

I-43 Grant
Denied

BEFORE THE MUNICIPAL COMMISSION
OF THE STATE OF MINNESOTA

Robert W. Johnson	Chairman
Thomas J. Simmons	Vice Chairman
Gerald J. Isaacs	Member
Peter E. Tibbetts	Ex-Officio Member
Arthur E. Schaefer	Ex-Officio Member

IN THE MATTER OF THE RESOLUTION)
OF THE TOWN OF GRANT FOR INCOR-)
PORATION AS THE CITY OF GRANT)

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

The above-entitled matter came on for hearing before the Minnesota Municipal Commission on February 9, 1972, at the Washington County Office Building, Stillwater, Minnesota and was immediately continued to March 30, 1972, at the same location. The hearing was continued to June 8, 1972, August 16, 1972, August 31, 1972 and November 1, 1973. A quorum of the Commission was present at all sessions of the hearing.

The Town of Grant appeared by and through its Attorney, Robert Briggs. Bernard N. Litman, Attorney at Law, appeared representing Alan P. Davidson and Gloria Davidson, objectioners. Richard W. Copeland, Attorney at Law, appeared representing the City of Dellwood. Harold D. Kimmel, Attorney at Law, appeared representing the City of Stillwater. All parties were heard who desired to be heard.

After due and careful consideration of all evidence, together with all records, files and proceedings, and being fully advised in the premises, the Minnesota Municipal Commission hereby makes and files the following Findings of Fact, Conclusions of Law and Order.

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FINDINGS OF FACT

1. The resolution of the Board of Supervisors of Grant Township for incorporation was filed on October 12, 1971 and was in all respects proper in form, contents, execution and filing.

2. Due, timely, and adequate legal notices of the hearing ordered by the Minnesota Municipal Commission were properly published, served and filed.

3. That the area proposed for incorporation is the entire Town of Grant.

4. The population of the Township according to the 1970 federal census was 1,797. The population of the township since the turn of the century is as follows:

<u>Year</u>	<u>Population</u>	<u>Year</u>	<u>Population</u>
1900	822	1940	602
1910	1,242	1950	704
1920	600	1960	1,034
1930	631		

5. The Metropolitan Council projected population for 1980 is 2,000 and for 1990 is 2,500. The Washington County Planning Department projects the population for 1980 at 2,800 and 1990 at 3,500.

6. The quantity of land proposed for incorporation is approximately 17,356 acres, 93% of which is unplatted.

7. The latest comprehensive township plan shows that the present pattern of physical development within the area proposed for incorporation is "still highly agricultural" with residential development scattered throughout the township on less than 3½ percent of the total township acreage. Less than 1½ percent of the township acreage is devoted to commercial or industrial purposes with the record revealing a total of only six (6) such establishments.

8. The township planner testified that in his expert opinion the area proposed for incorporation is rural in character and is not about to become urban or suburban in character.

9. The township comprehensive sewer plan projects that into the future less than 23 percent of the total township acreage will be devoted to residential, industrial or commercial purposes. An expert witness called by petitioners indicated that projected future plans call for a maximum of 20 percent of the tax base being derived from other than single family residential development. No studies or testimony were presented to the commission supporting this division as a sound fiscal base for community development.

10. The township comprehensive sewer and development plans call for low density rural development, limiting gross dwelling unit density to one unit per 2½ acres of buildable land within the community. They call for no sanitary sewer service anywhere in the township for at least thirty (30) years.

11. The Washington County comprehensive development plan for the area calls for industrial and urban density residential land use in the

southwest quarter of the township requiring public utilities. The plan calls for extension of sanitary sewer and water service throughout the south half of the township.

12. The Metropolitan Council professional planners did a thorough special study of the area concluding that the petition for incorporation should be denied and that piecemeal annexation should be discouraged for the next ten to fifteen years. The Metropolitan Council and Sewer Board plans call for urban development and public sanitary sewers in much of the western half of the township during the next fifteen (15) years.

