

# Chapter Seventeen

## *Boundary Adjustments: Annexation and Detachment*

### **§17-1. Boundary Adjustments**

As discussed in Chapter 2, Congress commissioned a survey to establish congressional townships boundaries in Minnesota. In most cases these boundaries became the jurisdictional boundaries of the organized town. The Minnesota Legislature confirmed that the boundaries of towns as they existed on March 1, 1906, remain their boundaries unless the county board changes them as provided in law. Minn. Stat. § 365.01. Additionally, the Legislature has provided that a town's boundaries can be changed through a process called annexation. This section will discuss the various methods for changing town boundaries.

A township may not be divided to contain less than 36 square miles unless certain criteria are met. However, County boards have the authority to act on petitions from voters to change the boundaries of one or more towns. "The county board may alter the boundaries of towns, or partition any town among other towns within the county by attaching a part of one town to another, or by dividing one town and attaching the parts to other towns, or by forming a new town from the territory of one or more towns, or from territory not before included in a town, whenever it is made to appear necessary or expedient, by a petition for that purpose signed by not less than 20 legal voters residing within the territory to be affected." Minn. Stat. § 379.02. It is also possible to petition the county board to add unorganized territory to an adjacent organized town.

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Counties are occasionally called upon to exercise this authority to address specific situations such as moving an isolated part of one town into another town that can more easily provide services to the newly developed area. These petitions are rare enough that most counties need to research the process before responding to a Chapter 379 boundary adjustment petition.

## §17-2 Annexation

By far the more common procedure used to change town boundaries is the annexation process. Under Minnesota law annexation involves transferring land and the associated tax base from one government entity to another. It is easy to see why annexation can lead to controversy for townships, since Chapter 414 of the Minnesota Statutes is structured to allow cities to annex and grow and towns to lose property and shrink.

In short, annexation refers to the process of a city expanding its boundaries into one or more towns. The annexation process can range from those occurring through a cooperative agreement between a city and a town, to a bitterly fought contested case. Annexation disputes can cost each party tens of thousands, if not hundreds of thousands, of taxpayer dollars. The Minnesota Association of Townships and many towns, particularly those that have experienced contested annexations, have very strong opinions about the annexation process and the need to bring balance to the process by giving town boards and town residents a greater voice in the process.

There are three different methods or authorities that exist in Minn. Stat. Chap. 414 to annex property.

1. Annexation by Ordinance
2. Orderly Annexation Agreement
3. Contested Case Annexations

The appropriate procedure depends on the ownership, size, and other characteristics of the land under consideration.

### §17-2. Annexation by Ordinance

Most annexations which occur are accomplished through the adoption of an ordinance by the annexing city under Minn. Stat.

§ 414.033. There are seven situations where a city can annex property by ordinance. Each situation has a set of requirements, some of which apply to other situations of annexation by ordinance, and some which are unique. **In all instances the city must adopt an ordinance to annex the land.**

1. **The city owns the land**, Minn. Stat. § 414.033, subd 2(1). For a city to annex property it owns, the land must "abut" the city's boundary. "The terms 'abut,' 'abuts,' and 'abutting' refer to areas whose boundaries at least touch one another at a single point, including areas whose boundaries would touch but for an intervening roadway, railroad, waterway or parcel of publicly-owned land." Minn. Stat. § 414.011, subd. 6. ***The city does not need to conduct a hearing to annex land under this provision.***
2. **The land to be annexed is completely surrounded by the city boundaries**, Minn. Stat. § 414.033, subd. 2 (2).
3. **Annexation of 120 acres or less**, Minn. Stat. § 414.033, subd. 2(3). The following requirements must be met:
  - a. The land to be annexed must abut the city's boundary.
  - b. The total amount of land to be annexed must be 120 acres or less.
  - c. Public wastewater facilities do not serve the land and are not otherwise available.
  - d. All the owners of the property to be annexed must petition the city and request the annexation.
  - e. The land to be annexed must not be contiguous to any land owned by the same owners that was annexed under this statutory provision in the preceding 12 months and which would cumu-

latively exceed 120 acres. The prevents a city from exceeding the acreage limit by adopting multiple ordinances from the same owner.

- f. If the land annexed under this provision is within a floodplain or shore land, the city must adopt or amend its land use controls to conform to Minn. Stat. Ch. 103F and any new development of the annexed land is subject to the same chapter.

**4. Annexation of Small Lots**, Minn. Stat. § 414.033, subd. 2(4). The following requirements must be met:

- a. The land has been approved after August 1, 1995, by a preliminary plat or final plat for subdivision.
- b. The land must consist of residential lots that average 21,780 square feet or less in area.
- c. The land must be within two miles of the city's limits.

