reimbursement
2.11 from the municipality to the town for all or part of the taxable property annexed as part of
2.12 the order. The reimbursement shall be completed in substantially equal payments over not
2.13 less than two nor more than eight years from the time of annexation. The municipality
2.14 must reimburse the township for all special assessments assigned by the township to the
2.15 annexed property, and any portion of debt incurred by the town prior to the annexation
2.16 and attributable to the property to be annexed but for which no special assessments are
2.17 outstanding, in substantially equal payments over a period of not less than two or no
2.18 more than eight years.

2.19 (b) This section does not apply to an annexation by ordinance under section 414.033.

Orderly Annexation Agreement Factsheet

Orderly Annexation agreements are authorized under Minnesota Statutes §414.0325 and are flexible agreements for managing future urbanization and the extension of municipal services. They are a valuable tool for local communities and an alternative to protracted conflicts and litigation over municipal boundary and land use issues.

Orderly Annexation Agreements feature:

- ▶ Published Notice of Intent To Designate an area for orderly annexation.
- ▶ Negotiated terms and conditions that allows for phased in growth over a specified timeframe.
- ▶ A joint plan for the designated area. This plan ensures that future use of the territory is carefully considered and coordinated. The plan may address future streets, sidewalks and trails, layout of neighborhoods, design standards, zoning, and public facilities such as parks, municipal buildings, storm water ponds, and utilities.
- ▶ Approval by the Office of Administrative Hearings – Municipal Boundary Adjustment unit. The Chief Administrative Law Judge may review and comment but must approve.

For more information, see the Municipal Boundary Adjustment website at www.mba.state.mn.us

Benefits to Orderly Annexation Agreements

Cooperative – while annexation and incorporation tend to pit neighboring communities against one another, orderly annexation agreements provide a chance to focus on shared values, points of agreement, and solutions that can benefit everyone.

Proactive – while annexation and incorporation put area communities in a reactive mode, joint annexation agreements enable communities to proactively guide their future.

Flexibility – while other statutory boundary adjustments mechanisms such as annexation are specific in scope and process, orderly annexation agreements provide communities with flexibility to creatively craft their own rules and solutions.

Certainty – while other boundary adjustments are unpredictable, orderly annexation agreements put communities in charge. Communities have certainty over how issues are resolved, the size of the designated area, the length of their agreement, how it can be amended, the conditions for how land will transfer, the responsibility for services, the duration of the agreement, and other details.

Broad participation – Affected property owners and stakeholders can advise elected officials of needs and concerns to be taken into account during negotiations leading to broader support for the adoption and implementation of the agreement.

Save money \$\$\$ – an orderly annexation agreement can avoid costly litigation. The agreement's plan for the designated area can identify service sharing opportunities and avoid duplication of services and capital facilities.