13. The township government has developed a comprehensive zoning and building control program restricting development to lots of $2\frac{1}{4}$ acres or more and encouraging development on lots larger than 5 acres. Testimony was unanimous and extensive to the effect that these controls are being administered aggressively and efficiently. The ordinances delete provisions in the Washington County Subdivision Code requiring building placement to facilitate potential re-subdivision. This deletion may have serious consequences in the event that utilities become available in the future.

14. The area proposed for incorporation is divided into three major watersheds: West towards Mahtomedi, East towards Stillwater and South towards Lake Elmo.

15. The proposed incorporation would divide two lakes and create difficulties in the provision of unified lake and lane use control.

16. Petitioners for incorporation presented the commission with a great deal of testimony on soil conditions, largely unrefuted, in support of the practicality of their plan to develop a city entirely sewerred by private on-site sewer disposal systems. Although the Metropolitan Sewer Board did not provide the commission with any specific contrary analysis with regard to soil data, they did express serious concerns over the on-site sewage disposal policy. The Sewer Board specifically suggested provisions for placement of buildings to allow for future re-subdivision when sewer becomes necessary.

17. Township governmental services are limited to street maintenance and police protection provided by two part-time constables. The township has no full-time employees. Police and fire protection are provided by the cities of Mahtomedi, Dellwood and Stillwater. There is, at present, no public water, sewer or active park and recreation program in the area proposed for incorporation. The township does not blacktop its roads or participate in the county purchasing pool to control dust along the roads.

18. The only testimony on current problems of environmental pollution in the record refers to the failure of individual on-site sewage disposal systems bordering Mahtomedi. Storm water run off carrying the effluent which has leached through the soils to the surface drains westerly into Mahtomedi and thus into White Bear Lake. Petitioners presented no testimony as to how this problem might be alleviated. The Metropolitan Council Phase I Study cites the future chance of a severe health problem in urging that development into Grant Township proceed from Mahtomedi, where sewer lines are in existence. No study was

presented to the commission on the likelihood of future water pollution problems resulting from the on-site sewage disposal policies.

19. The assessed valuation of the area proposed for incorporation has increased steadily over the last ten years, from \$510,564 in 1961 to \$1,477,503 in 1971. Eighty percent of this assessed valuation is derived from unplatted property. Grant Township's mill rates fluctuated between 13 and 19 mills from 1962 to 1971 and decreased in 1972 to 5.08. The trends in assessed valuation and mill rates are similar to those in other surrounding unincorporated and incorporated communities. The total mill rate for township, school and county purposes increased steadily from 286.41 in 1962 to 451.26 in 1971, decreasing in 1972 to 383.34. The township has not incurred any bonded indebtedness.

20. No study was presented by the petitioners as to the effect of the proposed incorporation on adjacent communities. The Metropolitan Council Planning Staff's expert opinion was that the proposed incorporation would create difficulties for surrounding communities. Dellwood has commissioned a consultant's report which urges annexation of part of the area proposed for incorporation.

21. The area proposed for incorporation is divided roughly in half by the Stillwater and Mahtomedi school districts.

22. The petitioners presented no analysis of whether needed governmental service can best be provided through incorporation or annexation to an adjacent community. There is nothing in the record to support the conclusion that incorporation would, in any way, improve the provision of municipal services. The township planner and the Metropolitan

Council planner both presented unchallenged expert testimony to the effect that isolated areas in the Northwest corner of the township would be better served by annexation to Dellwood. The Metropolitan Council planner also concluded that "the gradual transfer of land from Grant to Mahtomedi would provide for more orderly and economic development."

23. The petitioners presented very little evidence suggesting that the town government was inadequate to deal with the problems of the area. The township planner concluded that in his expert opinion the township form of government is adequate to protect the public health, safety, and welfare in the area proposed for incorporation.

24. Under special provisions of state law, Grant Township has village powers and taxing authority and is capable of utilizing that power and authority to deal with the problems of the area without incorporation.