**Hearings:** In annexations described under types 2-4, the city is required to hold a hearing after providing at least 30 days' written notice by certified mail to the following individuals or entities:

- town or towns affected;
- all owners of the land to be annexed; and
- all owners of the land contiguous to the area to be annexed.

**Town boards do not have the authority to object** to annexation by ordinance under types 2-4 beyond speaking against them at the hearing. The town board would need to bring a challenge in district court if it believes the city acted beyond its authority or did not follow the proper procedure.

**Electric utility notice.** At least 30 days before adopting an ordinance, the city must notify the petitioners the cost of electric utility service may change if the land is annexed. *See* Minn. Stat. § 414.033, subd. 13. The notice must include an estimate of the cost impact of any change in electric utility services, including rate changes and assessments, resulting from annexation.

***There are two methods of annexation by ordinance that does give the town board the authority to object:***

**5. Annexation of Platted Land or Unplatted Land containing 200 acres or less**, Minn.

Stat. § 414.033, subd. 5. In this case a majority of owners of platted land, or unplatted land, that does not exceed 200 acres abutting the city may petition to have the land annexed to the city. Within 10 days of filing the petition with the city, the petition must be filed with the chief administrative law judge, the town board, the county board, and the council of any other city that borders the land to be annexed. Within 90 days of being served the petition, the town board or council of an abutting city may submit written objections to the chief administrative law judge and the annexing city. Such an objection triggers the chief administrative law judge to call and hold a hearing as provided in Minn. Stat. § 414.031, subs. 3 and 4. If the petition was not signed by all the owners of the land being annexed, the city needs to hold a hearing. The city must give at least 30 days' mailed notice of the hearing to all of the property owners. If there are no objections, the city can annex the land by ordinance if all of the owners signed the petition. The city must determine if the land to be annexed is now, or is about to become, urban or suburban in character.

**6. Annexation of 60%, bordered land containing 40 acres or less**, Minn. Stat.

§ 414.033, subd. 3. The land to be annexed cannot contain more than 40 acres and 60 percent of the perimeter of the land must border the city. The city must serve notice of intent to annex under this provision upon the town board and the chief administrative law judge, unless the area is appropriate for annexation by ordinance under Minnesota Stat. § 414.033, subd. 2(3). Within 90 days of being served the petition, the town board may submit written objections to the chief administrative law judge. There is no statutory requirement to serve

the objection on the city, but it is a good practice. A timely objection will trigger the chief administrative law judge to call and hold a hearing as set forth in Minnesota Stat. § 414.031, subsds. 3 and 4.

7. **Annexation of land the City is required to serve**, Minn. Stat. § 414.0335. The final option is when the city is required to annex by the Minnesota Pollution Control Agency (MPCA) to extend wastewater service outside of its boundaries. The city must act within the 90-day period provided in Minn. Stat. § 115.49 to develop an agreement for the extension of services under the statute to annex the land instead of entering into the agreement. The land that may be annexed under this authority is limited to the land identified in the MPCA's order. The city must adopt an ordinance to annex the land and submit it to the chief administrative law judge. The chief administrative law judge is required to approve the annexation within 30 days of receipt. Once the land is annexed, the city is required to amend its comprehensive plan and official controls.

#### **A. Reimbursement of Lost Tax Revenue**

When a city annexes land from a town, the order issued by the state must provide for the reimbursement of town taxes to the town. Minn. Stat. § 414.036. The statutes do not provide a specific amount or formula for setting the amount of the reimbursement. Instead, if the parties do not agree on an amount or formula, the reimbursement must be completed in substantially equal payments over a period from two to eight years. The amounts reimbursed must include all special assessments and the portion of debt attributable to the annexed property. If the ordinance is passed after August 1, the town may continue to levy on the annexed area for that levy year and the City may not.

In issuing an order to annex property by ordinance, the chief judge does not consider the annexation factors contained in Minn. Stat. §§ 414.01 or 414.031. The court found there is no statutory authority to consider those factors in this context. *Gilbert v. Minnesota State Office of Strategic and Long-Range Planning*, 2002 WL 109313 (Minn. App. 2002). The review by the chief judge is to confirm the annexation is based on one of the authorities in Minn. Stat. § 414.033 and that the proper procedures are followed.

### **§ 17-4. Orderly Annexation Agreement**

Typically, a city initiates a discussion by asking the town to agree to the annexation of a certain defined area of the town. Negotiations allow the two units of government to agree on an annexation process, hence an orderly annexation. Because these annexations are mutually agreed to between the city council and town board, they are generally preferred over the other methods of annexation. Minn. Stat. § 414.0325. It is beneficial to cities because it saves them money and it is beneficial to towns because it allows them to hold onto their tax base longer.

The area designated in the agreement in need of annexation can be small or can encompass the entire town. Usually, agreements developed to annex small portions of land provide for the immediate annexation of the property with few limitations or conditions. On the other hand, orderly annexation agreements can be part of a long-range plan that addresses where, when, and under what conditions the city will be allowed to annex land from the town. Some agreements contain detailed provisions related to timing, providing additional infrastructure, payments to the town, joint zoning in the designated area before it is annexed, and other topics important to the parties in the given situation. Because of the potential impact of

these agreements, town boards should work with an attorney familiar with annexation if a city approaches it to develop an agreement for the annexation of a significant part of the town.

The following is a list of some elements to consider in an orderly agreement:

1. **Eligibility.** The agreement must set forth the conditions under which the land will become eligible for annexation. Some agreements simply designate different zones or areas and indicate a date after which the city may annex land from within the particular area. In other cases, the agreement contains a detailed set of conditions and variables for determining when particular portions of the designated area become eligible for annexation.
2. **Process.** The agreement should set forth the process to be followed to annex land from within the designated area. The procedure is unique to each agreement.
3. **Contact.** Minnesota Statutes specifically indicate orderly annexation agreements are binding contracts and that their provisions are not preempted by the other provision in chapter 414 of Minnesota Statutes, unless the parties agree otherwise. See Minn. Stat. § 414.0325, subd. 6. Furthermore, an agreement can indicate that it provides the exclusive procedures for annexing property from the designated area. Parties to an agreement should include a provision which indicates the agreement is a binding contract, and it provides the exclusive method for annexing land within the designated area. This prevents any confusion regarding the use of other forms of annexation.
4. **Zoning.** Determining which zoning ordinance applies and who is responsible for the administration of those regulations within the designated area needs to be addressed in the agreement. Options include:
  - a. **Joint Powers Board.** The parties can establish a Joint Powers Board to exercise planning and zoning authority within the designated area. Minn. Stat. § 414.0325, subd. 5(a). The board shall have all of the powers of a zoning authority under Minnesota Statutes, chapter 462 and may adopt and enforce the state fire code. Minn. Stat. § 414.0325, subd. 5(b). The agreement can limit the jurisdiction of the joint board to only a portion of the designated area or may actually expand its jurisdiction to other areas of the town or city. Minn. Stat. § 414.0325, subd. 5(c). If a Joint Powers Board is established, the Board must establish its official controls or indicate which controls it is adopting.
  - b. **Delegate.** The agreement may delegate planning and zoning authority over the designated area to the city or town.
  - c. **Other Arrangement.** The statute allows the parties to “establish some other process within the orderly annexation agreement to accomplish planning and land use control of the designated area.” Minn. Stat. § 414.0325, subd. 5(a).
  - d. **Default** – If the agreement does not address planning and zoning using one of the options listed above, the statute provides for a default process. Minn. Stat. § 414.0325, subd. 5(d).
5. **City Extends Regulations.** If the county and town agree to exclude the designated area from their zoning and subdivision ordinance, the city may extend its zoning and subdivision ordinances to the entire area. Minn. Stat. § 414.0325, subd. 5(d)(1).
6. **Three Member Committee.** If the county and town do not agree to exclude the designated area from their zoning and subdivision regulations, a three-member committee must be established to control zoning and subdivision regulations within the designated area. Minn. Stat. § 414.0325, subd. 5(d)(2).
7. **Public Improvements.** The potential for future public improvements in the designated area should be addressed in the

agreement in situations where the annexation may not occur for many years. When an area is designated for future annexation, the town should not undertake a public improvement project in the area. Rather, the parties should establish a process for addressing requests for improvements before the land is annexed.

8. **Differential Taxation.** The agreement may provide a method for increasing the tax rate from the town's rate to the city's rate. Such a provision is not subject to the limitations imposed in Minnesota Statutes § 414.035 when differential taxation is made part of a contested case order under Minnesota Statutes § 414.031.
9. **Provision of Services.** Obtaining city services is often the motivation of property owners leading to an Orderly annexation. Thus, the feasibility and timing of the delivery of those services becomes an important part of negotiating an agreement. An agreement may address this issue in a variety of ways including a timeline for the delivery of services.
10. **Roads and Streets.** Issues arise regarding roads that remain in the town after the land is annexed. Moreover, property owners are typically concerned about the expense of having their roads upgraded to city streets.
11. **Effective Date.** Minn. Stat. § 414.0325, subd. 4 requires an effective date of the agreement.
12. **Termination/Expiration.** Some agreements contain a provision providing for the termination or expiration of the agreement.