25. There is no nucleus of population and urban development within the area proposed for incorporation.

26. There was no evidence presented by petitioners tending to prove that the population in the area proposed for incorporation is characterized by interrelated and integrated social, cultural and economic ties. No evidence was presented of a unity or community of interest.

CONCLUSIONS OF LAW

1. That the Minnesota Municipal Commission duly acquired and now has jurisdiction over the within proceeding.
2. That the area proposed for incorporation or a part thereof

would be better served by annexation to or consolidation with adjacent municipalities.

3. That the existing township form of government is adequate to protect the public health, safety and welfare.

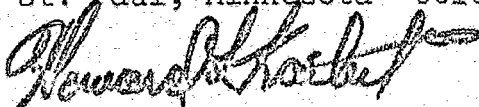
4. That the petition for incorporation should be denied.

ORDER

IT IS HEREBY ORDERED: That the petition for incorporation is in all respects DENIED.

Dated this 7th day of February, 1974

MINNESOTA MUNICIPAL COMMISSION
304 Capitol Square Building
St. Paul, Minnesota 55101

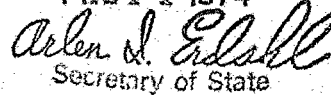


Howard L. Kaibel, Jr.
Executive Secretary

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STATE OF MINNESOTA
DEPARTMENT OF STATE
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Arlen J. Edsall
Secretary of State

MEMORANDUM

The purpose of the legislature in establishing the Minnesota Municipal Commission is outlined in the opening section of Chapter 414:

"The legislature finds that: (1) sound urban development is essential to the continued economic growth of this state; (2) municipal government is necessary to provide the governmental services essential to sound urban development and for the protection of health, safety, and welfare in areas being used intensively for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development; (3) the public interest requires that municipalities be formed when there exists or will likely exist the necessary resources to provide for their economical and efficient operation; (4) annexation to or consolidation with existing municipalities or unincorporated areas unable to supply municipal services should be facilitated; and, (5) the consolidation of municipalities should be encouraged. It is the purpose of this chapter to empower the Minnesota Municipal Commission to promote and regulate development of municipalities so that the public interest in efficient local government will be properly recognized and served."

After thorough review of hundreds of pages of testimony, exhibits and arguments, the Commission's best judgment as to how to carry out this legislative purpose is to deny the proposed incorporation. The statute applied to the record clearly requires that result.

The statute unequivocally states (Minnesota Statutes 414.02, Subdivision 3): "Upon completion of the hearing the commission may order the incorporation if it finds that the property to be incorporated is now or is about to become urban or suburban in character, or that the existing township form of government is not adequate to protect the public health, safety, and welfare." As the findings of fact accompanying this order manifestly catalog, the record presented to the commission cannot be interpreted to support either conclusion. The entire record including the clearly expressed judgment of petitioners own expert witness is consistent and unambiguous. The township is not about to become urban or suburban in character and the township form of government is adequate to protect the public health, safety, and welfare.

The statute goes on to say "The commission may deny the incorporation if the area or a part thereof, would better be served by annexation to or consolidation with an adjacent municipality." The commission's best judgment on the record and again supported by the expert testimony of petitioner's and Metropolitan Council planners is that at least part of the northwest area proposed for incorporation would be better served by annexation to Dellwood. We have no jurisdiction - no power - under the statute to consider or order the annexation. Our only alternative, other than denial of the incorporation, would be to exclude the area and incorporate the remainder of the township. This would leave a Grant Township of only a few sections of land and is obviously unsatisfactory. Perhaps the ultimate solution, suggested by some persons, is an amendment to the incorporation legislation giving the commission the jurisdiction to order annexations in this situation, but this is up to the legislature.

The basic reason reiterated throughout the record for seeking the incorporation is to prevent future annexations. The incorporation statute does not include prevention of future boundary adjustment as a reason for approval. Indeed, one of the basic reasons for creating the commission in 1959 was to curtail the rash of "defensive incorporations" that occurred in the 1950's.