#### **A. Procedure to Develop and File an Agreement.**

Once the terms of the agreement are agreed to in principal or outlined, then the municipalities need to go through the process of notifying the affected property owners and finalizing the agreement.

The town and city must publish notice of their intent to include the designated land as an orderly annexation area at least 10 days *before* they act to adopt the agreement. Minn. Stat. § 414.0325, subd. 1(b). The notice must be published in a newspaper of general circulation in both the town and city and must clearly identify the boundaries of the designated area. The notice should be included in the agreement.

The town board and city council each need to act to approve the joint resolution/agreement. The agreement must then be filed with the Chief Administrative Law Judge. If the parties do not limit the role of the chief judge in the agreement, the chief judge is required to hear and decide whether to approve the requested annexation using the same factors used to determine a contested case annexation. Minn. Stat. § 414.0325, subd. 2 and 3. Once completed, the chief judge must file a copy of the annexation order with the county auditor. Minn. Stat. § 414.0325, subd. 4a.

If the annexation is effective before August 1, the city may levy taxes on the annexed property in the same year as annexation. Minn. Stat. § 414.031, subd. 8. The town remains the levying authority in the year of annexation if it is effective after August 1 and the city then becomes the levying authority in the following year

## § 17-5. Contested Case Annexations

Contested case annexations can be initiated by a city, town, or by a petition of 20 percent, or 100 property owners, whichever is less. Minn. Stat. § 414.031. There are no acreage limitations on such annexations and the state must conduct a hearing on all proposed annexations under this method. Hearings for these types of disputes are heard by an Administrative Law Judge through the office of Municipal Boundary Adjustments.

Contested case annexations do not occur very often, but when they do they can have a dramatic impact on the town and its residents. When people hear stories in the press of a city proposing to annex thousands of acres or an entire township, they are referring to a contested case annexation initiated under Minn. Stat. § 414.031.

When hearing a contested case annexation, the administrative law judge is to consider a list of 13 factors set out in Minn. Stat. § 414.031(3) when deciding whether to approve the requested annexation. An important part of the judge's authority in these cases is the ability to alter the boundaries of the area proposed for annexation. Because of this authority, a judge's decision in a case can be dramatically different than what either party asked for or expected. In fact, cities have used the contested case annexation procedure to insert themselves into both non-contested and contested proceedings between a town and another city in hopes of being able to carve out part of the town for itself, rather than see it go to another city.

### A. Procedure in Contested Cases

At least 30 days prior to filing a resolution or petition with the chief administrative law judge, the city or petitioners must provide the town clerk notice by certified mail of the intent to seek the annexation. The notice must clearly identify the boundaries of the area proposed to be annexed.

The resolution or petition must be filed with

the chief administrative law judge and it must include a map showing the land proposed for annexation. See Minn. Stat. § 414.02. Within 30 to 60 days of receipt of a request for annexation, the chief administrative law judge initiates a hearing on the matter. The hearing must be in the county where the land to be annexed is located. The hearing is an opportunity for the parties to show the presence or absence of the factors the chief judge is required to consider for annexing property.

The chief judge can also order that the city and town mediate. If mediation is ordered, the city and town must hold a joint information meeting after the final mediation, and before the hearing.

As part of the evidentiary portion of the hearing, the judge is required to tour the proposed annexation area along a route agreed to by the town and the city or, if they cannot agree, as determined by the judge.

After receiving evidence at the hearing, the judge is to determine, based on his or her consideration of the factors, whether to grant the requested annexation. The judge is required to set out the factors that are the basis of his or her decision. Minn. Stat. § 414.031, subd. 4 (i). The judge may issue the following decisions:

1. **Approve.** An annexation may be granted if the judge determines:
  - a. The land is now or is about to become urban or suburban in character;
  - b. That city government is required to protect the public health, safety, and welfare; or
  - c. The annexation would be in the best interest of the land being annexed. Minn. Stat. § 414.031, subd. 4(b).

A judge only needs to find that one of these criteria is met in order to approve an annexation. See *In re Annexation of Land to the City of St. Paul Park*, 2007 WL 2177910 (Minn. App. 2007).

2. **Partial Approval.** If less than the entire town is being annexed, the judge must consider whether the remainder of the town can continue to carry on its functions without undue hardship.

3. **Mandatory Denial.** The judge shall deny the annexation if he or she finds "that the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area." Minn. Stat. § 414.031, subd. 4(d).
4. **Permissive Denial.** The judge may deny the annexation if he or she finds:
  - a. That annexation of all or a part of the property to an adjacent municipality would better serve the interests of the residents of the property; or
  - b. That the remainder of the township would suffer undue hardship. See Minn. Stat. § 414.031, subd. 4(e).
5. **Taxation Rates.** The order may include a stepped increase in tax rate for the annexed property from the town's rate to the city's rate in substantially equal proportions over not more than six years. Minn. Stat. § 414.035. The judge is to base the period "on the time reasonably required to effectively provide property-tax-supported municipal services to the annexed area." Minn. Stat. § 414.035.
6. **Boundaries Modification.** The judge is authorized to alter the boundaries of the proposed annexation area if needed to include only land that is or is about to become urban and suburban in character, as needed to preserve or improve symmetry of the area, to exclude property that may be better served by another unit of government, or to follow visible, clearly recognizable physical features. Minn. Stat. § 414.031, subd. 4(f) and (g).
7. **Effective Date.** The annexation is effective on the date specified in the

**ANNEXATION FACTORS:  
MINN. STAT § 414.031 (3)**

- Present population, number of households, past population, and projected population growth for the subject area.
- Quantity of land within the subject area and the natural terrain, including recognizable physical features, general topography, major watersheds, soil conditions, and natural features like rivers, lakes, and major bluffs.
- Present pattern of physical development, planning, and intended land uses in the subject area, including residential, industrial, commercial, agricultural, and institutional land uses and the impact of the proposed action on these uses.
- The present transportation network and potential transportation issues, including proposed highway development.
- Land-use controls and planning presently in use in the area, including comprehensive plans and policies of the Metropolitan Council where applicable, and whether there are inconsistencies between the proposed development and existing land-use controls.
- Existing levels of governmental services provided to the area, including water and sewer service, fire rating and protection, law enforcement, street improvements and maintenance, administrative services, recreational facilities, and the impact of the proposed action on the delivery of services.
- Existing or potential environmental problems and whether the incorporation is likely to improve or to resolve these problems
- Fiscal impact on the subject area and adjacent units of local government; the present bonded indebtedness; the local tax rates of the county, school district, and township; and other tax and government-aid issues.
- Relationship and effect of the proposed incorporation on adjacent and affected school districts within and adjacent to the area.
- Whether delivery of services to the subject area can be adequately and economically delivered by the existing government.
- Whether necessary governmental services can best be provided through incorporation or through annexation to an adjacent city.
- The degree of contiguity of the boundaries of the subject area and adjacent units of local government.
- The applicability of the state building code.

judge's order. Minn. Stat. § 414.031, subd. 6.

8. **Judge's Order.** The judge's "order of annexation enjoys a presumption of correctness." *In re Annexation of Land to the City of St. Paul Park*, 2007 WL 2177910 (Minn. App. 2007). Therefore, a court will not interfere with the decision unless it is either: 1) based on an erroneous theory of law; or 2) is not supported by substantial evidence in the record.

The point to keep in mind is that when a town hears that a city is talking about annexation, it should immediately open discussions with the council on the issue rather than to sit back and wait for the city to come to the town. By getting involved early in the process, the town will gain a better understanding of the city's objectives and be more likely to achieve a mutually agreeable outcome. Town officers should listen to the plans of the city and provide input on the proposal as well as identify possible better alternatives. It is also important to understand the method of annexation a city is considering so the town board can get an idea of what process to expect.

## § 17-6. Detachment

Another method through which a town's boundaries may be adjusted is through the detachment of property from a city into a town. From a town's perspective, a detachment may be thought of as a reverse annexation, and the process is set out in Minn. Stat. § 414.06. Detachment of property from a city may be initiated by the city or by the owners of the property requesting detachment. The property must be adjacent to the city's boundary (i.e., an island of property within a city may not be detached to a town). If the proposal is to detach into a town, the town board is asked to pass a resolution to support, oppose, or to stay neutral as to the request. Minn. Stat. § 414.06, subd. 1a. Failure to submit a resolution creates a presumption of neutrality. If the town takes an affirmative position that is contrary to the city's position, the town becomes a party to the action and is required to share in the costs of the proceeding. A hearing is required before an administrative law judge. If there is agreement between the city and town, a hearing is not needed.

For additional information on annexation, refer to the Municipal Boundary Adjustment unit's website within the Office of Administrative Hearings (<http://www.mba.state.mn.us>).