We do recognize that recurrent piecemeal annexations hinder long range community planning and have consistently urged local political subdivisions to work out comprehensive mutual boundary adjustment programs and agreements. The commission would like to assist this process in any way that local communities feel would be helpful. The Metropolitan Council staff recommended that the Municipal Commission deny any further piecemeal annexations for a period of ten or fifteen years. We feel that this would be arbitrary in this

situation and would only perpetuate the problem in the northwest part of the township. We do, however, today announce a moratorium in further annexations in Grant Township for a period of at least two years with the following exceptions: Proceedings for the annexation of property lying west of Sections 4, 9 and 16 will be entertained. Proceedings for the annexation of other township property in special situations will be considered if concurred in by the Grant Town Board.

We stress that this denial of the proposed incorporation is without prejudice to a future filing at any time. The denial should not be interpreted as necessarily foreclosing the possibility of some future incorporation in this area under appropriate circumstances on a proper record.

Most of the hearing on this incorporation was devoted to a discussion by petitioners of their proposed comprehensive plans for future development. While it is not our function to be critical of or otherwise judge local planning efforts, the statute does require that we examine "Comprehensive Plans for the development of the area." We stress that the township plans had very little to do with the decision in this matter noting particularly that such plans would have been subject to total revision by the newly elected council in the event incorporation were granted.

Witnesses stressed that the plan provides a diversified "mosaic" of large lots. The one element excluded from such a mosaic is low and lower middle income families unable to afford homes on large lots with private sewer and water facilities. The commission has never deliberately created a community or adjusted community boundaries in a manner which effectively excludes persons of a particular social or economic class. In our view, communities serve and regulate social institutions best if they contain and reflect maximum socio-economic diversity. This observation should not be taken as criticism of the use of planning to control and retard premature urban growth or sprawl. Our only concern is that plans should contain provisions for low income - and admittedly high density - housing

developments at such time as the required utilities, facilities and services become available. Another way of achieving this integration of high and low income and density would be to consider consolidation with adjacent communities.

Another diversity lacking in the plan is fiscal. The proposal calls for extraordinary reliance on a single family residential property tax base deliberately excluding or restricting multiple family residential, commercial or industrial development. No study was done of the burden that this might place in the long range future on homeowners. While we have no basis for reaching any conclusions as to the economic viability of this construct, we urge careful study of the long range ramifications. One witness made reference to the "fiscal disparities" legislation allowing communities to share the tax base of new industrial and commercial growth elsewhere as a partial solution to this problem. In our view, this would constitute a misuse of remedial legislation for tax sharing if deliberately utilized to avoid any share of the burden of servicing and regulating such commercial and industrial growth. The law as we see it was developed to assist communities relying excessively on residential property taxes through lack of foresight or otherwise, not to encourage future excessive reliance.

Another key element in the comprehensive plan is avoiding public sanitary sewers in favor of private on-site septic systems. We urge local officials to heed the warning of the Metropolitan Sewer Board:

"Historically, it has been a generally known fact that soil absorption systems, even though planned properly, will fail over some time period. The township should be aware of the need for providing some alternate method of sewage disposal provided these systems fail at some future date, say within a period of 10 to 20 years. One such alternative may be to require that dwellings be placed on these large acreage lots of two and a quarter acres in such a manner that it would permit subdivision at some future date when a central system of sanitary sewage collection may be necessary. Experience has shown that it is not generally economically feasible to provide local sanitary sewer systems to acreages which are much larger than one acre in area.

(Emphasis added)

Finally, we question, with very little contrary evidence in the record, the presumption that higher density development can be practically eliminated in the near future, particularly in those areas adjacent to urban growth in Mahtomedi. We urge local leaders to review the letter, cited in the record, of August 9, 1972 from the Chairman of the Metropolitan Council to the Grant Town Board referring to the map of "Proposed Urban Lane Use 1972-1990", which shows urban development and public utilities in the western part of the township. This pattern of development is also called for in the Washington County comprehensive development plan for the area.

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